

THE TRIBUNAL RESUMED AS FOLLOWS, ON FRIDAY, 18TH FEBRUARY, 2000, AT 10:30AM:

MR. COUGHLAN: Mr. Raymond McLoughlin.

MR. SHIPSEY: I wonder before he is called, I appear for Mr. McLoughlin, instructed by William Fry and I apply for limited representation.

CHAIRMAN: Usual terms, Mr. Shipsey, as you are aware.

Very good. Limited representation on that basis. Thank you Mr. McLoughlin.

RAYMOND MCLOUGHLIN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. McLoughlin, I think you have furnished a Memorandum of Evidence for the assistance of the Tribunal, isn't that correct?

A. That's correct.

Q. You have that with you in the witness-box?

A. I have, yes.

Q. And what I intend doing is taking you through your memorandum in the first instance and then coming back to deal with the document entitled "Note to John Furze" and asking some questions about that. If that's all right with you?

A. Okay.

Q. Now, I think in the first instance, you have informed the

Tribunal in your memorandum, that the memorandum is written in response to a request for assistance from the Moriarty Tribunal concerning the writing by you, of a document entitled "Note to John Furze" in September 1983, is that correct?

A. That's correct.

Q. And I think you say that, by way of background, you say that you are a businessman and have been since the mid-1970s, Chief Executive of a public company, limited company, James Crean PLC, an industrial holding group, is that right?

A. That's right.

Q. And that since in or around 1972, when you worked with the IDA, you have had business dealings and contacts with the merchant bank, Guinness & Mahon, is that correct?

A. That's correct.

Q. And I think you have informed the Tribunal that in or about the month of September 1983, the late Mr. Desmond Traynor suggested that you should meet a colleague of his, a Mr. John Furze, from what he described as Guinness & Mahon's Cayman Island's subsidiary?

A. That is correct.

Q. I think you have informed the Tribunal that Mr. Traynor, with whom you had a brief discussion in or about February 1983 concerning Discretionary Trusts, suggested that you should take the opportunity to seek to understand the Discretionary Trust services which were available through

Ansbacher (Cayman) Limited, is that correct?

A. That's correct.

Q. And you say that for completeness, you know that you did have a note of this February 1983 meeting which you have misplaced and you are unable to locate?

A. That's correct.

Q. That is the meeting with Mr. Traynor, is that correct?

A. Which I believed to have been in February of 1983.

Q. Sorry, I keep saying '83.

A. '83.

Q. I think that you have informed the Tribunal that to the best of your recollection, you met Mr. Furze on his own at the office of Guinness & Mahon in Dublin, is that correct?

A. That's correct.

Q. And at that meeting, Mr. Furze presented some loose leaf information sheets under a number of headings relating to the creation and operation of Discretionary Trusts, is that correct?

A. That's correct.

Q. And to the best of your recollection, in the course of the meeting you took notes as he elaborated on the material contained in the information sheets, is that correct?

A. Yes.

Q. I think you have informed the Tribunal that following the meeting, as was your normal practice in such circumstances, you dictated a memorandum upon the information sheets and the explanations which had been furnished to you for the

purpose of setting down on paper the information with which you had been furnished and for the purpose of formulating any follow-up questions you might have, is that correct?

A. That is correct.

Q. And in that memorandum you set out your understanding of the subject, based on the information given to you by Mr. Furze, together with some questions arising, with the intention of sending the note to Mr. Furze to check if your understanding was correct and to obtain answers to supplementary questions, is that correct?

A. That is correct.

Q. And I think the memorandum, that is the note to John Furze, was based on the information sheets prepared by Mr. Furze which he had given to you at the meeting, together with the explanatory for additional comments made by Mr. Furze at the meeting, is that correct?

A. Yes.

Q. In preparing the memorandum, you followed the same headings as those in the information sheets given to you by Mr. Furze, save for the additional headings which were indicated by you at the end of the memorandum, for example, "Note re: Irish Tax Implications," "Note re: Irish Exchange Control Regulations", and "Note re: Richie Ryan Act 1973" that is the Finance Act of 1973 that's being discussed there?

A. I am not sure what act it is.

Q. You have informed the Tribunal that to the best of your

recollection, you do not believe that you ever sent the memorandum to Mr. Furze and that other than dictating the memorandum entitled "Note to John Furze", of which you accept you are the author, you took no further steps in the matter, is that correct?

A. That's correct.

Q. You have informed the Tribunal that you decided the idea of establishing a Discretionary Trust was not appropriate for you and so you informed Mr. Traynor of that?

A. That is so.

Q. And I think you have informed the Tribunal that you do not recall sending a copy of the memorandum to Mr. Ciaran McLoughlin who was and is a friend and business associated of yours, although you accept that it is most likely that he obtained it from you?

A. That is correct.

Q. If I could just deal with that aspect of your evidence first, Mr. McLoughlin. I think you were aware that the Tribunal came into possession of this particular document entitled "Note to John Furze", and that it came from the personal papers of Mr. Ciaran McLoughlin, isn't that correct?

A. I am aware of that.

Q. You are aware of that?

A. Yes.

Q. And I think you were aware that this document was prepared by you, isn't that correct? You are the author of the

document?

A. I am aware of that, yes.

Q. And when you prepared the document or at the time you prepared the document, was Mr. Ciaran McLoughlin both a friend and a business adviser of yours at that time?

A. Yes, informally a business a friend and informally a business adviser, yeah.

Q. And it's your recollection that you did not send the document, the note to John Furze, to Mr. Furze, isn't that correct?

A. That is correct, yeah.

Q. And you didn't give it to Mr. Desmond Traynor either?

A. I am nearly sure that I did not.

Q. Can we take it that the probability is that as the document was in the personal papers of Mr. Ciaran McLoughlin, that it must have been given to him by you one way or the other?

A. Yes, I think that is almost certainly what happened.

Q. Now, it wasn't prepared to give to Mr. Ciaran McLoughlin, is that correct?

A. No, very definitely not.

Q. Could you have, just perhaps have sought the advice of Mr. Ciaran McLoughlin or asked for his general views about something that you had prepared as a result of information being given to you?

A. I think that's very unlikely, Mr. Coughlan. I would have no reason whatever to suppose that Ciaran McLoughlin knew anything about this topic. I have a vague recollection

that he called me to say something in the following lines:

That he had been asked to meet this man from the Cayman Islands by Guinness Mahon. That he wondered if I knew him, because he was aware of my connection with Guinness Mahon. And my guess is that I told him I had met with him, and it would be natural in those circumstances to send him a copy of my notes on it, but I actually don't recall sending them.

Q. Very good. Well, as you attempt to reconstruct, and the Tribunal is always trying to look at things with the benefit of hindsight: In the first instance, did it appear to you that it was a marketing operation by Mr. Traynor and/or Mr. Furze in respect of Discretionary Trusts or business for Cayman?

A. I couldn't really say, Mr. Coughlan, what I thought about it at the time. I couldn't do better than attempt to deduce from seeing the document and understanding the circumstances. My sense of the situation is that he told me this man was coming over to Dublin on a business trip and would I meet him? There were two purposes held out for the meeting. One was to talk about whether his operation could provide services to Crean in terms of providing an international holding company structure and, as I said, the second leg to it was that I should take the opportunity to understand Discretionary Trusts. And that's really all I can say about it.

Q. Now, just to be clear about that, we are talking about two

distinct subject matters, aren't we? An international holding company or to discuss such a subject in respect of Creans?

A. Yes.

Q. And discretionary trusts related to personal matters, is that correct? Would that be your understanding, that there were two distinct matters being discussed?

A. Again I can't recall what I thought at the time, but I would deduce from looking at the document and reviewing the circumstances that it had to be that.

Q. Now, if we could, in the first instance I think, you met or you would have had met Mr. Traynor, I take it, regularly over the years in business circumstances, would that be correct?

A. I wouldn't say regularly. Now and again would be the expression that I would use. Going back to 1972, there would have been many years in that period where I wouldn't have met him at all.

Q. Very good. You knew him?

A. I knew him.

Q. And you knew Guinness & Mahon as a merchant bank?

A. I did indeed.

Q. And I just want to be clear now about the two matters which may have been under discussion or being considered by Mr. Traynor. Can I take it that Mr. Furze played no role and offered no advice to you in respect of an international holding company for Creans?

A. I think there was a certain amount of discussion on that, but not very much, because really Crean had no need of any such structure.

Q. Now, if we turn to the document entitled "Note to John Furze", I think the front page of it is just "Note to John Furze", and it's dated the 15th September, 1983. And that's the cover page, isn't it, on the memorandum prepared by you?

A. Yeah.

Q. And then I think if we turn over the page, we then see a preface, and it says:

"John, I have set down blurb representing my understanding of the position in relation to the formation of a Discretionary Trust arrangement.

This material is based primarily on my discussion with yourself yesterday but also to a secondary degree on a early discussion with some mutual acquaintances of ours.

I took you up on your offer of talking to you by phone so that I could check out my understanding of this overall matter and put the specific questions to you."

If I could just go back to the second paragraph of the preface, Mr. McLoughlin, and assist the Tribunal as to the mutual acquaintances being referred to in that second paragraph with whom you had discussions?

A. Clearly, Mr. Coughlan, one of them was Desmond Traynor.

Q. Yes.

A. And clearly the earlier discussion being referred to is the one in February 1983. I have no recollection of any discussion about Discretionary Trusts with anybody from within the Guinness Mahon Group except Desmond Traynor and John Furze, and I have reflected on this matter in recent weeks as I have read the documents, and clearly I knew you were going to ask me that question, but I clearly do not recall whom else I had in mind writing that down at the time.

Q. Very good. I think you say in the final paragraph in the preface, that you also spoke to Mr. Furze on the telephone, is that correct?

A. No. I don't think it says that.

Q. "I took you up on your offer of talking to you by phone."

A. Well, I have no recollection of ever speaking with Mr. Furze after writing that document, and my interpretation of what that meant is that at the time of writing the document, it was my intention to ring him and tell him that I would take him up on his offer, but that I would like to do it by sending him a book with questions in it and that we would do that subsequently. I don't remember that that's what happened. But that is my guess as to what happened, and it would not be an unusual way of

Q. No, I don't suggest that there is anything unusual, and just that "I took you up on your offer of talking to you by

phone". That could be before or during the preparation of the document itself, I suggest?

A. I suggest that in writing the document that I anticipated that by the time he would be reading it I would be telephoning him first to tell him it was on the way.

Q. In fact it goes on to say that "The phone call was to check out your understanding of the matters." Now, correct me if I am wrong, but my impression of that is as somebody was preparing a document, they might ring somebody up and say, "Look, am I correct in putting this down as being my understanding? I am going to raise further questions about it." Doesn't it seem to indicate that that was more than likely the process that was engaged in?

A. Well, bearing in mind that I have no recollection of telephoning him, that I don't believe that I did telephone him, I think that the sequence is more likely to be the one which I outlined to you, which is that at the time of writing the document, I anticipated ringing him first and telling him that I was taking him up on his offer and that I would be sending him this document and would then over the phone talk with him through this document. So it seems to me that I must have anticipated proceeding in this way at the time of writing the document, and therefore I wrote this knowing that if I proceeded with that course of action, he would have had a phone call from me at the time of reading the document. That is what I think must have happened, because I have no recollection of phoning him

subsequently about this.

Q. Well, you didn't send him the document, did you?

A. I have no recollection of sending him the document, nor have I any recollection of talking to him about it subsequent to the meeting which is the subject of this note.

Q. Can I ask you this Mr. McLoughlin, just so that we have an understanding as to your recollection, did you ever have any discussions with anyone else about Discretionary Trusts, whether Discretionary Trusts here in Ireland or Discretionary Trusts anywhere else?

A. I have no recollection of any such discussion other than the ones referred to here.

Q. That's what I am trying to get at.

A. I did revert to Mr. Traynor sometime after this meeting to tell him that I wasn't interested in Discretionary Trusts or in proceeding with the Discretionary Trust arrangement.

Q. So that to the best of your knowledge, the only time you spoke to anyone about Discretionary Trusts was the time that you had discussions with Mr. Traynor and/or Mr. Furze at different times, is that correct? You may have given

A. There is a possibility at sometime over the years in relation to planning affairs generally, I may have talked to a tax adviser or a legal adviser, but I actually at this moment cannot recall any such occasion.

Q. I am leaving aside now situations whereby one might be making one's will and providing for a situation where children may be under age or there may be a dependent relative or something like that. I am talking about a Discretionary Trust like this outside of any will trusts or anything like that. Did you ever discuss, to your knowledge, Discretionary Trusts with anyone else?

A. I have a vague recollection that I may have had some discussions about the Discretionary Trust at some stage along the way, but it's only vague and I couldn't even say whom it might have been with. If I did have, it would have been with my tax advisers and my legal advisers but I am really not sure about that.

Q. Well, that may be understandable, that you would discuss with your solicitors and your own tax advisers matters like trusts or other matters pertaining to your affairs, but Mr. Traynor and Mr. Furze were neither of those. I mean, they weren't your solicitor, they weren't your tax advisers, isn't that correct?

A. That's correct, yeah.

Q. So apart from professional advice that you would have been getting from your own professional advisers, did you ever have any discussions with anybody outside of that in respect of Discretionary Trusts?

A. I have no recollection of any such discussion.

Q. Well, can I

A. If we leave aside the fact that discussion on all topics

came up, you know, on a Friday night in the pub, leaving that aside, I have no recollection of any discussions with any parties like John Furze or Desmond Traynor other than legal advisers, and I have only a vague recollection that I may have had some discussions with them.

Q. That's why I am asking you that, this was a unique type of situation that Mr. Traynor and Mr. Furze were discussing Discretionary Trusts with you. That's what I am really trying to

A. Unique in the sense that it wasn't part and parcel of my life or my affairs.

Q. Yes, so that you can remember having the discussion, there is little doubt about that?

A. I know I had these two discussions.

Q. Yes. And you know you prepared this particular document?

A. That's right.

Q. And to be fair to you in this regard, Mr. McLoughlin, I think you know that the Tribunal has seen other documents prepared as in normal business circumstances, it follows a similar format, isn't that correct, the way you set things out?

A. This kind of an approach would not be unusual in circumstances where I would have had a discussion with somebody about a complex technical issue.

Q. Yes. And precisely, and what I am trying to ascertain here is you devoted a reasonable amount of time to putting this particular document together?

A. I wouldn't say that I did necessarily, Mr. Coughlan. It would be a normal part of my modus operandi that if I were at a meeting like that, that I would try and get this stuff out of my head whilst it was there as quickly as possible before I lost it. And it wouldn't be unusual for me if I was at a meeting to get into the car and take out a dictaphone and spit it out into the dictaphone on the way back to the office, because that's when you have got it all there. I reflected on the way that this document was probably put together, and I would say that it mightn't have taken more than half an hour, because at that moment, I wouldn't have had any thinking to do. It was all in my head or in notes or in the printed sheets that I got. Certainly not more than three quarters of an hour.

Q. But you have no recollection of sending the document to Mr. Furze, is that correct?

A. That's for certain.

Q. Can we take it you didn't send it?

A. I think it was extremely unlikely that I sent it.

Q. That's really what I am trying to get at. I think you do recollect well you know you didn't go down this Discretionary Trust route with Mr. Traynor and Mr. Furze, is that correct?

A. I know for certain, yeah.

Q. So you know that you must have informed Mr. Traynor that you weren't going down this route?

A. Yeah, I know that. I am quite sure that I informed Mr.

Traynor to that effect.

Q. Now, if we go through the document, and I am afraid we will have to go through the document because it is evidence before the Tribunal of a system which was being marketed here in Ireland by Mr. Furze and Mr. Traynor, so the next page is the contents.

Now, can we take it that this must have been put on at a later stage than the occasion where you just dictated everything into the dictaphone, Mr. McLoughlin? It would have to be.

A. Well, what do you mean by that?

Q. Well, to know what page anything was on, you'd have to see the hard copy?

A. Well, the way in which I believe this was constructed was that I took out a dictaphone, this would be not unusual for me. That I dictated onto the dictaphone each heading which was on these information things which I got. That I would that I dictated onto the dictaphone the information I was given which was the subject of the notes that I had taken during the meeting, and as I went along I would have directed my secretary to bring in to the text chunks from the printed material that I was given and I would just do it on a heading-by-heading basis and given it to her, and it is she who would, at the end of day when it's all put together, put the Table of Contents, and in fact it is her handwriting that is on the Table of Contents.

Q. On the numbering?

A. Yes.

Q. Well, the first thing that we deal with is the definitions or notation on the next page. And under the heading "Trust" it reads: "A trust is something created by deed where somebody gives property to somebody else to hold for the benefit of certain specified beneficiaries." That was information you got, I take it, from either a printed sheet or from Mr. Furze?

A. Yes.

Q. Then there is description of somebody who is entitled "The Client". "The person giving the property to the trustee, shall for the purpose of this note be referred to as 'The client'." Was that information that you were given by Mr. Furze or on a printed sheet?

A. I have looked at this document, Mr. Coughlan, and I really couldn't be sure which came from which, but my guess would be that most of this first page came from printed sheets, whereas later on, I can see that a lot of it, of the subject of the notes which I had taken during the meeting.

Q. But can I take it that you yourself had no knowledge of trust law or trusts at the time you were getting this particular

A. Virtually nil. The only knowledge I would have had is what I would have picked up what I had picked up in the meeting with Mr. Traynor in February. I did say in my statement that I saw a note of that meeting about a year

ago. It was about a page and a half, a very cursory note, and my guess is that you could almost reconstruct it from the references in this document to it, and my knowledge of Discretionary Trusts as I went into this meeting would approximate to what was on that note at that time.

Q. Now, I'll come back to deal with the meeting with Mr. Traynor and the note or what may have transpired at that meeting, if I may, in a moment, Mr. McLoughlin. But I'd like to continue on then with the document. Under the heading "Discretionary, Non-Discretionary and Open Trusts."

I think the document continues: "A Discretionary Trust is one in which discretion in relation to the decisions affecting the property or its transfer to potential beneficiaries are legally at the discretion of the trustees, and where the client abdicates all legal control in relation to such decisions from the point at which the trust arrangement comes into being.

In a Non-Discretionary Trust the client retains the right of instructing the trustees.

In an earlier note I had a reference to an Open Trust, and I do not know what that means."

That Open Trust, that earlier note you refer to here, is that the note Mr. Traynor, of the Mr. Traynor meeting?

A. Yeah, the one I just referred to a moment ago.

Q. And

A. Or I have a vague recollection that I got something from Mr. Traynor at that meeting. It could possibly be that, but having read through this document, I think there probably is, that the references to the earlier note are the references to the note that I prepared.

Q. And was reference to an Open Trust, I am just trying to understand what was being conveyed to you at the time, was it being conveyed to you that they were specific types of trusts available in Cayman which may not have been available in other parts of the world.

A. I have no way in which I can I have no basis for helping you with that question, other than by seeing what's in the document and drawing logical conclusions from it. I don't have any recollection of anything else about either of the meetings which I could draw upon to help you.

Q. Or was it a type of trust which was referable to a class of beneficiaries or potential beneficiaries who were not specified in the trust? Do you remember that?

A. I am afraid not. The reality is that I cannot say to you that I remember the specifics of either meeting. You know recollections are triggered in some cases by looking at this, but there is nothing I can add to what one can deduce from looking at the document here.

Q. Well, we will continue with the document so. Under the heading "Trustee". That's paragraph number 4:

"The trustee is the party in which there has been vested

the authority to hold property for the benefit of certain specified beneficiaries and which has been trusted by the client to make decisions in relation to the holding and transferring of the property in accordance with the wishes of the client."

I take it you must have got that from some document or blurb?

A. Yes, I think most of the early part of this is straight off the printed sheets.

Q. And then under the heading "Settlor". It says:

"The settlor is the executive or administrator who gives effect to the steps necessary to bring a trust arrangement into being.

A settlor will usually be a professional person engaged inter alia in the activity of creating trusts and trust arrangements."

That was information which was given to you, isn't that correct?

A. Like everything else here, this is either the result of me putting on a dictaphone the information which I got by way of direct discussion with John Furze at the meeting, or having introduced into this document excerpts from the written material that was given to me.

Q. Yes. Now, turning over the page, there is under heading number 6 "Trust Deed". "The structure and operation of any

trust in the Cayman Islands must operate in accordance with the trust laws of the island. In the case of specific trust arrangements, the activities of the trustees are also guided and governed by a trust deed and a, what is described as a 'Supplemental Deed'."

That is specific information you received from either a printed document or Mr. Furze, you believe?

A. Yes.

Q. It's described as a "Supplemental Deed", is that correct?

It must have been?

A. My only basis for taking a view on it is to read what I see here.

Q. Now, it continues: "The trust deed is the principal document and as I understand it, the principal features of this deed is that it specifies all those who can be beneficiaries under the trust but does not specify the specific rules to be adopted in making decisions in relation to the property held by the trust."

Can I take it that this is something that you have a contribution to now, this particular paragraph, in that you understand something to be "The trust deed is the principal document", that is what is being conveyed to you as I understand it?

A. Although that phrase is introduced there, the essence of that paragraph nevertheless, is the result either of the information given to me directly at the meeting or

information which was contained in the written sheets.

Q. Yes, I understand that, but the source is the information. You may have been making a comment, but this is from information which has been given to you?

A. Yes.

Q. And then the document continues: "The trust deed can at any time the trustees can at any time in their absolute discretion transfer part or all of the property to any beneficiary or beneficiaries under the trust deed that it wishes, but it can not settle property on any party other than a party specified as a beneficiary under the trust deed."

Again, this is just general information which has been given to you?

A. Yes, I think.

Q. Now, under the heading "Supplemental Deed or Letter of Wishes", your note goes on: "The supplemental deed is also called the "Letter of Wishes" and it is the letter written in the first instance by the settlor to the trustees indicating his wishes with regard to the operation of the trust."

Now, can I ask you the term "Supplemental Deed", is that information which was supplied to you?

A. Yes, it has to be.

Q. And "Letter of Wishes" may also have been, but the term "Supplemental Deed", was one that was supplied to you, it

had to be

A. 99 and a half percent probability because there is no way I invented it.

Q. Now, continue: "As I understand it, the trustees can disregard the Letter of Wishes, even though the normal practice is that they take full account of the Letter of Wishes. It is my understanding that legally the trustees are not under any obligation to abide by the wishes of the settlor."

Now, we then turned over the page and there is a series of questions "re: section A", that being section A. Can I take it these are questions which you intended raising?

A. Yes, these are questions which would have crossed my mind as I would have been dictating the material on to the dictaphone, and each time a question would have crossed my mind, I would have set it out there and then and my secretary then would have extracted it into a set of questions subsequently.

Q. Now, the first question you raised is: "In an earlier discussion, there was reference to an Open Trust to avoid taxation considerations here. It would appear that an Open Trust may be the same as a Discretionary Trust." You didn't know what it meant, did you, you would like clarification?

A. It would appear that I did not and it's very likely that I didn't.

Q. Now, then it goes on, Question 2: "In that earlier note,

it was stated that the trust and trustees are one and the same. As I understand it, the trust is a legally created entity as empowered through the act of legal creation to act as trustee."

Question 3: "What else does a typical trust deed say other than the specify the beneficiary?"

4: Would it be possible to send me a few examples of trust deeds and Letters of Wishes?

5: Am I right in understanding that the trustees can legally disregard the wishes contained in the Letter of Wish or indeed in any other communications from the client or his nominees?

6: Am I right in understanding that the trustees can settle amounts only on listed beneficiaries?

7: The earlier note stated that the beneficiaries had to be charities or charitable organisations, is this correct?

8: The earlier note stated that the trustee had to be charitable organisations. Am I right in thinking now that that was an incorrect note?

9: In the earlier note, there was a statement that once the trust arrangement was created it could not be unwound. I would like to clarify what that means."

Then you set out, leave a blank space where the replies were intended to go in, isn't that correct?

A. Yeah.

Q. Now, if we go to Question No. 1, you seem to have had an

understanding or a belief that there was a reference to an Open Trust, and you are wondering here in this question, is that the same thing as a Discretionary Trust, that would appear to be the question?

A. Yes.

Q. And the earlier discussion was the discussion with Mr. Des Traynor, isn't that correct, being referred to in Question No. 1?

A. Yes.

Q. And obviously you either had it written on paper or you had it in your head as a result of that discussion, that there was a reference to a trust being a good vehicle to avoid taxation considerations here, isn't that correct?

A. Well, of course I can't recall that now, but I think it's very likely that I had that other note with me at that time.

Q. But, you are making specific reference to it here, "the avoidance of the consideration of taxation here". All I am trying to ascertain is what information was being given to you, Mr. McLoughlin, by Mr. Traynor at that meeting? What was being said to you about an Open Trust?

A. I really can't remember that question specifically. More generally in relation to the earlier meeting, the impression that I had from looking at the note of the meeting about a year ago, was it had to have been a very short meeting and it seemed to have been treated only very cursory, I mean just a page and a half of points like

this. So I cannot really say, other than what one can deduce from here, as what was being said to me about an Open Trust or what it was even nothing additional I can add to what's here.

Q. Well, there is nothing inappropriate about having a discussion with anybody about legitimate tax avoidance, and obviously Mr. Traynor, in his initial discussion with you, must have suggested that there was some benefit to having an Open Trust or your asking a question, it was the same thing as a Discretionary Trust? Let's just take it, a trust in the first instance, that there must have been some benefit in having a trust, and he must have made some reference to the tax implications in general terms about that, would that be fair to say?

A. I can't recall specifically, but the sense I have is that Mr. Traynor regarded this trust arrangement as legally compliant with Irish law, that is the sense that I would have of that discussion. And it was really a tax planning tool, but all I can say is the sense I have of the discussion. I can't really recall anything specific of the discussion, in fact I can't really recall the physical aspects of that meeting, you know, a room or where it was. I think it must have been in Guinness Mahon, but that is a sense I would have of how we viewed it in terms of the tax issue.

Q. Well, if I could just I'll come back to deal with it in a moment. What I am really trying to ascertain is that

when Mr. Traynor spoke to you, I know you can't remember the specifics, and it would be impossible perhaps to remember the specifics over such a long period of time, but there must have been a discussion of a tax, a potential tax benefit to the vehicle which he was suggesting you should consider at least. Would you agree?

A. I am not sure where you are headed but it might be helpful to you if I were to say that taking those two discussions together, the Desmond Traynor discussion and the John Furze discussion, my sense of the situation is that the main thrust in these discussions was about family planning matters and all the benefits that would apply in that direction rather than tax, clearly the tax issue came into it, but that's the sense that I have here in the year 2000, but that's as much as I can say about that. I can't say that I remember anything in particular other than I remember me asking in particular my knowledge of these meetings is really based on reviewing what's here.

Q. Very good. Can I just ask you, Mr. McLoughlin, because again this is really to get an understanding of what was being offered here by Mr. Furze and Mr. Traynor. We are talking about you as being an Irish resident, isn't that correct, at this time?

A. Yes.

Q. Now, did you ever even, from Mr. Traynor or anybody else, ever solve the query raised in Question No. 1, "Was an Open Trust that was being referred to, the same as a

Discretionary Trust" in their terms?

A. Well, to repeat something that was said earlier, I have no recollection of having had any further discussion with Mr. Furze about this. My sense of my subsequent discussion with Des Traynor is that it was very short and sweet. And to this day, I don't know what an Open Trust is.

Q. That's what I am trying to find out. What was being told to you by Mr. Furze and Mr. Traynor about this? You don't recollect at the moment?

A. The thrust is I really know I can't say that I remember sitting at either of these meetings and remember specific things being said. I have a sense of the main thrust of those discussions and regard to the specifics, I'd be relying entirely on looking at this note and making deductions from it.

Q. Now, if we move to page 5 so for the moment. Many of the other questions that you are asking there just really relate to the trustees, whether the trustees can disregard the Letter of Wishes legally and matters of that nature.

If we go to the steps that you were told were involved in creating a trust deed agreement.

"The client authorizes a settlor to create the trust arrangement." Is that correct? "The settlor creates the trust arrangement by:-

(A) Drawing up the trust deed.

(B) Obtaining the agreement of a selected trustee to act as

trustee.

(C) Arranging appropriate engrossment of the trust deed.

(D) Preparing and sending a Letter of Wishes to the trustees. The settlor and the client arrange the transfer of the appropriate property to the control of the trustee."

Now, I think you raised a question in that, this is Section B, Section 1: "Is the content of this Section B correct?" And you are awaiting replies.

Can I take it, if we go back to that particular page of the document in the first instance, can I take it that information was obtained either from documents or something that was told to you by Mr. Furze at the meeting or from the document you may have had of the original meeting with Mr. Traynor?

A. Judging by the question, I would say that it is some amalgam of all three or two out of the three, but I actually don't recall.

Q. Just to be clear again, you weren't a lawyer, you weren't a tax planner, you had no expertise in trusts or how to set up a trust yourself, can we take that?

A. It also may be worthy mentioning that I have a recollection, but obviously a vague recollection, that some of the information under these headings was by way of bullet points or discussion points. Not all of it, I think the earlier part of it was primarily text. And it

could well have been that what happened in this case is that there were bullet points which elaborated on during the meeting and that I was setting down what I thought was a proper record of that elaboration.

Q. You were told that the settlor is a person who creates the trust arrangement by taking these various steps, drawing up the trust deed, obtaining the agreement of a selected trustee, arranging appropriate engrossment of the deed, and preparing and sending the Letter of Wishes. You must have been told that by somebody?

A. We can logically deduce that I was told that either by one communication mechanism or the other.

Q. And you were told that the settlor and the client you were never told that the client was the settlor, were you, obviously?

A. From reading the document it would seem not.

Q. But what you were being told is that there was a settlor being put in between the client and the trustees, is that correct?

A. That seems a logical deduction from reading the document.

Q. And then you were told that the "Settlor and the client arrange the transfer of the appropriate property to the control of the trustees." Now, can I just ask you about that. Whoever the settlor was going to be, it was clear that it wasn't going to be the client, isn't that correct?

A. That would seem to be

Q. Under this particular structure. And from what was being

offered to you or being marketed as far as you were concerned here in Ireland, was that the client was an Irish resident, isn't that correct, on my understanding of this document if I am right or wrong?

A. Well, I am not sure that I would be entitled to assume that this is being marketed in Ireland. I think all I can say is that reading the document it was being conveyed to me by one means or another, that it would operate as set out here. I really can't say more than that.

Q. I am just trying to take it sort of in ordinary layman's terms now. You were an Irish resident. You were here in Ireland. Mr. Furze was over here in the office of Guinness & Mahon and Mr. Traynor would say, you should give consideration to looking at Discretionary Trusts, and he offered Mr. Furze as somebody to talk to you about

A. Yes.

Q. So there was a man from Cayman telling you about a trust that would have to comply with Cayman law, isn't that right?

A. Yes.

Q. Had to be a Cayman trust?

A. Yes, the whole context of this makes it clear that it had to be Cayman

Q. And it was offered to an Irish resident as a service, isn't that correct?

A. Yes.

Q. Now, I think what I am trying to ascertain here is, "The

settlor and the client arrange the transfer of the appropriate property to the control of the trustee." What discussion took place around that particular sentence, can you remember?

A. I am afraid I just can't help you with that, Mr. Coughlan. I just have no separate recollection of the discussion, I'd be relying entirely on what I see here.

Q. Well, I take it that as a senior businessman, as you were at the time, that you were aware that in respect of matters like cash and share transactions and matters of that nature, that there would have been in certain circumstances a requirement for Exchange Control approval for the transfer of any particular matters of that nature from Ireland?

A. Yeah, I believe that is a correct conclusion, because of the experience I had in running the business

Q. As a businessman, you'd know that in doing business, in the normal course of business, the bank gave that but that there was special things needed to be done, there might be need for Central Bank approval

A. In any event the bit at the end of the document about Exchange Control regulations, that I was conscious.

Q. Maybe we will go through the whole document and come back to what discussion may have taken place around that. That might be the better way of dealing with this.

CHAIRMAN: Just Mr. McLoughlin, your own discipline at

third level education before you went into business, it was the case that you were involved in scientific rather than business orientated studies?

A. It was engineering and mathematics and that kind of stuff.

Q. MR. COUGHLAN: Now, perhaps we'll go on so to Heading C, page number 7. And the question arises: "How can the client influence the decisions of the trustees?"

"As already stated the client has no legal control over the decisions of the trustees. The practice, however, is that the trustees will fully accept the wishes expressed in the Letter of Wishes, provided doing so is not in contravention of the appropriate trust laws. Usually, at the outset, the Letter of Wish will contain the wishes that the trustees should in the future be guided by the day-to-day instructions by some specified person, and that specified person would be the client or somebody acting to the order of the client.

The settlor has in the first instance the power to change the trustees at any time, but at the time of the creation of the trust, he renounces his right in favour of the client. Because the trustees will acknowledge the wishes contained in the Letter of Wishes, and will therefore recognise the day-to-day instructions of the client or somebody operating under the client's instructions. It is therefore possible for the client to give instructions in

effect to the trustees with regard to the allocation and transfer of the property held by the trust.

However, since the trustees cannot legally settle any part of the property of the trust to anybody other than somebody specified as a beneficiary of the trust, it is important at the time of inception of the trust, that the client arranges with the settlor that all parties will be named as beneficiaries to the trust that he can anticipate his people to whom he might like to transfer funds at any time in the future both before his own demise and subsequent to it.

In order to give him maximum flexibility in this respect, it would be usual that one of the beneficiaries under the trust would be specified as anybody, whether corporate or individual, who would subscribe \$10 to the Red Cross and would be able to deliver a certificate of subscription to the trustees. "

Now, I think you raised some questions about that information that you were given. And the questions are:

"1: You stated that at the outset the settlor would renounce his right to change the trustees and that he would renounce it in favour of the client. How would a client change the trustees? Would new trustees operate to the same original trust deed?

2: You said that anybody can become a beneficiary at any

time by subscribing \$10 to the Red Cross and showing a certificate to that effect to the trustees. Is this correct? Does this apply whether the subscriber is a corporate person or an individual? Query.

3: On the surface, there seems to be a vulnerability, in that anybody familiar with the trust arrangements could subscribe \$10 to the Red Cross and similarly show a certificate to the trustees. I imagine that is covered by the fact that the trustees will not register or list any such person as a beneficiary without the approval of the client.

4: As I understand it, an Irish individual, if listed as a beneficiary, would be in contravention of Irish law, even if a legitimate beneficiary under Cayman Islands law and under the rules of specific trust arrangement. Am I correct in this?

5: If I am correct in Question 4 above, then in the Irish situation, is it not so that individuals cannot be listed as beneficiaries?"

Now, in this particular area, or perhaps would you prefer if I continued with the whole document and come back to this particular area again, Mr. McLoughlin, as to what information was being conveyed to you?

A. Are you asking me?

Q. Yes, I am asking you, which would be the easier way to

proceed with the document?

A. I don't know.

Q. Okay. Now, I think there must have been information conveyed to you that there would have been a difficulty in having an Irish person named as a beneficiary in the trust deed, is that correct?

A. I would deduce from the document that I had that that was conveyed to me in some form or something like that was conveyed to me. Otherwise I wouldn't have asked that question.

Q. And could the difficulty be in relation to tax implications here in Ireland for somebody who was named as a beneficiary?

A. Well, I think that the question here asks whether it would be in contravention of Irish law. Somebody other than a beneficiary, and I would guess that that's tax law, but I don't recall.

Q. And can I take it that what was being indicated to you was that the class of beneficiaries under the trust would be either the International Red Cross itself or subscribers to a specific branch of the International Red Cross, whether it would be Cayman Island branch or some other branch? Is that what was conveyed to you?

A. You know, this isn't intended to be a glib answer but your guess is as good as mine, because my only basis for answering is that question, so to draw deductions from the document here, and that would appear to be so.

Q. And that for somebody then to be taken into consideration as coming within the class of beneficiaries on whom some disbursement might be made out of the trust, would be that they would pay their \$10 subscription to the International Red Cross, produce the certificate of that to the trustees to satisfy them that they were now people who came within the class who should be considered by the beneficiaries or by the trustees, was that your understanding of what was being conveyed?

A. You know again, at the risk of being boring, I cannot say what my understanding was then but reading this here, that would seem to be what was conveyed to me.

Q. Yes. And that subscriber to the International Red Cross could be a company or it could be an individual, is that correct? What was being conveyed to you?

A. That would appear to be the case.

Q. And can I take it that it was your understanding when this information was being conveyed to you, that the purpose of this was to have some form of tax efficiency? I am not going into the legality or otherwise of it, but that it was conveyed to you that it was to have some form of tax efficiency?

A. I really couldn't say yes to that. The best way I could answer that is to say that the sense I have of those discussions was that the relevance of them from the point of view of family planning of family issues is the thing that's embedded in my consciousness as the most prompt

aspect, but clearly the tax effectiveness of it was in there somewhere, judging by this document, although many of the questions here are questions that crossed my mind as I went along and beyond that, I really don't think I can draw any conclusions.

Q. Now, if I go to page 9 for the moment then. Again this appears to be information which was conveyed to you and that you were it's under the heading "Usual Features of the Trust Deeds."

"And the principal feature of the trust deed is that it contains a list of beneficiaries on whom the trustee can settle property at their absolute discretion at any time. The fact that somebody would be named as a beneficiary would not necessarily mean that any money would ever be settled on the person from the funds owned by the trust.

The recurring features of the trust deeds were as follows:

1. The trust deed might include as beneficiaries a list of all the parties which the client feels he might like to have funds settled on at any time in the future either before his demise or afterwards. Therefore the list might include people like himself, his wife or his children.
2. Sometimes instead of putting down the names of himself and his family, a client will use nom-de-plumes and in practice this is acceptable to the trustees.
3. Sometimes it is specified that anybody will be a

beneficiary under the trust who subscribes \$10 to the Red Cross and delivers a certificate to the trustees to that effect.

4. It would be usual that there would be a company listed amongst the beneficiaries called "X Limited" for example, which have subscribed to the Red Cross and produced a certificate to that effect."

So that was information that was conveyed to you obviously?

A. Yes.

Q. And I think you then proposed raising queries under this particular heading and the first one, Question 1: "Is it correct that the fact of being listed as a beneficiary does not necessarily mean that the money from the funds would ever be settled on such person?"

2: I would like to talk a little more about how the nom-de-plume arrangement works.

3: Can there be any number of companies listed as beneficiaries provided they make the \$10 contribution?

4: Am I right in thinking that you can put in a new company as a beneficiary at any time, provided such company makes the \$10 contribution and provided the trust deed states in the first place that anybody putting forward a \$10 contribution can be a beneficiary?"

Now, again that's continuing the same theme really of

beneficiaries, isn't it? And whether companies can be beneficiaries, whether you can change the company who becomes a beneficiary or add a company to the class of people who would come within the category of potential beneficiaries, isn't that correct? Those are the queries being raised in that particular page?

A. They are on that same theme. Yeah.

Q. And what other matters oh, the nom-de-plumes. What was said to you about that, can you remember?

A. Again, Mr. Coughlan, I really don't have any specific recollection. I am confined to deducing what happened by looking at the document.

Q. I suppose, and you don't have a specific recollection of the discussion about the use of nom-de-plumes? Could I ask you if it would be your understanding now, your understanding now, having looked at the document again, perhaps not having a specific recollection, that this seemed to be directed towards a very high level of secrecy, isn't it? The use of fictitious names, isn't that correct?

A. The sense that I have now, or the sense that I had then of the situation, is that confidentiality was a significant feature of this kind of an arrangement for whatever reasons.

Q. But even here we are moving within the circle of confidentiality, aren't we, into a tighter circle of confidentiality? All financial institutions, tax advisers,

lawyers are bound by confidentiality. Here I am just asking you is this your understanding now, we are moving into a high level of secrecy? Is that your understanding? Maybe it's not.

A. Again I don't know if I can do better than repeat what I said a moment ago. My sense is there was a large emphasis on confidentiality. I obviously have read this document a number of times, and the piece about planning for death and some other pieces there seems to focus an awful lot on the issues of confidentiality, geared, it seems to me, primarily towards family issues. So my sense is that confidentiality and how to ensure privacy and confidentiality were central themes. My sense is that family issues have a lot to do with that, and presumably tax issues as well, but the main thing on my mind about those discussions is emphasis on family issues.

Q. I'll come back and just ask you what your understanding may be in respect of other matters as well, but maybe we should continue now for the moment, and that there is a note, re: Letter of Wishes, which is on page 11 then of the document. And it reads:-

"At the time of creation of the trust, the settlor completes the creation task by renouncing in favour of the client his right to change the trustees and by writing a Letter of Wishes to the trustees in which he expresses his wishes to the trustees. In practice, the wishes expressed by the settlor to the trustee are those specified by the

client. According to X2, the document would say" who is that a reference to?

A. My view is that X2 would be, here was intended to be Mr. Traynor.

Q. I understand, yes. "... Would say if I had the power to instruct you what to do with the funds, I would say that you should take the advice of Joe Bloggs or whomsoever?"

That seems to be a quote from Mr. Traynor or

A. Yeah, or it may well have been from that note we were talking about earlier.

Q. "Frequently the person specified in the Letter of Wishes as the person to give instructions to the trustees will be the client himself. However, it could be anybody else that the client might nominate.

This Letter of Wishes might also specify what should be done in the event of the demise of the client, although that is something that the client would give the trustees instructions on could give instructions on at any later point. However, it is advised that would be dealt with at the outset in order to cover the possibility that the client dies immediately upon after the creation of the trust."

Can I ask you this, when you had the meeting with Mr. Furze, I think you informed us that it was your intention to note, create a note like this, seek further information, and send it to him for his reply, is

that would that be the general

A. I don't think that captures it absolutely right. I didn't have an intention as such going into the meeting. I would say I just landed at the appointed time and my normal reflex in these situations just sprung into play, which is to take notes

Q. After the meeting, that was the intention formed?

A. My intention in my view was the way I would put it is at the meeting I took notes and afterwards I followed my normal modus operandi of getting it onto the dictaphone from my head as quickly as possible. And as part of understanding this more fully. It is clear from the headings at the end that I envisaged talking to lawyers and tax advisers about it, and if ever I were to take it further, I would have taken all this information into account and made a judgement. There was little prospect that I would because my circumstances at the time which were not suitable to thinking in these terms. So it was a semi-academic exercise, understanding this subject as the opportunity arose or as the event arose. I didn't seek that meeting.

Q. Yes, I know, it was one Mr. Traynor suggested to you?

A. That's correct.

Q. Why would there be a code reference to Mr. Traynor in a document you were creating for Mr. Furze?

A. I have asked myself that question, Mr. Coughlan. I really don't have an answer for it.

Q. Well, could I suggest to you that the obvious answer might well be this concept of confidentiality that you were talking about?

A. Oh, it would relate to a perception that this was a sort of a confidential type issue, but I cannot tell you whom I was worried about in putting down "X2" or "X1" on that document.

Q. Well, might I suggest to you that if a document went around the place, as this document did find itself, into somebody else's personal papers, and it came to the Tribunal many, many years later, but a document floating around the place discussing structures of a trust in Cayman which contained Mr. Traynor's name might be an embarrassing document in many senses of the word?

A. I am not sure Mr. Coughlan, because I can't really say what 1983 was like in terms of views about these issues, and I most certainly wouldn't have intended it to float around the place. The fact that it finished up in Ciaran McLoughlin's files is as a result of something that happened afterwards, if in fact my view about this matter is correct after the document was written and after I decided to put in X1s and X2s. So I really don't know. I think it might have been a natural reflex, that this was a confidential type area and that I would

Q. Could it be that you were asked by either Mr. Traynor or Mr. Furze not to make specific reference to say people here in Ireland? Could you have been asked to do that?

A. It's a theoretical possibility, but I think it's highly unlikely. No sense at all that I was asked to do that.

Q. You raised a question in respect of this. I don't think much turns on it. It says sorry, that does give the source of the reference to Joe Bloggs as being the earlier note. That's the note of the meeting with Mr. Traynor, isn't that correct?

"In the earlier note it was stated that in sending the Letter of Wishes to the trustees, a settlor begins with the words 'If I had the power to tell you what to do, I would tell you this.' Is this correct?" That seems to be the origin of the reference on page 11, doesn't it? The earlier note? Would I be correct in that?

A. They are very similar, I am not sure

Q. Would I be correct in it?

A. It could be that the second one is sort of a truncation of the first one.

Q. Clearly it would then identify X2 as being Mr. Traynor?

A. Well, the earlier note I am quite certain was based on my discussion with Mr. Traynor, so certainly the question EQ1 speaks of something that was stated by Mr. Traynor and, you know, I have little doubt that X2 is Mr. Traynor.

Q. Yes. Now, I think if we go on then to page 13 which is the note re: Ongoing Operation of Trust.

"Who Gives Instructions?"

In practice the trustees will do anything except as

instructed by the client or by such person as is nominated by the client.

A nominated person could be nominated by the client indirectly through the Letter of Wishes in the first instance or at any subsequent time through new instructions by him to the trustees."

And then there is a method of communication.

"In practice, clients do not like committing instructions to the trustees to paper and therefore, it is quite usual that instructions would be given by phone. Telephonic recognition of the client's voice by an executive operating for the trustees would ordinarily be sufficient, but if it were somebody who was not known to some executive of the trustees, then he might be asked to name an identification number or perhaps to give his own passport number. In any case, there probably would be some conduit between the client and the trustees, such as Mr. X1 for example in the case of GMCT". Who was Mr. X1?

A. I don't know, Mr. Coughlan. That question is in the same territory as the one at the outset that arose in connection with the preface. I have no recollection of speaking to anybody else on this subject other than Mr. Traynor and Mr. Furze. It could have been that Mr. Traynor might have mentioned somebody who was working with him, but I have no recollection of that.

Q. Well, it's a Mr.?

A. Yeah.

Q. And it is somebody who would be a conduit between the client and the trustees, that is the trustees being Guinness Mahon Cayman Trust, isn't that correct?

A. Yes.

Q. And as this information was being furnished to somebody in Ireland, it's obviously directed to an Irish client, isn't that correct?

A. Yeah. That's reasonable to conclude, yeah.

Q. And the client not wishing to commit anything to paper, and perhaps not wishing to use the telephone, would have a conduit which would seem to logically lead to the view that the conduit would have to be somebody here in Ireland, isn't that correct?

A. Yes.

Q. And it's not Mr. Traynor?

A. Well, if I hadn't seen X1, if somebody had put his finger over that before I first read this document when you sent it to me and it asked me who would be in that slot, I would have thought it would be Mr. Traynor. X1 could be an error but then there is X1 referred to elsewhere in the document so it's unlikely to be. So the nearest guess I can make is that Mr. Traynor may have mentioned somebody who would have been working with him on this, but I have no recollection of that.

Q. Lets proceed so for the moment to No. 3, and it deals with who receives instructions in the GMCT situation. It

says: "Initially the communication will be directly to JF" that's Mr. Furze. I think there can be little doubt about that. "But in due course, it would be directly to one of three or four people working with him. The principal of these would be his partner who is PC and is joint MD of GMCT."

Might I suggest that's a typographical error or an error of understanding, that the PC should be JC? It should be a Mr. Collins, isn't that correct?

A. I don't know.

Q. You don't?

A. That has been suggested to me.

Q. I see. Or is that note of yours an accurate note, to the best of your recollection, and was it intended to be PC, the information which is conveyed to you?

A. The only answer I can give you to that, Mr. Coughlan, is I just don't know.

Q. How accurate do you think this note is?

A. Well, I think that any attempt to evaluate that is, like asking anybody who wrote a note of this length seventeen years ago and who it doesn't look like something that was edited or second drafted or third drafted. What the chances of an error would be I really don't know.

Q. Well

A. It could be that I was given a name and just misremembered it and hadn't written it down, but the real answer is I

just do not know.

Q. It doesn't have an appearance of a document to which any corrections were made either Mr. McLoughlin, does it?

A. Do you mean by that, that it looks like a first draft?

Q. No, it looks like a final prepared document. Remember, this document, if we have, if we have the original document, is bound and has a cover, a brown cover on it.

This is a final document, isn't it, Mr. McLoughlin?

A. It depends what you mean by "final document"? What I would say about it is that having put it together, it would be not unusual that it would be put in a spiral bound form like this. That would be quite usual in the way in which I work, but it could well have been something I intended coming back to, or it was possible I would come back to it but

Q. The reason I am asking you about this, Mr. , McLoughlin is when I asked you initially about PC, was that incorrect and should it have referred to JC? Your answer to that is "that has been suggested to me". I know you may have been dealing with this document in another Forum. You didn't answer the question that I asked you. Is it PC? Is that note accurate or is it in error and should it have meant somebody else? That's what I am asking you.

A. I do not know.

Q. Very good. I just let's be clear about this again. On the document itself, the document the Tribunal has, is that the original? I think you have been shown it. Is

that the original document, to the best of your

knowledge? (Document handed to witness.)

A. I do not know that either. By "the original", do you mean it was a copy of the original?

Q. I mean, is that the original document?

A. I really don't know.

Q. Well, were there many copies made of it by you?

A. Were there many copies made of it? Is that the question? I have no idea.

Q. Did you make any copies of it?

A. I have no idea. You know, there is a fair chance I copied it or got my secretary to copy it to send it to Ciaran McLoughlin, if I sent it to him, but I really have no recollection of it.

Q. Well, that was the document that was in Mr. Ciaran McLoughlin's private papers, that bound document there.

A. Yeah, well, I really cannot tell you whether a copy was taken, whether what was sent to Mr. Ciaran McLoughlin, if it was sent, was the only copy I had or a copy or whether if I took a copy, he was sent the original or the copy, I really do not know.

Q. Okay. But if you could just it looks like the final draft, and if there was only one draft, that's it, but it looks like the final draft, doesn't it, as far as the Tribunal can ascertain?

A. Do you mean by that, that it is unlikely there is that I produced a further copy a more refined copy of this?

Q. Yes.

A. I think it is very unlikely. My whole sense of the situation is that I just did this, got it typed up and it died a death.

Q. And there are no, I suppose, before the word processor days, but there are no corrections made by hand on the document as far as we can see either, isn't that correct?

A. There isn't there aren't.

Q. And you don't know whether the reference to "PC" is correct or incorrect, is that right?

A. I have no reason to suppose one way or the other, Mr. Coughlan.

Q. Right. Now, let's continue so. Under the heading "What Transactions Can Be Done Directly By The Trust?"

"The trustees will allow the trust to own any assets, except property assets, because there are difficulties with that, and if funds entrusted to the trust are to be used for the purpose of purchasing a property or fixed assets, then it would ordinarily be done through a company which would be a wholly-owned subsidiary of the trust and not a beneficiary of the trust."

So what you are being told in respect of this particular trust scheme in any event, is what they are really looking for is funds, isn't that correct? That seems to be the business of the trust funds. If anything is to be done, companies under the trust will enter into purchases

of properties or investment in properties. The trust itself is talking about funds, isn't that right?

A. I am just not sure if I understand the question, Mr. Coughlan.

Q. Money

A. I am not sure if I understand the question you are asking me there.

Q. what you are talking about there. Look at it. "If funds entrusted to the trust", they are saying that the trustees will allow the trust to own any assets except property assets. See that? What the trust is talking about is having funds entrusted to it.

A. It would appear from this that that's what they are talking about.

Q. Sure there can be no doubt about that, can there? Looking at the document, there can't be any doubt?

A. All I am saying is I have no independent basis for offering a view

Q. I am not asking I am asking what was being conveyed to you and what you

A. I would agree with that.

Q. Now, if we continue over the page.

"Administrative Capacity of the Trustees.

If the client wishes the trustees to purchase shares with the funds entrusted to the trust or put the funds on deposit in Bank X or to change the funds to another bank or to transfer the funds to a company, the trustees have the

administrative capacity to give effect to all of these instructions."

So what they are saying is any money you give us, we have the capacity to buy shares or deal in shares or matters of that nature, isn't that correct?

A. That would appear to be

Q. And then they deal with the tax implications of settling on a beneficiary. "If funds are transferred from the trust to an individual or to a company, then the question of whether there is any tax implication for the beneficiary of such transfer depends upon the tax laws appropriate to the residence of a person who is receiving the transfer from the trust, i.e. is there a capital acquisition, tax implication or a gift tax implication or a benefit in kind implication or whatever?"

So what you are being told you were being told there is, anything that comes out of the trust to a beneficiary, the tax implications are for that beneficiary wherever they reside?

A. That's the conclusion I would arrive at.

Q. Then there is an example: "If the client wants Billy Bloggs to have \$10,000 in the bank account in the South of France, the trustees would settle that amount in a company which would be a beneficiary in the list of beneficiaries on the trust deed. The X company would then transfer the funds to whatever account it wished. The money has not

been settled on B Bloggs and therefore, the operation of the trust is not in breach of any law. What might then happen is that the X company might engage Bloggs for a job in the South of France and pay him say, the \$10,000 for doing that job. If Bloggs were an Irish resident and if he did not declare receipt of the money and bring it back he would be in breach of taxation and Exchange Control law."

So, the example that has been given to you is that the client would give an instruction which appears would be acted upon by the trustees, to settle a sum of money on a company which would be a beneficiary under the trust.

That would take place. No monies would have been settled on Mr. Bloggs and that money could be paid in anywhere by the trustees. The company then would engage Mr. Bloggs to do a job or as a consultant or something in some part of the world and pay him the money which he had initially given instructions to the trustees to settle upon a beneficiary, isn't that correct? That's the example you were given, that's all I am asking?

A. The description here is the best description for me of what was said there, the best evidence I have of what was said there.

Q. Yes. So just using the terminology of Mr. Furze, the client can instruct the trustees to effectively ensure that the money, the trust money is paid to him through a

vehicle, isn't that correct? That seems to be the understanding that you have taken from what you were told by Mr. Furze?

A. Well again, what I would say is the one thing I can hang on to as being the best indication of what was said to me is what's here, and any truncations or summaries of it might be a hundred percent accurate, might be a little bit off, but I think your summary captures it reasonably well.

Q. And then of course there is, if somebody was an Irish resident and he didn't declare receipt of the money and bring it back into the country, there were obligations to bring money back under the Exchange Control, and there were tax implications and matters of that nature, for an Irish resident, isn't that correct? But that was for that person himself on the tax and Exchange Control side of it?

A. That would appear to be the inference from what is written here.

Q. Now, dealing with an investment company. "The trust would own an investment company and this investment company would do the job of investing funds of the trust. As I understand it, the investment company would not own the investments so created but would simply be a management company in the same way that the Investment Department of say IBI manages funds on behalf of a client and invests on behalf of clients."

Then you raise questions, or there were certain questions raised, and perhaps they are the type of questions the

Tribunal itself might raise. And Question 1 is:

"What risk is there in practice of voice impersonation in the situation where voice identification is adopted as a means of communication?"

2. As I understand it, the problem about the trust

holding properties is that circumstances could arise where

the owner of a property could be subject to legal action

and that all the assets of the trust could become

vulnerable to such action, and therefore it is appropriate

that a wholly-owned subsidiary should be inserted between

the trust and the property being acquired. Is this the

problem? If it is, surely it must apply to certain other

assets also, e.g. a piece of machinery which could incur a

public liability problem. I would like to clarify this

question a bit.

3. Am I right in thinking that it is a wholly-owned

subsidiary of the trust that would require a property

rather than a company listed as a beneficiary under the

trust?

4. What limits are there on the administration services

potentially provided by the trustees?

For example, (1) will they form a Cayman island company?

Will they engage solicitors? Will they manage the legal

gymnastics of acquiring a property?"

I take it there is nothing meant there other than you had

no understanding of what solicitors or lawyers might do in respect of buying property, is that the term "gymnastics"?

A. I think it might be helpful to you if I said the way in which these questions arose almost certainly were that I just put them on the dictaphone as I would have dictated the notes, and every and any question that might have crossed my mind at that moment would have gone in there and, you know, to some degree, they are a theoretical evaluation of it as I went along, or some of questions are theoretical and not really germane to the main theme of the meeting.

Q. Then you go on: "Is it my understanding of the tax implications of the settling of a beneficiary correct?

Have you any comment on the example set out?

Specifically is my statement in the last paragraph in relation to Bloggs being in breach of Irish law correct?

Am I right in understanding that the trustees use an investment or management company to manage the affairs of the trusts?"

So then, coming to the heading "Planning for Death."

"Provided that the client has arranged that one of the beneficiaries listed in the trust deed is a company, then he can use that company as a conduit through which funds could be transferred from the trust to anybody he would like for as long as he is alive. However, he might wish to have specific rules adhered to following his death and

not to leave the allocation or benefits to be determined by decisions taken after his death, and for that reason therefore, he would very probably be happier that it would be possible for him to arrange that in the event of his death, funds would be settled in an appropriate way on those people that he would like to be beneficiaries after his death.

Because the trustees cannot settle money on anybody who is not listed in the trust deed as a beneficiary, it is of value therefore that at the time of inspection of trust arrangement in the first place, the client specifies as beneficiaries in the trust deed anybody whom he might ultimately want to be beneficiaries after his death.

It seems to me however, that he could still do it through Company X Limited. He could specify to the trustees that in the event of his death a certain amount of money should be settled in X company and he could provide instructions to the directors of the company with regard to how those funds would be allocated in the event.

If X company were an Irish company or UK company, then it seems to me that the settling of such money on such a company would be subject to a gift tax within the rules of gift tax legislation of these countries, and I wonder therefore, whether it would be normal that X Limited would be a Cayman island registered company.

If it were a Cayman Island company, and if such settlements were free of such tax implications, it would remain for the directors of that company to distribute the funds in accordance with the wishes of the client. It seems to me that the tax implications for the recipients of such money would be the same whether the money was settled on them by the trust or transferred to them by X Limited.

I can see however, that the settlement of funds on them by the trust could be hidden and not necessarily disclosed by the recipients, whereas transfer of money by X Limited might create a record of transactions in the records of X Limited which might prejudice that position.

The client would have great flexibility in the form of the instructions that he might give to the trustees with regard to what should happen in the event of his death. He could, for example, arrange any of the following in relation to a specific beneficiary:

1. That an amount of money would be settled on the beneficiary.
2. That the amount of money would be retained and invested for the benefit of that beneficiary on the basis that the income would be paid to that beneficiary on an ongoing basis.
3. That the money would be held for the benefit of that beneficiary and that the actual transactions in relation to that money in the event would be done on the instructions

of some specified person.

If it was intended that there would be three parties who would give instructions in relation to the funds in the trust on the basis of a certain allocation of the overall funds, then, it would simply be arranged that in the event of the death of the client, each party would give direct instructions to the trustees. The instructions would relate only to the proportion of the overall original funds applicable to that person. Ordinarily, it would not be arranged that the three new trust arrangements would be created to reflect this position, and it would be unnecessary to do so.

Neither of the three parties would know anything about the amount of funds that had been in the earlier trust arrangement or what the allocation of the overall trust fund was on the death of the client.

The GMCT is a legal body which deals with multiple trust arrangements, and it would simply see itself here as dealing with three separate trust arrangements, even though it would be guided by one original Letter of Wishes and one trust deed.

If the client were to die and if he had specified that monies would be settled on certain beneficiaries or that certain beneficiaries would benefit in some way by monies held by the trust, then any one of those beneficiaries

would be entitled to see the trust deed but would not be entitled to see the Letter of Wishes.

Therefore, at the time of setting out the beneficiary in the trust deed, it must be anticipated that any one of those people ultimately benefiting after the client's death would see the list of beneficiaries. It would be important therefore to leave out mistresses and such like.

The trust deed would not specify the amount of money that had been transferred to the trust in the first place and there would be a record of that only in the trust accounts. Nobody would be entitled to see the trust accounts.

The original trust deed and the wishes of the client expressed either through the Letter of Wishes or subsequently, would constitute the rules to be applied by the trustees in relation to the particular amount of funds to be applied to the trustees in relation to be managed for the benefit of a particular beneficiary, and the trustees would simply manage that particular amount in accordance with the instructions given to them either in the first instance by the client or subsequently by such persons as would be empowered to give instructions to the trustees.

It would be possible after the death of the client that even though one beneficiary, for example, a wife, would be

a beneficiary only in relation to a part of the overall trust fund, that she could specify that any part of her particular proportion could be settled on any other beneficiary under the original trust deed."

That was a fairly lengthy chunk of information to dictate into your dictaphone, wasn't it, Mr. McLoughlin, might I say? Was this all information given to you?

A. It has to have been because I have no other source of it.

It was either information which was on those sheets or it was the subject of the notes I took, and from looking at it, I'd say it was primarily the latter.

Q. Now, I think the questions then, if I just go through those for the moment.

"1. Am I right in understanding that when the trust settles money on an individual or an entity, the individual or entity is subject to the tax laws of the country of residence of that individual or entity that are appropriate to the receipt of money for non-considerations as would apply in the case of settlement from the trust?

2. Can you tell me about any problem re: the use of companies listed as beneficiaries to the trust as a means of conduiting money in the event of death to an intended individual beneficiary other than those problems that I have listed here?

3. Are the tax implications for the recipient of monies by and to the trust whether before the client's death or

afterwards the same whether a trust came from a trust or from a company which would be a beneficiary under the Trust?

4. If they are the same, are there any advantages not referred to by me in having a settlement direct from the trust rather than through a company which would be a beneficiary under the trust?

5. What parties may have rights or entitlements to see the trust deed and in what circumstances would they have such right?

Can that right apply to the wife of a client on the death of the client, even if she has not been listed as a beneficiary or if there are no provisions made for her?

Can any beneficiary be entitled to see the trust deed on the death of a client or at any other time, even if it is not intended that the beneficiary would have been money settled on him, her, or it?

Would a beneficiary due to have money settled on him, her, it, be entitled to see a copy of the trust deed?

6. Am I right in understanding that nobody in any circumstances is entitled to see a copy of the Letter of Wishes except the client?

7. Am I right in understanding that nobody is at any time

and in any circumstances entitled to see the trust accounts?

8. In the event that after the client's death there is some beneficiary with an entitlement to a proportion of trust fund and with a right to give instructions to the trustees with regard to the management of that fund, can that beneficiary instruct the trustee to settle money on any other beneficiary under the earlier trust deed?"

Did you have any discussions with anybody for the purpose of raising those questions, Mr. McLoughlin?

A. You mean other than Mr. Furze?

Q. Other than with Mr. Furze?

A. I have no recollection, Mr. Coughlan, of discussions with anybody else on this topic.

Q. Now, the only reason I ask it, it seems fairly complicated to me. I was just wondering whether you had even an informal discussion with somebody to raise questions on it?

A. I didn't, I am afraid. It's all down to that meeting.

Q. Now, turning to page 21, Note re: CI situation. That's the Channel Islands I think, Note re: Cayman Islands, I beg your pardon.

"The Cayman Islands is a crown colony. There are 15,000 people in it and there is a representative elected to the legislature from each of the different districts. All altogether there are 14 elected representatives to the legislature. Four are elected to form a governing body.

Only the legislature has the power to change the laws of the island and, the British Government couldn't require a change of law without their consent. There is no taxation in the Cayman Islands. There is always an individual in office in the Cayman Islands. Such an officer has in the past been affiliated either to the Bank of England or to the IMF. In the last two situations, the man has been affiliated to the Bank of England. This person could demand all the documents related to any trust arrangement at any time he wished to do so. Such an officer is however, sworn under the Secrecy Act, as all others involved in trust arrangements are.

The principal economic activities in the Cayman Islands are tourism and finance, and finance is probably the major one, and there is a big incentive on the part of the legislature not to make unfavourable changes in the law governing financial matters.

The Cayman Islands is to be favoured relative to the Channel Islands because,

(A) They already have an efficient organisation of 30 people and they are very good.

(B) It is felt that the Channel Islands is more vulnerable in the sense that there is a suspicion already that the authorities in the Channel Islands and the authorities in the UK exchange information. There are threatening sounds

being made by the UK on a continuing basis about altering the taxation status of transactions and entities in the Channel Islands. If the exchange of information were to become more general, there would be a major problem.

(C) The Cayman Islands is further away and more remote.

(D) There is legislation in the Cayman Islands to safeguard secrecy."

Now, this is information which must have been given to you by Mr. Furze, isn't that correct?

A. Yes.

Q. And the reference there, "The Cayman Islands is to be favoured relative to the Channel Islands because (A) They already have an efficient organisation of 30 people and they are very good." Must be, I suggest, a reference to Guinness Mahon Cayman Trust as opposed to Guinness Mahon's Channel Island vehicles?

A. I really have no basis for drawing a conclusion from it other than by reading here, and I am not sure what I can conclude from reading that.

Q. Well let's see if we can be of assistance, Mr. McLoughlin. This page opens with the fact that there are 15,000 people living in the Cayman Islands, isn't that correct? It goes on to describe that the major economic activity of the Cayman Islands is tourism and finance, isn't that correct?

A. Yes.

Q. But that finance is the bigger of the industries, isn't

that correct, or the larger? That's what the document seems to indicate.

A. Yeah.

Q. So can we take it that as the senior businessman that you were and are, that you did not deduce from that that there were only 30 people working in the financial services sector of the Cayman Islands?

A. Oh yes. I have no doubt that in talking about the Cayman Islands, that this document tells me that the discussion was about Guinness Mahon Cayman Trust.

Q. That there are 30 people there, that they efficient, and that they are good. It goes on, it can only be, the reference to the preferring of the Cayman Island over the Channel Islands, can be referable to two Guinness Mahon offshore businesses, is what I am asking you about; would you agree with that?

A. You are really into speculation here. It could mean that. It could simply be the more general matter of comparing Cayman and you could come up with ten scenarios with variations on them.

Q. What it really is conveying here is Cayman is good for secrecy. The Channel Islands is becoming a little bit vulnerable and the UK authority can get information out of the Channel Islands. Isn't that information being conveyed here?

A. That would seem to be what the document is saying.

Q. So what the document is saying is Cayman is good for

secrecy, isn't that right? And the tax matters?

A. Well again, you know, whether your summary of it captures the situation accurately or not is what I am thinking about.

Q. Yes.

A. And the only basis I have for offering you a view as to what was said at the time is simply what is here.

Q. But I am asking you for your view. I am asking you for your view from what is there. Isn't it clearly saying, look, Channel Islands, all right, but it's a bit vulnerable now. It's vulnerable to information which may leak to tax authorities. Really, isn't that what it's really on about? The UK authorities might be able to get information out of the Channel Islands. Cayman is safe. It's secret. Would you agree would you make that assessment of your own note, may I ask you that?

A. Would you repeat it again?

Q. Very good. We have gone over it. Could I ask you this is, is it your understanding of what was intended to be conveyed, is the Cayman Islands over the Channel Islands is to be favoured because secrecy is safeguarded in the Cayman Islands and you can't guarantee that secrecy in respect of the Channel Islands? Isn't that what is attempted to be conveyed?

A. That is, in my view, an accurate deduction or conclusion from what I see here.

Q. And what is clear it's secrecy, not the protection of

personal information from snooping busy-bodies or journalists or people like that, but secrecy from the authorities, isn't that what's being conveyed, secrecy from the authorities?

A. This would seem to be focusing on that issue.

Q. Secrecy from the authorities.

Now, I won't read out all the questions, if that's all right with you, I will just flip through them on the screen

CHAIRMAN: Perhaps if there is a little time more involved, Mr. Coughlan, it may be a little hard on the stenographer to press on. It's now after twenty five to. Is it okay, Mr. Coughlan, if you were to finish your evidence at five to two?

MR. COUGHLAN: No. That's fine.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE HEARING RESUMED AS FOLLOWS AT 2:00PM:

CONTINUATION OF EXAMINATION OF MR. RAYMOND MCLOUGHLIN BY  
MR. COUGHLAN

CHAIRMAN: Thank you, Mr. McLoughlin, please.

Q. MR. COUGHLAN: Mr. McLoughlin, thank you, Mr. McLoughlin.

I just want to stress, Mr. McLoughlin, what the Tribunal's interested in is the information which was imparted to you,

not the questions that you were necessarily raising. The Tribunal wants to know what Mr. Furze or Mr. Traynor had told you insofar as you can best recollect it from looking at the document you prepared. In that regard we just moved on then to page number 23.

And it is, if you have it there, it is headed "Note re Confidentiality Position" and it begins paragraph number 1: "There is a secrecy act in the Cayman Islands and all offices involved in the trust arrangements and indeed the overall officers with responsibility for supervising the operation of trust arrangements in the Cayman are sworn by the Secrecy Act.

2. In practice, in the GMCT situation, only very senior officers are privy to the trust documents.

3. In the case of a Dublin situation, the only parties who would be aware of the trust arrangements would be X1." You are unsure as to who that might be, is that correct?

A. That's correct.

Q. "X2" that must be Mr. Traynor from the previous note. "JF and perhaps three or four of his officers" that is JF's officers I take it, is it?

A. That is what I understand that to mean.

Q. So just looking at that, can I take it that it appears or it appeared to you from the note you made at least anyway, that two people in Dublin might know of the trust arrangement, one was Mr. Traynor and the other is X1 whom

you have no recollection as to who that might be at this stage; is that correct?

A. That's correct.

Q. Now, "4. None of the trust documents are public documents which are registered anywhere.

5. The making of the arrangements with the Trustees with regard to the disposition of funds in the case of death of a client can be given effect to without going through a will which must be probated and given and would be a public document. Even in the Cayman Islands a will would be a registered public document and the tax authority in any part of the world would be free to look at it.

6. Nobody in Dublin other than the two principals would know about any trust arrangement and there would be no record of any kind anywhere in Dublin or any reference in any correspondence between GMCT and Dublin in relation to any trust arrangement.

7. In order that any interested party could identify a possible linkage between an individual and a particular trust arrangement, it would be necessary that one or other of the parties who are aware of this arrangement would disclose that or that through detection work or theft or accident that sight would be obtained either of the Trust Deed or the Letter of Wishes or any other correspondence pertaining to the trust arrangement.

8. If all the money were moved from the trust at any point in time, and if the client wished to discontinue the operation of the trust, it would be legally possible for him to recover the trust deed, and the Letter of Wishes, and any other correspondence, and to obtain a certificate from the trustee that there were no copies anywhere.

9. There are no duplicate copies of trust documents anywhere outside of GMCT. Consideration is being given to having a set of duplicate copies somewhere but no decision has been reached on it. "

Now, can I take it that was all information that must have been imparted to you?

A. Yes.

Q. Now, again I take it that it must have been that this information was being imparted to you and perhaps to other people for all we know, but to you anyway, for the purpose of pointing out the advantages of Cayman, I presume.

A. Yes, I think that is a reasonable assumption.

Q. Now I think on pages 25 and 26 these are questions which you intended to raise and I don't necessarily wish to go through the questions unless you wish to make reference to them yourself. I will just indicate that they are there in the document.

A. No, I don't wish to. I think that they are referred to

Q. I suppose you have asked questions, are they again on this question of secrecy a question which might legitimately and

reasonably be asked, are there any Irish people employed in GMCT? And perhaps question 5, the final paragraph of that, "Am I right in understanding that the client can at any stage decide to terminate the use of the trust arrangement and to recover the Letter of Wishes and Trustees and to obtain a certificate that there are no copies held anywhere?" That is information, you are just querying again information which had been imparted to you; is that correct?

A. Yeah, clearly it must refer to information that I was given.

Q. Yes now, if we could then go to page 27 which is headed "Towards Minimising the Footprints" can I take it that or can you help us, would that language have been obtained from a document, one of the sheets that Mr. Furze had or something that was told to you to the best of your recollection?

A. I am quite sure that the headings here up as far as L were all taken from the actual sheets I was given.

Q. Yes.

A. I specifically have a recollection of this 'minimising the footprints' expression, it rang a bell with me when I saw it in recent times, and I know that that was his expression.

Q. His expression?

A. Not mine. I would say the word "towards" is probably my expression.

Q. But 'minimising the footprints' is an expression which was used by Mr. Furze?

A. I believe I can recall that actually being used in discussion.

Q. Yes, and the document goes, "I discussed with JF various possible ways in which it could be arranged that sight of either the Trust Deeds or Letter of Wishes would not provide clues as to the linkage between clients and the trust arrangement. On the basis of my discussion with JF, it seems that the following things might be possible:

1. If it is correct that any individual could be named as a beneficiary upon subscription of \$10 to the Red Cross, then at the time of the creation of the initial Trust Deed it would be possible to leave out names of any connected parties but still have the option of putting them in later by arranging that they would subscribe \$10 dollars to the Red Cross. This would mean that the problem was deferred until a later point but it would bring with it the risk that the client might die before he gave effect to satisfactory arrangements.

2. Equally it could be arranged that there could be a list of several companies in the original Trust Deed and that at a later point each one of these could be assigned to a potential individual beneficiary and that that money could be settled indirectly on those beneficiaries through the company route. This, however, would have the difficulty

implicit in transferring money from a private company to a shareholder or to an unconnected third party, whatever those difficulties might be."

Could I just pause there for a moment. We have seen in the document X company, is that just a reference to a hypothetical company or a name of a company or is there a specific

A. No, my own reading is, it is just that it is hypothetical like AN Other.

Q. Yes, I will continue.

"In the case of the company registered in Ireland or the UK, there would be tax implications but presumably there would not be, if it were a company registered in the Cayman Islands.

If the client were to go the route of using a series of companies, the onus would then fall on him to ensure that the officers of those companies would carry out his instructions with regard to transfer of monies to the intended beneficiaries. Of course the intended beneficiaries could be shareholders or directors or both.

It would be an implication of this that the confidence which the client had in the reliability of the Trustees to discharge his wishes after his death would be lost and that he would be substituting for that such confidence as he would have in the officers in the company and perhaps that

might not be as good.

3. The Letter of Wishes in the first place might specify that the trustee should accept the instructions of a partner in a law firm in New York or in London. A problem arises if such a partner were to die, however this might be covered by having it specified that the trustee should accept the instructions of either of two or three or four persons. They could be different persons in the same law firm or persons from different law firms.

4. If that were to be done, the client would have to have confidence that the people specified would be relied upon to behave properly and not to give instructions to the Trustees to transfer funds somewhere without the client's authority. In following this route, the client is losing the assurance which he has that the Trustees are reliable in relation to acting in accordance with the wishes of the client and that in any case, there is insurance cover in relation to potential erratic action on the part of the Trustees. Perhaps he can satisfy himself that in the case of the persons nominated that he can have total reliability but if there were a doubt about that, it could be dealt with by arranging that Trustees could only act when an instruction from a specified person was confirmed by some other specified person. In this situation the client could then select two unconnected persons, for example, from two different unrelated law firms, therefore cut down sharply

whatever probability there might be that one of the nominated persons might give a misguided or irresponsible instruction to the trustees.

If the route was being followed that the trustee could only act on instructions when they were confirmed by a second party, then it would be necessary to have a number of payers to cover the possibility of somebody dying."

Now I think the question that you raised about that was whether there was in fact insurance, actual insurance cover in respect of erratic behavior by trustees; is that correct?

A. I think that is what I would read from that.

Q. And then if we go on to page 30. There is, "Discretionary Trust Pros and Cons" could I ask you what your impressions about this particular portion of the document. Would this again have been matters which would have been raised with Mr. Furze at the meeting you think?

A. My belief, Mr. Coughlan, is that on these information sheets there were headings on it which correspond approximately with the headings here up to the point.

Q. Very good.

A. up to the point of the queries about tax, some of them had bullet points and my guess would be, from looking at it, some of the latter headings here were based on bullet points or discussion points.

Q. What I am trying to ascertain, you believe it was

information that was imparted to you to the best of your knowledge?

A. Yes, I have no doubt about that.

Q. So under the heading, "Pluses"

"1. Money can be moved, invested or divested from time to time simply through a telephone call to a contact operating on behalf of the Trustees. A bank will not do that without drawing up, from time to time, documents of authority.

2. In the event of demise, it is possible to give effect to the client's wishes without drawing up a will and this is of advantage because a will has to be probated and it is a public document and any authority or tax authority anywhere can go and look at the details of any will whether it be registered in the Cayman Islands or anywhere else.

3. Because assets held in a Discretionary Trust are legally not at all under the control or ownership of the client, it is therefore factually and legally correct to state that the client does not own any of the assets held by the Discretionary Trust and it is therefore not in breach of Exchange Control Regulations. The bank in Ireland can swear to the Revenue as to the non connection in the legal sense between any parties that might be inquiring about any legal trust.

Minuses:

Although many of the footprints can be erased, it is still true that a number of individuals will know who the

effective client is in the case of any trust. It is always possible, therefore, that due to error or investigation of a sufficient thorough kind that the true client be identified by an interested party as being connected with the trust. On the other hand, if an Irish individual who held undisclosed funds were to hold them to his own account in an overseas bank, then it is much less likely that anybody would learn about the matter even though he would be in breach of various Irish laws.

The problem about a tax official identifying through research or investigation who the real client was in the case of any trust arrangement is not that he can claim that the client is the owner of the assets in the trusts because he can not do that, because he legally is not the owner, but rather that he knows that the assets of the trust arose in the first instance through a transfer to the trust from the client and he will suspect that the assets in the first instance may have been generated by the client without paying the appropriate amount of tax and that might lead to an investigation of the client's affairs of a sufficient degree to track down what the assets might have been."

I think the question then raised is not very significant.

Then just going through page 32 "Note re tax implications," there is nothing on that.

"Note re Irish Exchange Control Regulations," and "Note re

Richie Ryan's 1974 Act."

And "O: Risks, P: Fees and costs," and that ends the document I think; isn't that correct.

Now, the headings; "Note re Irish Tax Implications Exchange Control" and matters of that are three of your own to the best of your knowledge?

A. I have no doubt that they are.

Q. Yes, and can I take it that when you had noted the information which had been imparted to you, it must be that you would have wanted to ascertain what the legal position was here in Ireland re tax, exchange control, the '74 Act, transfer of funds perhaps, risks and fees and costs, this is information which would you would have had to enable you to make a judgement on the matter, would that be correct?

A. Yes, this is inconsistent with my normal modus operandi on a matter of like that, I would have geared the information, asked all the questions and then when I would have asked my legal and tax advisors whether it stacked up or not, and if it did, I then would consider whether I would take it further or not. In this case I didn't reach that point because it just died. I don't know what my actual thinking process at the time was, but I know that one factor was that I had no money.

Q. Yes?

A. So the whole idea didn't stack up from a personal point of view.

Q. Yes?

A. But at the time that I would have been writing this which could have been within one day of the meeting, I would have seen these checks with lawyers and tax advisors as the natural final leg.

Q. The next step?

A. Of gathering all the relevant information before coming to a judgement. Those headings reflect that thinking in my view.

Q. Yes, but there could be little doubt, would you agree, on the information which was given to you, that what was being offered or suggested or perhaps marketed was secrecy in the Cayman, isn't that correct? That seems to be what it was about?

A. Certainly a very strong feature, yes.

Q. And that it looked, and you didn't take the step of taking legal advice yourself here or tax advice on the matter here, that what in effect was being offered was money which could be suggested that legally was not in the ownership of the client, but nonetheless which the client had complete control over. That seemed to be from the document, would you agree?

A. That would seem to be part of the central thrust, yes.

Q. And that also what was being offered was as tight an operation as possible to ensure that the Revenue authorities might not be able to see what was going on to enable them to ask the question, not about the legal ownership of the money abroad which would be in trust, but

as to the source of the money which had gone to create the trust, isn't that what the document seems to be about?

A. I would have thought that it had to do with the advantages of a trust in the Cayman Islands.

Q. Yes,?

A. Yes, well...

Q. And at the end here, that is what you are referring to, the reference to the taxation issue?

A. Yes, does seem to be on the basis that a structured they couldn't argue it from a legal point of view, that seems to be the theme there, but that if they didn't come with clean hands it raised problems for them unless confidentiality was assured, that would seem to be what the tail end of this is talking about.

Q. That the Revenue might ask where did the money come from in the first place that went in to this trust?

A. Yes.

Q. Thank you very much indeed, Mr. McLoughlin.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. QUINN:

Q. MR. QUINN: Just one question following on that last question. I think it is fair to say and I think it follows from what you said it was never intended that the Irish Revenue Authorities would ever see these trust documents or Letters of Wishes, isn't that right, Letters of Wishes; isn't that right?

A. Well, I couldn't really say what the intention was, but I

think one can deduce from everything that is in this document that the matter of keeping such arrangements confidential from Revenue authorities generally was in there somewhere.

Q. Yes?

A. as a fact.

Q. I am talking now about the actual documentation as it existed. On the notes under, I think it is "I" at page 23, dealing with the confidentiality position, first of all, there was an effort made to reduce the number of documents that would exist at all within the jurisdiction, isn't that right, and, for example, at 6 it provided, "that nobody in Dublin other than the two principals would know about any trust arrangement," isn't that right, there would be no record of any kind anywhere in Dublin? And any reference to any correspondence between Guinness Mahon Cayman Trust in Dublin related to any trust arrangement relating to any trust arrangement which wouldn't be in existence in Dublin, isn't that right?

A. All I can say is that what is written down here describes what was said at the time.

Q. Mmmm.

A. And if your summary is a correct summary of that, then that is fine with me. I am not sure if it is.

Q. And it further provided there would be no duplicate copy of trust documents anywhere outside Guinness Mahon Cayman Trust, isn't that right?

A. Isn't what right?

Q. That is at number 9. If you look at number 9 it says,

"There is no duplicate copies of trust documents in...

A. It is right that the document says that.

Q. And at 7 it says, "In order that any interested party could

identify a possible linkage between the individual and

particular trust arrangement, it would be necessary that

one or other of the parties were aware that the arrangement

would disclose that or that through detection work or theft

or action, sight would be obtained either of the Trust Deed

or the Letters of Wishes or any other correspondence

pertaining to the trust arrangement. "

Again an attempt being made to ensure that there would be

no paper so-to-speak within the jurisdiction in relation to

these trusts, isn't that right?

A. Well, all I can say to be right, is that this paragraph

here it describes what was conveyed to me at the time.

Q. Yes, the whole import of what was being conveyed to you by

what Mr. Furze and Mr. Traynor was that there wouldn't be

any documentation within the jurisdiction, such

documentation as existed would be in the Cayman?

A. Well that, my interpretation of the document is that that

would be one of the elements of the overall picture.

Q. One of the elements of the overall picture?

A. Yes.

Q. Thank you.

CHAIRMAN: Mr. Shipsey?

MR. SHIPSEY: I have no questions.

CHAIRMAN: Thank you very much, Mr. McLoughlin.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Sam Field-Corbett.

MR. SAM FIELD-CORBETT, HAVING PREVIOUSLY BEEN SWORN, WAS  
EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Thank you again, Mr. Corbett.

A. Not at all.

Q. MR. HEALY: Thank you, Mr. Field-Corbett.

A. Not at all.

Q. I think this is your second, if not perhaps your

A. Fourth.

Q. Fourth time giving evidence, perhaps three times in public  
or four times in public, I can't remember.

A. Three times.

Q. Three times in public and once at a session from which the  
public were excluded.

A. Correct, yes.

Q. As you mention I think in your statement, and I am much  
obliged for the assistance that you are providing. Again  
as on the earlier occasions you have furnished the Tribunal  
with a Memorandum of your Evidence and I hope you have a  
copy of that in front of you. Well we will arrange to give

you a copy. (Document handed to witness.)

A. Thank you.

Q. No doubt you are familiar with this document?

A. I am yes.

Q. The documentation was furnished in response to a number of queries from Mr. Davis, the solicitor to the Tribunal, and you have set it out in the form of a sort of a narrative, isn't that right?

A. That is correct, yes.

Q. You start by saying, "I previously explained to the Tribunal I knew Des Traynor since the year 1997."

A. '67.

Q. '67, sorry. Then you go on to set out in your statement your dealings with Mr. Traynor and with a number of other individuals so far as Mr. Traynor's activity in questions with Guinness Mahon Cayman Trust and other related activities were concerned up to the time of his death, and after his death your association with Mr. Collery and to what limited extent you had an association with him, your contact with Mr. Furze, is that right?

A. That is correct, yes.

Q. You say, "I had joined Haughey Boland in 1967 as a senior audit clerk and did a lot of Des Traynor's work. While I was in Haughey Boland, a Secretarial trust company was set up. I was appointed managing director of this company.

The Secretarial Trust Company acted as nominee on behalf of other companies and did accounting work for those

companies.

I remained in this company until 1973 when I decided to set up my own secretarial company. I spoke to Des about this and he confirmed that it was a good idea and would help me if he could. At that stage I would have known and trusted Des and held him in very high regard. I told him of my decision. He told me to contact him in a month after I had set up my own business and I did so.

After I contacted Des and when I had set up my own company at his suggestion, I took rooms in Trinity Street in the Guinness & Mahon building. Des Traynor referred work to me, being secretarial work, on behalf of a number of companies."

If I could just stop there. When you say you took rooms in the Guinness & Mahon building, do you mean that you took rooms over Guinness & Mahon?

A. No, they were actually, it was the Guinness & Mahon building around in Trinity Street. It wasn't in the bank.

Q. It was a building owned by Guinness & Mahon?

A. Let by Guinness & Mahon.

Q. Let by Guinness & Mahon?

A. Yes.

Q. And Des Traynor referred work to you. Would this be work arising in relation to Guinness & Mahon or that type of work or other work?

A. It would be both.

Q. Both?

A. Yes.

Q. And do I, am I correct in thinking that your association with Mr. Traynor over the years had a lot to do with Guinness & Mahon work?

A. In the initial stages, yes.

Q. And would you have been well-known to members of the staff of Guinness Mahon?

A. We were in a different building. We would be relatively known but not well-known. They were actually around the corner.

Q. I understand that.

A. There was no connection between the buildings.

Q. I understand. But you would have been in fairly regular contact with Mr. Traynor and/or his secretary I suppose?

A. Correct, yes.

Q. And may be one or two other members of the staff of Guinness & Mahon?

A. That would be fair to say.

Q. You would have been, maybe you wouldn't be known to every member of the staff, you would have been well-known to those members of the staff who had most contact with Mr. Traynor?

A. Yes.

Q. You say that during the course of the 1970s you became aware that Des Traynor was Chairman of Ansbacher (Cayman)

Limited. Now, I take it what you mean there is the bank that we now know as Ansbacher Cayman. Initially it was called Guinness Mahon Cayman Trust and it had a number of other names, we use the term "Ansbacher" to describe the bank in all its various incarnations, isn't that right?

A. Yes, yes.

Q. You say, "In the late 1970s or early 1980s Des let me know it would be open to me to invest in what were known as "Ansbacher accounts"."

You use that expression in parenthesis. You say, "I believe that Des Traynor simply mentioned this to me because he wanted me to know that the opportunity would be open to me if I wanted to avail of it. He put no pressure on me to avail of it and at the same token did he make me feel under an obligation for having been given the opportunity.

It was clear to me that this account was one that had advantages although Des did not discuss the nature of the account with me in any detail. He certainly did not tell me that anybody else had similar accounts either through him or otherwise. "

You go on to say, "In my experience of Des Traynor, which as I said was over a considerable period of time, Des Traynor would not inform anybody of the business transactions or confidential information unless it was absolutely necessary to do so. One knew that confidentiality was of the utmost importance to Des

Traynor. Because of this attitude of Des Traynor's, I had very little knowledge of the operation of the Ansbacher accounts with Des in 1994. I believe that the accounts as operated by Des were done on the basis that a deposit could be made through him but no receipt would be given for each individual deposit, however, every so often Des gave typed statements showing the balance on individual accounts. It would therefore be possible for a person monitoring any particular account to make a note of any payments made to Des, wait for the typed statement which arrived from time to time, and then reconcile the typed statement with the individuals' own note of what had been paid in the account. Into the account."

You say, "That prior to Des's death, I was only aware of two specific people involved in the Ansbacher accounts. They were Padraig Collery and John Furze. I did suspect that other people may have been involved but I never voiced my suspicions either to Des Traynor or to Padraig Collery and needless to say they never volunteered information to me about the identity of any other persons whom might have had an interest in the accounts. "

You then go on to deal with your knowledge of John Furze's involvement. You say, "I became aware of John Furze's involvement in or around the late 1970s. I was aware of the fact that there was a Cayman involvement. I was specifically made aware of the fact that a trust fund and a

company were involved in direct ownership of the accounts.

I understand that an investor had no direct access to the money but would have had to ask Des Traynor either to make lodgements or withdrawals or after his death, would have had to approach Padraig Collery. I also became aware at this time that John Furze had apparently set up the Cayman company and trust structure."

You say, "On the first occasion I met John Furze he had been on a trip to Dublin which I think lasted two or three days. He had worked with Des throughout those two or three days and at the end of his trip to Dublin, Des arranged a dinner which I attended. The dinner was an entirely social affair. People at the dinner were accompanied by wives and partners and no business was discussed.

After that I met John Furze on maybe six occasions before Des's death. These were always social occasions and were very similar to the dinner that I have just described. My understanding through Des was that John Furze visited Dublin about twice a year and on each trip to Dublin would spend two or three days working with Des at end of which there may or may not have been a social event and I would have not have attended all of these events."

You say that you "became aware in the late 1980s or thereabouts that Padraig Collery was involved in the Ansbacher account. Padraig Collery at that time informed

me that he had been operating these accounts for Des Traynor and that he continued to do so even after he left Guinness Mahon. This was in fact the context in which the discussion took place. We knew each other socially and professionally and I was having a drink with them in a pub in Dublin at a time when Padraig had left his job and was discussing what he would do. "

Could you just explain to me why you say 'them' there?

Could you just read that sentence? You were saying you had a discussion with the Padraig Collery in the late 1980's?

A. I had a discussion, yes.

Q. You said he had left Guinness & Mahon. "This was in fact the context in which the discussion took place. We knew each other socially and professionally and I was having a drink with them in a pub in Dublin." Is that a typographical error?

A. That, I would say that should be "we".

Q. Just read it again then. "We knew...

A. "We knew each other socially and professionally and I was having a drink with him in a pub in Dublin," it must be, "at a time when Padraig had left his job and he was discussing what to do."

Q. "He mentioned that one of the things that he was continuing to do was operating these accounts for Des Traynor.

Knowing the relationship between Padraig Collery and Des Traynor, I had thought for some time he might be involved in the accounts but this conversation confirmed it for me.

I should also say that at the original dinner that I attended with John Furze, Padraig Collery and his wife also attended and John Williams was also present.

After Des Traynor's death, you say that "John Furze assumed control of the Ansbacher accounts."

You go on to say, "Padraig Collery told me that he continued his work on the accounts and that he did not have an office space in which to hold files or a filing cabinet and an address to which he would have 24-hour access. Basically he needed storage premises for his files, a desk, 24-hour access to those premises, a postbox, and a bank signatory. He told me that I would be looked after but I did not actually agree any payment of fees to me or my firm. As it happened, two ex gratia payments were made by Padraig Collery. My understanding of it is that Padraig would have made a certain amount out of his handling of the accounts. I did not ask or request or solicit any payment and I do not know how much Padraig has earned from his management of these accounts."

You go on to say that you have already given evidence to the Tribunal concerning the names of persons to whom you believe to have benefitted from the accounts and that was provided in a sitting in which the public were excluded.

You go on to say that you should say that after the death of Des Traynor, you did not have access to any of the files

that Pdraig Collery stored in your office on foot of the arrangement between you.

You say, "The money in the Ansbacher accounts had, as I understand it, been moved to the Cayman Islands before John Furze died in 1997. Obviously John Furze had proved reliable in his dealings with Des Traynor and with Pdraig Collery, but I had no idea who was going to take over the Cayman operation. I was told that a Barry Benjamin had taken it over."

You go on to say, "I have had, to the best of my recollection, two discussions with Mr. Benjamin. Both of these were over the phone. I have never met Barry Benjamin nor have I ever written to him. I first telephoned him because I was concerned that the company involved in certain accounts had been struck off due to nonpayment of fees. Using the phone numbers supplied by Pdraig Collery I telephoned Barry Benjamin and asked him to inquire about the matter and if necessary have the company reinstated. This was in or around the beginning of 1988. Subsequently, approximately a couple of months later, I telephoned Barry Benjamin again to find out if the company had been reinstated and he told me that it had."

"I am aware that during the course of last year, Pdraig Collery made a trip to the Cayman Islands in which he obtained a statement in respect of certain accounts. These statements are handwritten statements which I know to be in

the Tribunal's possession. My understanding of the purpose of the trip to the Cayman Islands by Pdraig Collery is that it was effectively to close down his involvement in the operation and obtain closing balances. Earlier in this statement I have mentioned the fact that Pdraig Collery required a second signatory to certain accounts. The reason that a second signatory was required is that Pdraig could often be unavailable to sign cheque requisitions and it was necessary to have somebody based in Dublin who would be able to sign such cheque requisitions if the need arose. I therefore became a signatory and was capable of not just signing cheque requisitions but also other bank transfer orders for funds once directed to do so by Pdraig Collery and/or John Furze.

My understanding as earlier indicated that after Des Traynor's death that John Furze effectively took control of the accounts. Pdraig Collery operated them on a day-to-day basis in Ireland. I remember Pdraig only making one trip to Cayman in relation to these accounts.

I have already given evidence to the Tribunal in private session about the manner in which an account called The Diamond Trust A/A26 was operated" and you are referring to a particular coded account here.

A. That is correct, yes.

Q. Which I think if I can interject at this point in your statement was operated on a day-to-day basis by you rather

than by Padraig Collery, is that correct?

A. That's correct, yes.

Q. So you had a more intimate involvement in the operation of that particular coded account than any other?

A. Yes.

Q. Yes.

A. Since Des' death, yes.

Q. Yes, you say this involved buying and selling shares in Australia. Instructions and directions would have come from John Furze or Mr. Ron Woss in Australia in relation to this trust. These instructions were to come a few times a week. We then, in response to these instructions, did transfer orders for funds. These transfers were mainly sent to Australia. Once the McCracken Tribunal was set up, this particular operation was discontinued in Ireland. "

Now we may come back to that operation on another occasion, but I may have a few questions to ask you about it today.

Now, if you go back to the first page of your Memorandum, you are describing how you first became involved in what are known as the "Ansbacher Accounts". You say that Des, as you put it, let you know that it would be open to you to invest in what are now known as the "Ansbacher Accounts".

What do you mean by using the word "invest"?

A. That if I needed an Ansbacher account I would have one.

Q. Well what did that mean? Do you need an Ansbacher account? What need would you have for an account like that

or what class of an account was it that he thought you might need?

A. It was an account which had a limited company and a trust over it and you could set the money on it.

Q. Why would you need an account like that or why would you want it?

A. Well, my understanding at the time was that it was beneficial tax wise, beneficial tax wise.

Q. It was beneficial tax wise?

A. Yes.

Q. That in other words, if you put money into this account, you wouldn't have to pay tax on it?

A. On the interest on it.

Q. On the interest on it?

A. Yes.

Q. And is that what Des told you?

A. I don't think he told me the whole thing, but I knew it.

Q. How did you know it?

A. Structures like that were tax effective.

Q. But how did you know what the structure was?

A. Well I knew it was a Cayman scenario.

Q. Well, I am not criticising your use of language Mr.

Corbett, maybe we could avoid words like "scenario" for a moment. But what do you mean by "a Cayman scenario"?

Cayman was an off-shore island in the 1970s.

A. That's right.

Q. It was, in the 1970s it was outside of the Sterling area?

A. Yes, that's right.

Q. It operated a banking system around which there were very heavy secrecy laws; is that right?

A. Sorry, can you repeat that?

Q. It operated a banking system around which there were very, very tight secrecy laws?

A. Yes.

Q. Would that be a fair description of the activities conducted on the island?

A. Yes, yes.

Q. Did you know that at the time?

A. I would have, yes.

Q. Have you been here during the evidence which was given while Mr. McLoughlin was in the witness-box?

A. I am afraid not. I only heard part of it.

Q. Well, he gave evidence of conversations he had with Mr. Furze in 1983, which was many years after you first learned of the Cayman scenario, in which the advantages that were being, were being, if you like, hawked round Dublin by Mr. Furze and Mr. Traynor were essentially advantages which would enable you to put money in the Cayman Islands without the tax authorities finding out about it

A. This is what he said?

Q. well this is what the document seemed to suggest.

A. Yeah.

Q. Is that what Des Traynor was making available in the 1970s, that you could put money into this off-shore company and

that the tax authorities wouldn't know about it?

A. Well it would be tax effective, I suppose.

Q. That it would be tax effective?

A. Yes.

Q. Would you agree with me that if you were aware of a tax avoidance scheme, a good and effective tax avoidance scheme, there would be no reason not to tell the Revenue about it, you would simply say they couldn't touch your money, that you had invested it in a particular way and that you needn't concern yourself with any tax, wouldn't that be right?

A. Well...

Q. If you had a good tax avoidance scheme, wouldn't that be right?

A. People don't do it

Q. If you had a legitimate tax avoidance scheme?

A. They still don't do it. You still wouldn't do it.

Q. Wouldn't you?

A. No.

Q. Why not?

A. Because in real life

Q. Um-hum?

A. they would close it down.

Q. They might close it down afterwards?

A. Yes.

Q. I see.

A. Sorry, that is being practical about the thing, okay?

Q. Yes.

A. If somebody created a scheme, right?

Q. Yes.

A. And it went to the Revenue, right? They would close it down.

Q. Is there not also the difficulty that was mentioned in the document produced by Mr. McLoughlin or mentioned by Mr. McLoughlin, that if the Revenue examined a scheme like that, their interest would be not in any interest that might be earned on money invested off-shore, but rather in how the money that had been put off-shore came to have been assembled or accumulated in the first instance, wouldn't that be right?

A. Yes, they would query that.

Q. And wouldn't that be the real worry or one of the real worries any one investing money off-shore might have?

A. Well, it depends on what kind of money it was.

Q. Precisely. If the money that was being put off-shore was money on which tax had been paid, then obviously you wouldn't worry about the Revenue finding out?

A. That is correct, yes.

Q. If the money that was being put off-shore was not money on which tax had been paid, then obviously you would be very worried about the Revenue finding the source of the money?

A. That would be right.

Q. And one of the ways in which the attention of the Revenue could be distracted would be to ensure that there was no

link between the place where the money was put and the person who was putting it in that place; isn't that right?

A. Well, it would follow.

Q. And again to judge from the document that we have heard about this morning, the whole point of the service being offered by Mr. Furze and Mr. Traynor was that that link or that linkage would not be apparent.

A. Well, I haven't seen the document.

Q. I see. I am just telling you that is the service that was being offered.

A. Yes.

Q. And one of the features of the service was that there would be very little documentation with anyone's name on it.

That was one of the things that was mentioned.

A. Yes.

Q. Now, when you were dealing with Mr. Traynor, you say that you had very little knowledge of the operation of the accounts but that you believe that the accounts were operated on the basis that if money was given to Des Traynor, you wouldn't get a receipt, maybe not every time, but he wasn't in the habit of handing out receipts?

A. Correct.

Q. Every so often you might get a typed statement.

A. Yes.

Q. Giving a balance on an individual account or giving an individual balance on a larger account.

A. Or a transaction or transactions.

Q. Together with transactions?

A. Yes.

Q. Now would that type of document be like a bank statement?

A. Effectively not like an ordinary bank statement but effectively a bank statement.

Q. Would it be typed?

A. Yes.

Q. Would I be right in thinking that it was like a an ordinary bank statement except that it was on a piece of paper the top of which would have been cut off?

A. Topped and tailed.

Q. Topped and tailed?

A. Yes.

Q. By cutting off the top you would be cutting off the name of the entity in which the money was now being kept, and by cutting off the bottom you would cut off information like addresses and that sort of thing, is that right?

A. That probably was.

Q. And to get a statement like that, you would have to ask Des for it, would that be right?

A. Well, it would come from Des.

Q. Would it come unsolicited?

A. I think so.

Q. You wouldn't ask for it but would you get one anyway?

A. I think so, yes.

Q. Would you get it regularly or only occasionally?

A. Well, you wouldn't get it every month, you know, you would

get it two to three times a year.

Q. I see. How would you get it?

A. Most likely sent by his secretary in an envelope.

Q. Sent by his secretary?

A. Yes.

Q. Through the post?

A. No.

Q. It would not go through the post?

A. No.

Q. So it would be delivered by his secretary?

A. Not by his secretary. It would be sent by a secretary and delivered by his driver.

Q. His driver?

A. Yes.

Q. When you say "sent by his secretary," do you mean that there would be a letter with it?

A. Oh no. It would be in an envelope.

Q. It would be in an envelope?

A. Yes.

Q. So two or three times a year Mr. Traynor's driver would come to your office, your home or wherever you were and he would give you an envelope?

A. Yes.

Q. And in that envelope would be a photocopy of a bank statement with the top cut off and the bottom cut off?

A. That is quite right.

Q. And would you know that that had come from Mr. Traynor?

A. I would.

Q. And would you know what the purpose of it was?

A. Yes.

Q. And would you know why it had been given to you at that particular time?

A. Yes.

Q. To bring you up-to-date on the state of your investment, as it were?

A. Yes.

Q. And that document would have no covering letter, no indication of where it had come from, no indication of who it referred to, except possibly a code, but maybe not even that?

A. That's right.

Q. There would be nothing on that document to link the person who was receiving it with any of the funds that were being referred to in the document?

A. Do you mean the name?

Q. No name, no address, no covering letter, no compliment slip?

A. No.

Q. So the system that was being operated by Mr. Traynor was a system in which information might be available to certain people but only in a form which would avoid any connections being made or any links being drawn or being discerned between that person and any of the money that had been given to Mr. Traynor?

A. Sorry, can you repeat that please?

Q. I will. The system that was being operated by Mr. Traynor was a system in which information might be available to certain people but only in a form which would avoid any connection being made or any links being drawn or being discerned between that person and any of the money that had been given to Des Traynor.

A. In that account, yes.

Q. Yes. So the money that would be given to Des Traynor was not in an ordinary bank account, it was in a secret bank account, wasn't it?

A. It was a bank account, yes.

Q. The whole thing was secrecy from top to bottom, wasn't it?

A. It would.

Q. Utter and absolute secrecy and the whole point of the secrecy, wasn't it, was that the authorities in this country or in any country that might be interested, shouldn't have access to information about a person's money?

A. Well, that was a general rule of banking.

Q. I see.

A. That you wouldn't give out information to anybody about a bank account

Q. Now, Mr. Field-Corbett, I am not sure what you mean by that answer but I am sure you will agree with me that banks in Ireland do not operate in that way.

A. Sorry?

Q. Banks in Ireland do not operate in that way.

A. No, but they don't give out your bank statements to anyone.

Q. They don't. They give a bank statement

A. That's what I meant, that the banks have a confidential

Q. I want to be absolutely clear about it so that there is no

doubt. When I use the word "confidentiality" I am talking

about the ordinary obligation, ordinary obligation of

confidentiality that a bank would, when I am talking about

a bank, that Mr. Traynor would have. I am not talking

about ordinary confidentiality, I am talking about utter

and absolute secrecy, nothing do with bank

confidentiality, I am talking about something altogether

would you agree with me that what Mr. Traynor was

offering was a level of secrecy that had nothing to do with

bank confidentiality?

A. It was certainly a level of secrecy.

Q. And it was a far cry from bank confidentiality.

A. Well, it was a good extension of it.

Q. Your bank statements, I take it, from your ordinary bank

business, banking relationships involved getting a

statement every month usually from the bank with the bank's

notepaper?

A. That's right.

Q. With your address written on the statement.

A. Yes.

Q. Or a letter or if not a letter, nevertheless a clear

indication that this was a bank statement?

A. It would just have been a bank statement.

Q. It would have your address, your name, your address, the name of your company or your company's address?

A. Yes, correct, yes.

Q. The telephone of the bank?

A. Most likely, yes.

Q. Most definitely the telephone number of the bank. The address of the bank and any other information you want, you could get at the drop of a hat by ringing up the bank and indicating who you were or calling in or sending a letter, about your account. Not anybody else's account, just your account.

A. Yes.

Q. But in Mr. Traynor's case, nothing like that obtained. In fact what you had was a system in which there was no covering letter, no bank address, no telephone number, no names,, the whole thing was no names, no identification, isn't that right?

A. That's right, yes.

Q. When Mr. Traynor asked you or invited you to become involved in this type of operation, I don't want to get into the detail if I can possibly avoid it of your specific involvement, but nevertheless you did invest some money with him, if we can use that expression, is that right?

You gave money to Mr. Traynor?

A. I did.

Q. And as far as you were concerned, you were giving it to Mr.

Traynor, he was going to look after it through this system

that you say you knew about?

A. Yes.

Q. Though he hadn't mentioned it to you but you did know about it?

A. Yes.

Q. Just to go over that again. How did you know about it if he hadn't mentioned it to you?

A. I would have been aware at the time of the Cayman Des was chairman of the Cayman bank, right?

Q. Yes.

A. And he would have mentioned probably in a roundabout way, I knew he was going out back and forth to Cayman, Cayman was a certain area.

Q. Um-hum.

A. And they had a bank out there, so I would have worked put two and two and two together.

Q. Putting two and two together you were aware that Des Traynor had an operation in the Cayman Islands where you could put hush-hush money?

A. No. He had an operation in the Cayman.

Q. And it wasn't one that was advertised to people that wanted to put their life savings with a cheque with their name on it. It was for hush-hush money, quiet money, money that you didn't want anybody to know about, wasn't that what Mr. Traynor was offering?

A. It could have been for ordinary money.

Q. It could have been for ordinary money as well. It could have been.

A. It could.

Q. It could have been, I quite agree, it could have been for ordinary money as well as for money that was not.

A. I can't say that.

Q. Are you suggesting that most of the money that Mr. Traynor collected was money are you saying that most of the money that Mr. Traynor collected and put off-shore was money that went through the tax system?

A. Well, I don't know.

Q. What do you think?

A. I would be only guessing.

Q. I see. Well we may have to come back to it then later on.

In order to put money into this Cayman operation that Mr. Traynor was operating, the money was given to Mr. Traynor himself, isn't that right?

A. That's right.

Q. Did you ever give him money?

A. Yes.

Q. And would you get a receipt? No I suppose is the answer to that.

A. No.

Q. And you believed that the money you were giving him would be put into some kind of structure based on the information which you said you obtained in the manner which you obtained it a moment ago?

A. Yes.

Q. And would that be cash money or cheques or drafts or what?

A. I would say it would be cheques.

Q. Now, during the 1970's this is how he operated. During the 1980's this is how he operated. During the 1990's this is how he operated and after his death this is how Pdraig Collery operated, he would give money either in cash or cheques to him.

A. I am not aware of any money going after Des died.

Q. I see. Were you concerned yourself or in general?

A. Just me personally I have never seen

Q. I see. So during the seventies and the eighties and the nineties up to Mr. Traynor's death if you wanted to put money into this structure you gave it to Mr. Traynor.

MR. FULLAM: Mr. Chairman, the tenor of the questions here is an investigation, as I see it, of the witness. In the light of the assurances given in the memorandum on confidentiality, I don't see how it is relevant to the Tribunal.

CHAIRMAN: Mr. Healy?

MR. HEALY: Yes, Sir. I am not sure what Mr. Fulham means by the memorandum on confidentiality? It is clear at all times that any undertakings by the Tribunal, as I understand it, to keep information confidential, is subject to your discretion, Sir, to allow information to be put

into the public domain. Now, the feature of these accounts that is being investigated in this section of the sittings is firstly, the mechanics of the system and secondly, related to the mechanics is the fact, as the evidence today has shown before Mr. Field-Corbett came into the witness-box, the secrecy the utmost secrecy surrounding these transactions. The fact that, as this witness has confirmed, no documentation or a very limited amount of documentation, unattributable documentation came into existence. I appreciate there may be a degree, as is clear, of embarrassment from Mr. Field-Corbett's point of view, of going over matters that undoubtedly involve some personal disclosures on his behalf, I am trying to avoid to as much as possible getting involved in disclosures which may be personal where Mr. Field-Corbett is concerned, but the fact is that some of the information which the Tribunal obtained and which has enabled it to come to grips with this operation was only obtained last October as a result of the public spirited action of a Miss Margaret Keogh.

There is an amount of information which came to the Tribunal's possession at that time, some of which concerned Mr. Field-Corbett, I will come to that in a moment and it is in the context of what has transpired since that date, it is in the context of the fact that in July of 1998 the activities that the Tribunal is now seeking to investigate were being carried on under the nose of the Tribunal, if you like, that I am now seeking to find out as much as

possible about the mechanics. I will try to avoid, though I hasten to add, it is not going to be easy, try to avoid involving personal disclosure for Mr. Field-Corbett, but the number of individuals involved in this activity is very small. I say "involved" which I hasten add what I am talking about is involved in the mechanics of it is relatively small. If the information cannot be obtained from those individuals, I can't see where the Tribunal can find it, bearing in mind that the institutions or the entities into which this money was put will not assist the Tribunal. That is Ansbacher and Hamilton Ross.

MR. FULLAM: With respect, Chairman, it is quite possible for Mr. Healy to explore to the fullest extent the operation of the accounts with this witness without going into his personal details.

CHAIRMAN: There is a difficult balance to be observed by the Tribunal and its legal team in discharging its remit of inquiry thoroughly and fully into the working of the Ansbacher system without infringing unduly potential questions of individual privacy. Undoubtedly there is no basis that appears to have arisen whereby Mr. Field-Corbett comes within any of the categories whereby pertaining to public office his account may fall to be specifically scrutinised but by the same token, the Tribunal is under an obligation to probe fully and diligently into all matters pertaining to the working of the system.

It seems to me that Mr. Healy is, at present, is seeking not to attach undue emphasis to Mr. Field-Corbett's own personal finances at this juncture and it seems to me that perhaps on this basis, matters should continue for the time being. In other words, Mr. Fullam, I am conscious of the point that you make, but I am equally conscious in inquiring fully into the system, there has to be a balance maintained between diligent inquiry and potential interests of confidentiality. So I propose to approve, for the time being, the basis upon which Mr. Healy is examining and for the time being it seems, that matters may be proceeded with without putting in the forefront, Mr. Field-Corbett's own personal finances in the context of what has transpired but I do not necessarily hold for all purposes, for today or future hearings, that may necessarily hold firm throughout.

May I just, before Mr. Healy resumes, Mr. Field-Corbett, just take up one point whilst it is in my own mind. Mr. Healy asked you about what might be called two different ways of putting it euphemistically, keeping one's tax bill economic. First of all he said to you there might be a scenario in which one might simply conceal from the Revenue Commissioners any particular funds that a person may have accumulated and hope that the Revenue Commissioners will not discover the particular amount or any interest or accruals that may follow-up on it. There is the other

aspect that Mr. Healy mentioned to you whereby people can make open disclosure on their annual returns of particular forms of tax avoidance, be they business expansion schemes, film investments, particular schemes under the various Finance Acts and the like, and that they would indicate that they are prepared to have them contested by the Revenue Commissioners, before the Appeal Commissioners, or the Courts, and undoubtedly in Ireland and in other countries we have seen cases going up as high as the Supreme Court and on occasion the taxpayer may win.

Am I right in saying from your reaction of some surprise to the latter type of scenario, that that wasn't the sort of field that you were familiar with when you dealt with Mr. Traynor and Mr. Collery and others?

A. That's fair comment.

Q. MR. HEALY: In your statement on the second page, Mr. Field-Corbett, on the second paragraph, you are describing what you describe as the Cayman involvement, and you say on the second line of the second paragraph, "I was made specifically aware of the fact that a trust fund and a company were involved in direct ownership of the accounts. I understand that an investor had no direct access to the money but would have had to ask Des Traynor either to make lodgements or withdrawals or after his death would have had to approach Pdraig Collery. I also became aware during this time of the fact that John Furze had set up the Cayman

company and the trust structure".

Now again I will try to confine my questions to your knowledge of how the operation generally operated but what you are suggesting there, I think, is that while a person who put money off-shore would have no direct ownership of that money, he would nevertheless indirectly have complete access to it provided he went through Des Traynor, is that right, or Pdraig Collery?

A. Yes.

Q. So that a structure, as far as you were concerned, might have existed whereby the individual investing with Mr. Traynor would have no direct ownership, but if he wanted money or if he wanted to place money off-shore, he did it through Des Traynor?

A. That was my experience.

Q. And there would be no difficulty in either placing money off-shore through Mr. Traynor or getting money from Mr. Traynor?

A. That's my experience.

Q. Now, in order to get money off-shore during the 1970s and the 1980s and some of the 1990s, it would have been necessary to obtain exchange control, isn't that right?

A. I believe so.

Q. I think you were yourself a person experienced as an accountant and also as a businessman running a company such as the one you described in your earlier evidence, you

would be familiar with, in general terms, the operation of exchange control regulations?

A. I am not a banking person.

Q. I understand that.

A. But in a general way.

Q. But in a general way I think you are familiar with exchange control to the extent that you must get it to send money off-shore?

A. I am aware of that.

Q. Are you aware of anybody dealing with Des Traynor during the 1970s or 1980s?

A. Sorry?

Q. Are you aware either of your own knowledge or from your knowledge of other people or from your observations of Mr. Traynor obtaining exchange control for putting any of this money that was going into the Cayman Islands?

A. Well, I wouldn't have been involved.

Q. Off-shore?

A. I wouldn't have been involved with until Des's death, I wouldn't know that.

Q. Well could I suggest then that even in your own case, exchange control was never obtained to put any money off-shore?

A. Yes.

Q. You then mentioned Mr. Furze's involvement and up until his death Mr. Furze would come to Ireland, meet with Mr. Traynor and they would discuss business matters for a

number of days.

A. That's right.

Q. And then they would usually finish up their dealings with some dinner or other social event?

A. Yes.

Q. You had no doubt that Mr. Traynor was at that time the man in control of the operation and Mr. Furze was, as it were, in a secondary role. Would that be right?

A. He was chairman of it, yes.

Q. Who was the chairman?

A. Des.

Q. Yes, in terms of, if you like, the pecking order, was it Mr. Furze or Mr. Traynor was the boss at their meetings in Ireland?

A. I would say Mr. Traynor.

Q. And you say you met, you remembered meeting Mr. Traynor on one occasion, the first occasion at a dinner, then on some six other occasions before his death, on every occasion it was a social outing of some kind?

A. Yes, well it may not have been an outing, it was a social it wasn't business in other words.

Q. I see.

A. Drinks or

Q. Yes, I see. You mention that Mr. Collery and his wife and Miss Joan Williams was at one of these dinners?

A. That's right.

Q. At one of these dinners would I be right in supposing that

the other persons attending were also connected with the activity carried on by Mr. Traynor?

A. They would have been. The one that I was at, they would have been just been John Furze and his wife, Des and his wife and Pdraig and his wife, in that kind of circle.

Q. I see. Or Miss Jones Williams?

A. Yes, yes.

Q. Do you remember any other individuals being present at any of those dinners?

A. No.

Q. Now, after Mr. Traynor's death, you say on the final paragraph on page 2 of your statement, "John Furze assumed control of the Ansbacher Accounts. Pdraig Collery told me he was continuing his work on the accounts and that he did not have an office space in which to hold files or a filing cabinet and an address to which he would have 24-hour access. "

You then go on to say, "Basically he needed storage premises for his files, a desk, 24-hour access to these premises, postbox and a bank signatory."

And he came to you to look for these facilities?

A. Yes.

Q. You were aware, I take it, that up to then the information in question or the information that was being brought to your premises contained in the files and so forth was kept in 42 Fitzwilliam Square?

A. That's right.

Q. Did you have any involvement in moving that equipment from 42 Fitzwilliam Square?

A. No.

Q. When Mr. Collery moved into your premises, what did you actually give him in terms of facilities?

A. We gave him a room.

Q. Um-hum.

A. That we didn't use and it was a vacant room with our stuff in it, a computer room.

Q. Um-hum.

A. And he just moved his stuff into it.

Q. Well what stuff did he move into it? He moved a computer into it?

A. Correct, and filing cabinets.

Q. A computer and a number of filing cabinets?

A. Correct.

Q. A desk to work on?

A. That would have been there.

Q. Well you provided him with a desk to work on. You provided him with a room in which to put the desk and a computer and his files?

A. Yes.

Q. You also provided him with a postbox, i.e. an address.

A. Yes.

Q. A bank signatory and you have described how that might be necessary if he wasn't available to go to banks.

A. Yes.

Q. And 24-hour access?

A. Yes.

Q. Presumably that means a key?

A. Yes.

Q. So the operation which Mr. Traynor had conducted when he was in Guinness & Mahon which he had conducted from Fitzwilliam Square after he left Guinness & Mahon was now being moved into Winetavern Street into your premises?

A. Yes.

Q. And as far as you were concerned, that operation was now going to continue from your premises?

A. By Pdraig.

Q. Yes.

A. Yes.

Q. And there was no question of this being any form of a temporary arrangement. This was how it was going to operate from now on.

A. Well, he just asked me. I didn't know how long this was going to last, right?

Q. Of course you didn't, but you weren't told this was a temporary arrangement.

A. And it was on a downward trend.

Q. How would you know that? I thought you didn't know about other people's affairs.

A. Pdraig told me that it was winding down. Now how long that would take, I don't know.

Q. When did he tell you that it was winding down?

A. When he was moving in.

Q. He told you the operation was winding down?

A. Yes.

Q. But he didn't give you any timescale for how long he would need your premises?

A. No.

Q. But nevertheless he was taking up a significant portion of your premises, isn't that right?

A. Oh he was only taking up a tiny corner.

Q. I see.

A. Because we used the room during the day.

Q. You used the same room he used during the day?

A. Yes, yes.

Q. With all the filing cabinets there and everything?

A. The filing cabinets were all in a corner.

Q. Yes, um-hum. So your staff could have had access to those filing cabinets?

A. They would be locked.

Q. They may have been locked but anybody could have gone in?

A. Well, if they needed, if they had a key, I suppose they could.

Q. Now, Mr. Collery could have access to your office at any time?

A. He could.

Q. For the purpose of working on his computer?

A. Correct.

Q. And who provided the typing services for Mr. Collery if he

wanted to send letters or messages to either the Cayman Islands or to any of his clients in this country?

A. At that time?

Q. Yes.

A. He would have done some himself I think, and he would have also probably left a letter or two down with our secretary.

Q. And he would have done the typing for him?

A. Correct, yes.

Q. Now, I think you may be aware from other documents that were furnished to you, that letters from Ansbacher Cayman or GMCT or from Hamilton Ross during the time of Mr. Traynor's control, would come from an address described as being the Grand Cayman on one side of the notepaper but with 47 I think, is it?

A. 42.

Q. But with 42 Fitzwilliam Square on the other side. You have seen that?

A. Yes, I have seen those.

Q. And after Mr. Collery moved into your premises, the address was changed to 8 Inns Court; is that right?

A. That would be right, yes.

Q. I would just ask you to look at one of those documents on the overhead projector?

A. Yes.

Q. This is a letter to Miss Daragh Nolan Cassidy in Irish Intercontinental Bank seeking to arrange for a €20,000 draft payable to BEL Secretarial Services and debiting the

cost to Hamilton Ross account. We have come across these letters in a different context in the Tribunal's sittings.

This letter is dated the 30th of March 1995 and your address is given on the top left-hand corner. I notice that on this letter and on some of these letters there is no phone number given. Did you take phone call messages for Mr. Collery as well?

A. On a rare occasion.

Q. On a rare occasion?

A. On a rare occasion. And that would have been taken by our telephonist and left in his basket.

Q. Did you ever take calls for him yourself?

A. From his clients?

Q. Yes.

A. No.

Q. How did his clients make contact with your office?

A. He must have given a phone number.

Q. Well I just notice that on these documents there isn't, there aren't phone numbers, although I think you have also been provided with a document of 1996. Now I am not sure that at this point there, the content of that document need go on the overhead projector because it hadn't been mentioned in the course of hasn't been mentioned in the course of the evidence so far. This is a letter to the Bank of Ireland concerning the Ponsiana Fund Limited. It won't be necessary to go into the details of the content of the document but it does give a telephone number.

A. Our telephone number.

Q. That is your telephone number?

A. Yes.

Q. So that by 1996, in any case, your telephone number was being used by Mr. Collery?

A. I would say only in specific cases. His clients would have his own private numbers.

Q. And a fax number was given as well. Did you receive faxes for him from time to time?

A. Again if any faxes came in, they would have gone straight into his pending basket.

Q. That is what he meant by wanting a postbox?

A. Postbox, yes.

Q. So that people could communicate to him either by fax or

A. Letters.

Q. Or letters?

A. Letters or anything, or faxes came in or messages, they would be put in his postbox.

Q. Did you ever have clients of his visiting him in your premises?

A. No, I don't think so. They were never used during business hours.

Q. Can you say when Mr. Collery ceased to use your office?

A. From memory I think it was around the time of the, that the McCracken Tribunal started because all his, his files were given into the McCracken

Q. Well did you give them into the

A. No, it was his decision.

Q. Well, all you know is that the files were removed from your office, is that correct?

A. Correct.

Q. You don't know where they went.

A. Yes, I don't know where they went.

Q. You know that they were removed from your office. Who removed them?

A. It would have been Pdraig.

Q. Were you actually present when he removed them as a matter of interest?

A. No, no.

Q. So one day there was a whole load of files and a computer there and the next day they were gone?

A. Yes, yes.

Q. And did Mr. Collery say to you why it was that he was removing these documents?

A. I think he was giving them to his solicitor.

Q. Did he say that to you?

A. He may have. It would have been done at a weekend anyway.

Q. Did you have any correspondence from any of his clients from Irish Intercontinental Bank or from the Cayman Islands after he left?

A. No. After he left, it is possible.

Q. And what would you have done with that correspondence?

A. Put it in his pending basket and told him.

Q. When you say "told him," do you mean contact him by telephone or letters?

A. Yes.

Q. How long do you think that went on for?

A. Six months. I am only guessing.

Q. Well, was it still going on after the McCracken Tribunal had finished?

A. At a guess, yes.

Q. You think it was?

A. The odd letter would arrive.

Q. It is the odd letter?

A. It is difficult to stop correspondence.

Q. Of course.

A. Unless you give them a new address to send it.

Q. That is of course one way to stop correspondence, isn't it?

A. Yes.

Q. It is possible to stop correspondence by simply putting on it would have been possible to stop all of that correspondence by simply saying write to Mr. Padraig Collery at such-and-such an address, write to the Cayman Islands, whatever.

A. Well, I didn't do that.

Q. I understand that. You could have put that on any of the envelopes. I am not saying you should have but it would have been possible for Mr. Padraig Collery to have directed you to send that correspondence off somewhere else?

A. It could have been.

Q. But he continued to collect the correspondence, such as it was?

A. Such as it was, yes.

Q. You were aware that in 1998 Mr. Collery made a trip to the Cayman Islands?

A. That's right.

Q. Were you aware after he had made the trip that he had done it or were you aware before that he was going to do it?

A. My recollection is he told me he was going to Cayman.

Q. So before he went you knew he was going?

A. Yes.

Q. Did you have any contact with him or, any dealings with him rather than contact with him, any dealings with him during 1997 and 1998 concerning any concerns of your own regarding the Cayman Islands or any funds you had invested with Des Traynor?

A. Say that again.

Q. Did you have any dealings with Pdraig Collery in 1997 or 1998 concerning any investments you made with Des Traynor in the Cayman Islands?

A. Yes.

Q. With Mr. Collery.

A. Well, we were aware the Tribunal is aware of the documentation.

Q. I am aware of some documents, yes, I am aware of the documents that came into existence as a result of Mr. Collery's trip to the Cayman Islands, but prior to that,

did you have any dealings with him? Did you get any statements of account from him?

A. No.

Q. Or balances?

A. Anything like that would have been done verbally.

Q. He would have given you information?

A. Verbally.

Q. At your request?

A. Yes.

Q. What is the state of a balance? And he is the person who would have given you that information?

A. Yes.

Q. If somebody else wanted that information?

A. Well that was up to Padraig.

Q. Were you aware of requests from other people for that information that might have come through your office?

A. No.

Q. Now, when Mr. Collery came back from the Cayman Islands, you had some contact with him again, is that right?

A. I had, yes.

Q. I think he may have given evidence already to the effect that he let you have some documents or a document?

A. Yes, a document.

Q. Yes.

A. After

Q. After his return?

A. Correct.

Q. Showing a balance of certain accounts that you were interested in?

A. Correct.

Q. And that was a handwritten document?

A. That's right.

Q. What did he tell you about the document?

A. That was basically gave me those documents and said that he was finished with it, he was finished with it.

Q. When you say he gave you those documents, I don't want to be pedantic, you said a document a few moments ago.

A. I think there was a few pages.

Q. You are quite right, a few pages, yes.

A. Yes, there was a few pages.

Q. And he said "that's it," is it?

A. Yes.

Q. He was finished with it.

A. Yes.

Q. Did he tell you what he had done in the Cayman Islands?

A. No.

Q. Were you surprised that these documents were in handwritten form? They looked like for all the world, you have seen some of those on the overhead projector in connection with evidence given by Mr. Collery, they looked like the type of preparatory documents an accountant would generate for the purpose of producing printed accounts or whatever, is that right?

A. Well, I can only assume if he hadn't got that, he hadn't

got the facility to put them into printed form.

Q. The documents contained references to balances corresponding with coded identification letters and numbers, isn't that right?

A. Yes.

Q. Mr. Collery may have told you that he was closing down his involvement with the Cayman operation, but at that stage, as far as you were aware, any money you had invested or any money anyone else had invested that you were aware of, was still in the Cayman Islands or under the control of someone in the Cayman Islands, is that correct?

A. That's correct, yes.

Q. And I think you were aware that Mr. John Furze had endeavored to move most of the money under his control in Irish banks out of this country during the McCracken Tribunal, isn't that right?

A. Well whatever date it was, I wasn't aware of it, but, yes

Q. But that it happened in any case before Mr. Furze died?

A. It did, yes.

Q. Just dealing with that, did you become aware of that at the time that Mr. Furze did it or did you become aware of it at sometime later?

A. When I became aware of it? I would say later.

Q. So you weren't formally made aware of it at the time?

A. No.

Q. During Mr. Traynor's time you say that regular indications

of balances would be sent out to depositors a couple of times a year.

A. As I understand it, yes.

Q. Did that continue to happen after his death?

A. Not that I am aware of.

Q. After Mr. Furze died, I suggest it had become extremely difficult to get information about the state of a balance or an account in the Cayman Islands.

A. It had, yes.

Q. Can I suggest that in fact from time that the McCracken Tribunal started, the entire operation began to fall apart?

A. I wasn't that involved in it, right? But I would say that that is probably fair comment.

Q. And that the reason it began to fall apart is that it was dependant on a number of individuals and on the information they had, and those individuals were either dying, in the case of Mr. Furze and Mr. Traynor, or were no longer as enthusiastic to become involved in the whole operation after the McCracken report.

A. That is probably fair comment.

Q. And that a situation has now been reached where there is an amount of money under the control of a Mr. Barry Benjamin in the Cayman Islands to which some people in this country feel they have some entitlement. I am not suggesting for a moment you do, but you may have some claim or involvement with it, but that there are other individuals in this country who certainly claim to have some entitlement or

involvement with that money but they can find out nothing about it.

A. I think that was the situation.

Q. I suggest that is the understatement of the year, Mr. Field-Corbett. You know from the evidence of other people who have given evidence in these proceedings, you know from the newspapers, you know from correspondence that has been sent to you from the Tribunal, it is impossible to get information as to what is happening in the Cayman Islands, isn't it?

A. It is.

Q. Because the Cayman has put up the shutters, isn't that right?

A. Yes.

Q. And isn't that because the whole operation was never one in which the structures that were supposed to have been put in place or the whole operation is one in which the structures were supposed to be put in place were never in fact put in place really?

A. Well, I don't know that.

Q. And that the whole point of the operation was to put money in the Cayman Islands and to make sure nobody could find out who owned it, isn't that right?

A. Could you say that again?

Q. The whole point of the operation was to put money into the Cayman Islands or at least to put it under the control of somebody in the Cayman Islands even if it was in a bank in

Ireland, but in such a way that it would be impossible to find out on paper who owned it?

A. Yes.

Q. And to this day, if you, if one wanted to be absolutely sure who owned the money under Mr. Benjamin's control, would you have to ask Mr. Collery?

A. Well, maybe Mr. Benjamin now.

Q. Yes, but Mr. Benjamin says he doesn't know, he says he doesn't know.

A. Well, I think he doesn't what?

Q. He says he doesn't know.

A. He doesn't know?

Q. He would only know because Mr. Collery has told him.

A. Well I am not aware of that.

Q. But you wouldn't be surprised at that, I quite agree you couldn't be aware of that because that is only information that has come to the Tribunal in the last few days. Would you be surprised by that?

A. If Mr. Benjamin says he doesn't know

Q. If he tells me - Mr. Benjamin - that he doesn't know, that he can't identify

A. If you say that

Q. But you wouldn't be surprised by it?

A. No.

Q. After Mr. Collery came back from the Cayman Islands, he gave you some documents, are you aware that he had other documents which he

A. No.

Q. kept and gave subsequently to Miss Margaret Keogh?

A. No, I was unaware of that.

Q. In giving you the documents which he gave you, did he indicate to you that he didn't want those documents made available to any Tribunal?

A. No, definitely not.

Q. I think you were aware that the Tribunal had obtained a considerable amount of documentation concerned concerning coded accounts in the Cayman Islands including some of the codes mentioned in the documents that were mentioned to you, isn't that right?

A. I understand that.

Q. But I take it you were aware that the Tribunal did not have the document that was given to you?

A. No. Well I wasn't aware of that.

Q. Did you think the Tribunal had been given those documents?

A. I had no idea.

Q. Were you aware that when Mr. Collery was in the Cayman Islands deductions were made from balances on a number of coded accounts in respect of legal fees

A. No, I wasn't.

Q. incurred by Mr. Furze?

A. No, no I wasn't.

Q. You say no because you know what I am talking about.

A. Yes, we discussed

Q. You know from evidence.

A. We discussed it in private.

Q. You know that no deduction was made in your case, in Mr. Collery's own case, and in Miss Jones Williams case?

A. I understand that from you.

Q. And you have never inquired about anything like that from Mr. Collery?

A. No.

Q. You say you did not actually agree any payment of fees to you or to your firm with Mr. Collery in connection with the provision of the services that you provided to him?

A. That's correct.

Q. He was nevertheless using your office space.

A. Yes.

Q. Using your telephone.

A. Yes.

Q. Using your stationary etc. etc.

A. Well, I would suggest he had his own stationary.

Q. I see. You didn't request or solicit a payment but did you get what you call an ex gratia payment?

A. Correct.

Q. He said to you when he took over the office that you would be looked after?

A. Yes.

Q. Yes.

A. Yes.

Q. I take it you knew Mr. Collery for some considerable time?

A. I did, yes.

Q. When he said to you that you would be looked after, it was understood when he moved into your office that it was not going to be free gratis and for nothing?

A. I suppose that is fair comment.

Q. And you knew him well enough to know that you would be properly looked after or properly paid, that it wouldn't be

A. I presume if things worked out okay.

Q. that that it wouldn't be necessary to enter into a formal arrangement?

A. No.

Q. And in fact you were made payments?

A. I was.

Q. And those payments were paid in the Cayman Islands, is that right?

A. That's correct, yes.

Q. Did you know when they were made, of the amounts that were being made?

A. Not until afterwards.

Q. When you say "afterwards" immediately afterwards or

A. Weeks, months, maybe months afterwards.

Q. Would this be by being provided with a statement or by being told directly how much had been paid into some account for your benefit or whatever?

A. I would say verbally.

Q. By being told verbally?

A. Yes.

Q. Thank you very much, Mr. Corbett.

MR. QUINN: No questions.

MR. FULLAM: No questions, Chairman

CHAIRMAN: Thank you very much, Mr. Field-Corbett.

MR. COUGHLAN: Those are the available witnesses today.

CHAIRMAN: Tuesday, yes, thank you.

THE HEARING THEN ADJOURNED UNTIL TUESDAY 22ND FEBRUARY,  
2000 AT 10:30AM.