

THE HEARING RESUMED AS FOLLOWS AT 10:30 A.M. ON THE 23RD OF
FEBRUARY, 2000:

CHAIRMAN: Good morning everyone. Mr. Coughlan.

HAVING BEEN SWORN, PATRICK O'DWYER WAS EXAMINED BY
MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Please sit down, Mr. O'Dwyer. Thank you for
attending and sorry for any inconvenience with you not
being reached yesterday afternoon.

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

A. That's correct, yes.

Q. And do you have that with you?

A. I have indeed.

Q. What I intend doing is taking you through that and maybe
clarifying one or two matters

A. Absolutely.

Q. that may arise. I think in the memorandum you have told
the Tribunal that you joined Guinness & Mahon in 1971 as
the assistant banking manager and that you were appointed
the banking manager in approximately 1974; is that right?

A. That's correct.

Q. I think as banking manager your duties primarily related to
the operation and overseeing of the banking and the retail
banking aspect of Guinness & Mahon's business, such as the

opening of accounts, the receiving of lodgements, the provision of drafts or cheques to customers, the collection of Instruments lodged with the bank and so forth; the ordinary retail side of banking?

A. Yes, day-to-day banking.

Q. I think you have informed the Tribunal that when you joined Guinness & Mahon, the late Mr. Traynor and Mr. Maurice O'Sullivan were the joint Managing Directors and that Mr. John Guinness was the Chairman, is that correct?

A. That's correct.

Q. That was your understanding?

A. To the best of my knowledge.

Q. I think you informed the Tribunal that at the time that you joined Guinness & Mahon, Guinness Mahon Cayman Trust had already been established and the accounts of Guinness Mahon Cayman Trust were already on the books of Guinness & Mahon, is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that you were also aware that Guinness & Mahon had off-shore subsidiaries in the Channel Islands, is that correct?

A. That's correct.

Q. I think you had no direct involvement in the business or operation of the off-shore subsidiaries, and during your time as banking manager, you had limited contact with Mr. Traynor, is that correct? But that from your general involvement on the retail side of the banks' business over

the years, you became aware that this aspect of Guinness & Mahon business was controlled by Mr. Traynor and that as regards the Channel Islands operations he was assisted by Mr. Martin Keane and that as regards the Cayman operations he was initially assisted by Mr. Rue Leonard, who was the accounts manager, and subsequently by Mr. Pdraig Collery who replaced by Leonard as accounts manager, is that correct?

A. That's correct.

Q. Now, I think you have informed the Tribunal that you were aware that records in relation to the off-shore holdings were kept in Guinness & Mahon, is that correct?

A. Yes. Absolutely.

Q. That you had no knowledge of how these accounts were maintained, but you did know that considerable secrecy attached to the off-shore arrangements, is that correct?

A. Yes.

Q. I think the matters were strictly within the domain of Mr. Traynor and in all your dealings with him, you would not have presumed to make any direct inquiries of him as to the identity of account beneficiaries or the precise working of the off-shore subsidiaries, is that correct?

A. That is correct.

Q. Now, I think during your years as banking manager, your principal involvement with Mr. Traynor related to the drawing of funds on his instructions from accounts which he controlled, is that correct?

A. Yes.

Q. That this usually involved you in providing him with funds either in cash or in bank drafts, is that correct?

A. Correct.

Q. Part of your function as banking manager was to sign drafts issued by Guinness & Mahon, is that correct?

A. Correct.

Q. Usually you received instructions in the form of typed internal memoranda, although occasionally Mr. Traynor would give you verbal instructions; is that right? In such cases it was invariable your practice to create a written record of Mr. Traynor's instructions and to ask him to receipt the record to confirm you had implemented his instructions, is that correct?

A. That's correct, yes.

Q. You did this to ensure that at all times both you and Guinness & Mahon had full documentary records for all withdrawals and in particular cash withdrawals?

A. Correct.

Q. You wanted to create a permanent record?

A. Absolutely.

Q. Particularly when cash was involved?

A. Absolutely.

Q. That would be the procedure to be adopted by any prudent banker, is that correct?

A. Yes, absolutely.

Q. Now, I think the Tribunal brought to your attention a

number of sample documents relating to such transactions made by you, as on Mr. Traynor's instructions, and the details you have then set out in your memorandum. If we just look at those few documents, just as a sample and an example of the type of transaction you carried out on Mr. Traynor's behalf or instructions, is that correct?

Now, the first one is an internal memorandum which is dated the 4th of April 1977 from Mr. Traynor addressed to you and which he requested you to provide him with a cheque payable to cash in the sum of £5,750 and to debit his S/L account.

Now, I think it is headed: "Urgent." This had to be done fast it was Mr. Traynor to you 4th of April 1977.

"Please arrange to let me have a cheque payable to cash in the sum of £5,750 and debit my S/L account. JDT." And it is reference JDT/AJW.

So it would appear that the memorandum was typed by Miss Williams?

A. Yes.

Q. Or Miss Williams, Mr. Traynor's secretary.

Now, the reference to his S/L account, what was your understanding of that at the time?

A. I would assume that it was probably Amiens S/L account.

Q. Yes, and the cheque, is that a Guinness & Mahon cheque?

A. It would be a Guinness & Mahon cheque.

Q. And made payable to cash, would that be the same as a

draft?

A. It was, I suppose, a draft, yes, absolutely.

Q. Yes. Now, that is on the 4th of April 1977, I think there is also one, a memorandum of the 5th of April 1977 from Mr. Traynor addressed to you in which he requested you to give him a cheque for €10,000 made payable to Mr. CJ Haughey and to debit the funds to his S/L account, that is Mr. Traynor's S/L account of course, isn't that correct?

A. It would be probably the same account as the former

Q. The day before you withdrew a cheque for five-and-a-half-odd thousand?

A. I would presume that it was the same account.

Q. Now, the cheque being made payable to Mr. CJ Haughey on the 5th of April 1977, again that is effectively a draft, is that correct?

A. Oh, yes, it is a draft. It would be exactly the same cheque as the previous one.

Q. Yes.

A. Exactly the same.

Q. Guinness & Mahon, drawn on Guinness & Mahon?

A. Yes, it is as good as cash.

Q. For €10,000 as good as cash?

A. Correct.

Q. And that is in April of 1977. Again, it is prepared by Miss Williams, as you would expect, Mr. Traynor's long-serving secretary.

Now, I think there is a further internal memorandum dated the 5th of October 1977, also from Mr. Traynor and addressed to you in which he requested you to provide Miss Williams by 10:30 on the following Monday, the 10th of October, 1977, with £5,000 in English notes of £20 each and to debit the fund to his S/L account. And again I take it that that is the same account?

A. It is. I would

Q. You would believe?

A. I would believe it certainly is.

Q. And this had to be done in advance because you had to perhaps get English notes?

A. I probably had to order them, presumably through the Central Bank on Friday to be available on Monday at 10:30.

Q. To have £5,000 worth, that is?

A. Correct.

Q. Now, I think the Tribunal has also brought to your attention a number of documents relating to transactions involving cash payments made through Guinness & Mahon and Co. London, and funded by debits to off-shore accounts held in Guinness & Mahon Dublin and to which you appear to have been involved in some way in the transactions, isn't that correct?

A. Yes.

Q. And I think you have informed the Tribunal as Guinness & Mahon held a Sterling Nostro Account with Guinness & Mahon Company in London, this enabled the bank to provide

Sterling to customers in London, is that correct?

A. I think that is correct.

Q. Yes, and that the funds would be debited then to Guinness & Mahon's Nostro Account in London and an equivalent debit would be made to an account in Guinness & Mahon which would be credited to Guinness & Mahon's account in London, and then the Tribunal has brought to your attention three documents showing such a transaction?

A. That is correct.

Q. That is correct?

A. Yes.

Q. And the first document then is an internal memorandum dated the 4th of May 1983 from Mr. Traynor addressed to you referring to an attached letter which he had forwarded to a customer and a copy which he had sent to Brenda Finnemore, who was an official of Guinness & Mahon company London; that is who she was, is that correct?

A. That's correct.

Q. And I think that in the memorandum Mr. Traynor requested you to speak to Brenda Finnemore and to authorise her to debit the Guinness & Mahon account with Guinness & Mahon and Co. London, is that correct?

A. Yes.

Q. The memorandum instructed you to debit €7,000 to an account of Colinas Investments Limited and €10,000 to GMCT S2 deposit, is that correct?

A. That is correct.

Q. I think you informed the Tribunal that it appears from the contents of the memorandum that Mr. Traynor had arranged for a customer to collect €17,000 in London which was to be funded by withdrawals from two off-shore accounts which were held on deposit in Dublin, is that correct?

A. That's correct.

Q. And that while you have no specific recollection of this transaction, you imagine that you would have telephoned Brenda Finnemore and confirmed to her that the funds could be debited to Guinness & Mahon's account and you would then have debited the two off-shore accounts and transferred the funds to Guinness & Mahon's account in London, is that correct?

A. Yes. And I might add that it is quite likely that in addition to my phone call that the fund that it is quite likely that there is a telex in confirmation of it as well, I can't be certain of that, but that would be the normal procedure.

Q. That would be the normal procedure?

A. Yes.

Q. And to the best of your recollection that would be how things would have been done?

A. Correct, absolutely.

Q. Because you would want to create some form of a permanent record, there were funds involved here?

A. Absolutely correct.

Q. So your understanding of this, to the best of your

knowledge at least anyway, is that somebody was getting

£17,000 in London, is that correct?

A. That's right.

Q. From the parent company Guinness & Mahon in London?

A. That's right, yes.

Q. And that £17,000 was to be taken out of Dublin's account with London, is that correct?

A. Yes.

Q. Dublin's Nostro Account?

A. Yes, that's correct.

Q. And then the funds were made up by withdrawals from off-shore deposits held by Dublin, isn't that correct?

A. That's correct. And I think the two accounts that were actually mentioned there one is Colinas and the other is GMCT.

Q. The S2 deposits?

A. Yes.

Q. And of course it is Sterling which would be withdrawn in London, isn't that correct?

A. Yes, yes. It would be, yes.

Q. And of course these off-shore deposits were also in Sterling, isn't that correct?

A. Yes, that is correct.

Q. So nobody had to apply for Exchange Control or if

A. No, no.

Q. If they happened to be Irish residents who went to London to get the £17,000

A. I would have thought that you are correct in the first assumption, that the two accounts were Sterling.

Q. Yes. Now, I think the second document in this series of three documents is a copy telex dated the 14th of July 1983. This is to Brenda Finnemore. This is the telex I think where you are saying: "Please debit our account and pay the person a sum of Sterling œ30,000. We will call around midday next Tuesday. Will identify himself with passport number." And you give the passport number. "You may be able to facilitate him by making six bundles of œ5,000 each available. Many thanks for your assistance".

Now, this is a telex instruction being given to Miss Finnemore in London. You think a similar type telex would have been sent

A. I would have been surprised if there wasn't a similar telex covering the œ17,000 absolutely the same as that.

Q. Yes. And I think you are asking Miss Finnemore if she could make available six bundles of œ5,000. This is in cash?

A. Correct.

Q. Yes. And I think you have had no specific recollection of this transaction, but you confirm that it would have been representative of the type of dealings that you would have had on Mr. Traynor's instructions, is that correct?

A. It would, but I want to be the dealings, they wouldn't be an every day dealing, if you know what I mean; they would be

Q. Yes.

A. They would be exceptional, if you know what I mean?

Q. Yes.

A. They wouldn't happen very often, but it would be representative of the type of instruction I would receive.

Q. Yes. Well, there are a number of I will just go through the memorandum and I will come back and ask one or two questions that we can clarify then Mr. O'Dwyer.

Now, I think you have informed the Tribunal that in respect of this particular type of transaction, you imagine that you would have received an internal memorandum from Mr. Traynor instructing you to make these arrangements and indicating the account or accounts in Guinness & Mahon that you should debit as the transaction related to the provision of Sterling, you imagine that you would, in all probability, have debited an off-shore Sterling account; would that be

A. It would be most likely correct.

Q. Would this be to the best of your recollection now?

A. It would be most likely be correct.

Q. Now, I think a third document has been brought to your attention by the Tribunal and it is another telex signed by you and addressed to Brenda Finnemore similarly requesting her to have available a sum of Sterling œ15,000 at 12 noon on the following Friday, which would be collected by a named person who would produce an Irish passport, the

number of which was provided. And I think it is there is the telex and you are saying: "Could you please arrange for Friday at 12 o'clock, Sterling œ15,000 in cash. Blank will collect same. And for identification purposes here, passport number is blank Irish and please debit our account in the above sum and any charges. Regards, Pat O'Dwyer".

That is asking London to debit Dublin's account with London, isn't that correct?

A. It is a similar transaction to the previous one.

Q. Yes.

A. It is exactly the same transaction only for a different amount.

Q. Yes. Now, I think as of the previous instance, you have no recollection of this transaction, but that you would have been acting on Mr. Traynor's instructions and would in all probability have debited the Sterling off-shore account?

A. That is correct.

Q. So just dealing with that aspect of your duties at Guinness & Mahon, that is there were instances, I think, where Mr. Traynor asked you or instructed you within the bank to draw either cash or drafts in effect?

A. That is correct.

Q. Which were to be debited to his Amiens Account, the S/L account?

A. That's right, yes.

Q. And these drafts were either made payable to cash or we have one instance when there was one payable to

Mr. Haughey?

A. That is correct.

Q. And would you have given those to Mr. Traynor, is that correct?

A. That is correct.

Q. And here we have examples of, obviously, Irish passport holders being in London going to the London bank Guinness & Mahon and Co.

A. Guinness & Mahon and Co.

Q. Guinness & Mahon and Co. the parent, and withdrawing cash, substantial sums of cash, isn't that correct?

A. Correct.

Q. And the ultimate source of that money appears to have been Sterling off-shore accounts held in Dublin, is that correct?

A. Yes.

Q. Now, of course, this isn't a concern of yours, Mr. O'Dwyer, but the effect of these transactions was that somebody did not have to apply for any form of Exchange Control approval or anything like that, isn't that correct? A person could be in London, take Sterling out and the balance could be adjusted in Sterling out of the off-shore deposits held in Dublin?

A. Yes, presumably so.

Q. There was no foreign exchange dealings?

A. No.

Q. Now, I think you were appointed loans officer of Guinness &

Mahon in the late 1970s, is that correct?

A. That's correct, yes.

Q. And that you become responsible for the operation and administration of the lending side of Guinness & Mahon's business?

A. To a large extent that's correct.

Q. And that your function as loans officer was to keep the loan files in order, ensure that the facility letters were forwarded, and which accorded with the facilities approved by the Credit Committee to ensure that the securities were in place before loans were drawn down, to prepare schedules of loans to be reviewed by the Credit Committee, and generally to oversee and supervise this aspect of the banks' business, is that correct?

A. That is more or less correct, yes.

Q. And that as loans officer you had no authority whatsoever in relation to the approval of loans, this was the function of the Credit Committee or the Board of Directors?

A. That is correct.

Q. So your responsibility was to make sure that the paperwork was in order in respect of loans?

A. That the decision was carried out.

Q. You gave effect to a decision and make sure everything was kept in order?

A. Correct.

Q. As best you could?

A. Correct.

Q. To allow it to be reviewed by the Credit Committee or the Board of Directors, as the case may be?

A. Correct.

Q. Now, I think as loans officer you were aware that certain of the loans advanced by the bank were secured by backing deposits of Guinness Mahon Cayman Trust, is that correct?

A. That is correct.

Q. And that you understand that these backing arrangements, with the exception of certain loans advanced to United States companies, the arrangements were informal arrangements, is that correct?

A. I wouldn't know in connection with the backing deposits whether the arrangements were formal or informal. As far as I was concerned, I would have been told that there was backing deposits from staff and I wouldn't know what arrangements or what kind of security was taken over them.

Q. Well, could I just ask you this: Your responsibility was to give effect to the decisions of the Credit Committee or the Board of Directors?

A. That's correct.

Q. Where a loan was approved?

A. Yes.

Q. And as, to give effect to that, it would be the normal procedure that a facility letter would be prepared, isn't that correct?

A. That's correct.

Q. And that would be sent to the client?

A. That's correct.

Q. The customer?

A. That's correct.

Q. And that will specify the terms on which the loan were being granted, isn't that correct?

A. That's correct. That is absolutely correct.

Q. Which would have matters as much as the amount, the interest

A. The period.

Q. The repayment, the security, and matters of that nature.

And then if the client accepted that, the whole thing fell into place?

A. That's correct.

Q. He or she was able to drawdown the loan?

A. That's right.

Q. And then you kept that loan file, I can take it, up-to-date periodically to see what the state of the loan was?

A. Correct.

Q. And that would be reported periodically to the Credit Committee if and when reviews fell due?

A. That's right.

Q. Apart from US loans, loans to US companies now, I think that the Credit Committee used a designation, isn't that correct; the words, "suitably secured" or similar type words in parentheses?

A. That is correct.

Q. And how was that viewed within the bank, to you

particularly as the loans officer?

A. I would know that funds were held in Cayman. I would not know how much was held.

Q. Yes.

A. But I would know funds were held to back the loan.

Q. Yes. And can I take it so, that it is an expression that you as the loans officer, you were familiar with?

A. Yes.

Q. And it must have been you must have been given some general information by Mr. Traynor or somebody that it is all right, there is money to back it?

A. Yes.

Q. Is that where you would have understood it from?

A. That's correct.

Q. You wouldn't know the specific amount of money which was held to back the loan?

A. Absolutely not.

Q. But you would know that Mr. Traynor or somebody else had indicated to the Credit Committee it is good for that?

A. That is correct.

Q. Your file would have contained no formal letters of hypothecation?

A. No.

Q. And the facility letter would never refer to the back-to-back nature of the security, isn't that correct?

A. No.

Q. Was that something you were instructed in relation to

initially, that reference was not made on the facility

letter to the true security?

A. No, I wouldn't I cannot recall having received specific instructions to that effect.

Q. Um-hum. Right. Well, could I ask you this: There must have been situations where you had on loan files, formal letters of hypothecation, in respect of ordinary business of the bank?

A. That is quite possible.

Q. And would it be the case that in those circumstances the facility letter would disclose

A. Yes.

Q. the security?

A. Correct, if it arose.

Q. Yes. Now, in respect of the US companies, did your loan files contain letters of hypothecation or some form of letter indicating that there was a security in place?

A. Not to the best of my knowledge.

Q. Right. Did you have control of the US files yourself?

A. I cannot recall that there would have been many at all, if any.

Q. Yes. Well, could I ask you this

A. Sure.

Q. I think we are, it will become obvious that some of the US loans were substantial loans?

A. Oh, I read of some

Q. Yes.

A. Some loans that were mentioned in the newspaper.

Q. Yes.

A. I wouldn't have known anything

Q. You didn't know anything about them?

A. No, no, nothing at all.

Q. So, I think what I am really trying to ascertain, you as the loans officer of the bank, you dealt with, as you understood, all the loans or

A. Well, yes, but the specific one to which you are referring.

Q. You were unaware?

A. And I have only read of them in newspapers, I didn't

Q. You were unaware of those?

A. Yes. I wouldn't have known anything about them.

Q. And I just want to I think you were making reference to the Pruna loans?

A. Yes.

Q. You knew nothing about those yourself, those loans, as loans officer?

A. When I was with you about a month or six weeks ago and you showed me them, it is totally, totally foreign to me.

Q. Totally foreign to you?

A. Absolutely never heard the name before.

Q. Yes. And in the normal course of the business would you have accepted files relating to loans to be under your control, wouldn't you, that's what you would accept in the normal course of your duties?

A. The loans that were in the books of Guinness & Mahon, the files relating to those loans, were in Guinness & Mahon.

Q. Yes.

A. And they were available to me.

Q. Yes, very good. So in relation to the Pruna loans now, I will just stay with those for the moment they were news to you until they were brought to your attention by the Tribunal, isn't that correct?

A. To the best of my knowledge I have never had any dealings of seeing them or even knew the name.

Q. Yes. And you had no role in doing the usual work of preparing facility letters or anything of that nature?

A. Positively not to the best of my knowledge. I certainly cannot recall it.

Q. Yes. And to the best of your knowledge did you have any awareness of the fact that there was a court order seeking information from Guinness & Mahon about these loans?

A. No.

Q. And as loans officer, did you have a Department, like did you have a staff?

A. I had a secretary.

Q. A secretary?

A. And maybe one or two assistants.

Q. Yes. And can I take it that it was your secretary and the one or two assistants who would have prepared all the facility letters on the loans?

A. Yes, yes, that is correct.

Q. And that was the area of the bank where all of that work was done?

A. That is correct.

Q. And when you say loans that were on the books of Guinness & Mahon, was there a register also kept or some sort of a book which kept the loans, a loan list or

A. Well, there would have been ledgers, there would have been a loans ledger.

Q. Yes.

A. And there would have been balances at month end, so it would show all the loans at a particular point in time.

Q. Yes.

A. I mean, the loans ledger would have been available for anybody to look through it.

Q. Yes. And who made the entries on that ledger, was it the loans Department?

A. Not necessarily so. They may not have made all the entries.

Q. Yes.

A. They would have been it would have been open to any of the personnel or any of the employees in Guinness & Mahon at the time to make entries, should they see if it was necessary to do so.

Q. If it was necessary?

A. Correct.

Q. Was the effect of the loans ledger that at any given time, or at the end of a month period or something like that,

that one could look and see what the state, the overall

state of loans were in the bank?

A. Oh, you could, yes.

Q. And did the loans, did the loans ledger have any reference to securities?

A. The actual ledger cards themselves, to the best of my knowledge, as far as I can recall, would not have any security memorandum

Q. Yes.

A. on them.

MR. COUGHLAN: Thank you, Mr. O'Dwyer.

MR. CONNOLLY: No questions, Sir.

CHAIRMAN: Would it be fair to say, Mr. O'Dwyer, that when you saw the phrase "suitably secured" or the few other equivalent phrases that we have learned of in Tribunal hearings, it effectively was a green light to drop your guard and disregard the normal instincts you would have had as a banker ensuring that Instruments of security were carefully and properly compiled and recorded?

A. That would be a reasonable assumption, Chairman.

CHAIRMAN: And if the loan went west, it was somebody else's look out?

A. That would be a reasonable assumption as well.

CHAIRMAN: Thank you very much for your assistance.

A. Not at all.

THE WITNESS THEN WITHDREW.

MR. HEALY: There are a number of witnesses. They are going to give evidence now in relation to the relationship between Mr. Traynor and Irish Intercontinental Bank, but as a result of a request to their solicitor from Mr. Davis this morning, the solicitor, the solicitor representing the bank has had to absent himself for a few minutes. There may be a delay of a couple of minutes. And I think, subject to what you think, Sir, it mightn't be appropriate to call them in the absence of their solicitor who has already, as far as I know, sought and obtained limited representation on their behalf.

CHAIRMAN: Well, on the basis of that, we will resume perhaps within, if at all possible

MR. HEALY: Oh, five to ten minutes.

CHAIRMAN: Right.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND RESUMED AS FOLLOWS:

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

TONY BARNES, HAVING BEEN PREVIOUSLY SWORN, RETURNS TO THE WITNESS-BOX AND IS EXAMINED BY MISS O'BRIEN AS FOLLOWS:

Q. Thank you, Mr. Barnes. Mr. Barnes, you have previously

given evidence to the Tribunal on a number of occasions relating to the Ansbacher account in Hamilton Ross accounts in Irish Intercontinental Bank?

A. That's correct.

Q. I think on those occasions you were giving specific evidence in relation to particular transactions across those accounts?

A. That's correct, yes.

Q. I think on this occasion the Tribunal has asked you to assist it in relation to the general operation of the Ansbacher Hamilton Ross accounts in Irish Intercontinental Bank from the years January 1991?

A. That's correct, yes.

Q. I think, in fact, much of the evidence that you will be in a position to give today has already been mentioned by you in the context of some of the specific transactions that you have already testified to?

A. Yes, indeed. Yes.

Q. I think you are just to recap, I think you are an Associate Director in the operations branch of the bank?

A. That's correct.

Q. And I think you have been responsible for the administration of the banks' deposit-taking function since 1989?

A. Actually since 1990.

Q. 1990?

A. Yes.

Q. Now, I think the first matter which the Tribunal has asked you to provide assistance relates to the opening of the Ansbacher accounts in Irish Intercontinental Bank Limited?

A. I think, in fact, my colleague will be addressing that particular point today.

Q. He will deal with the specific involvement of Mr. Traynor and the opening of the accounts?

A. Indeed, yes.

Q. I think the position is that following the introduction to the bank of the Ansbacher accounts, which I think we will hear was from Mr. Traynor directly, that the bank received an application form from Ansbacher which included a list of directors and officers of Ansbacher and a list of authorised signatories, is that correct?

A. That's correct.

Q. And I think those signatories were split between A signatories and B signatories, is that correct?

A. That's correct, yes.

Q. I think that the directors of the bank in the application form were listed as Mr. Brian Bothwell, is that correct?

A. That's correct.

Q. Mr. John Dutton?

A. That is correct.

Q. Mr. Richard Fennells?

A. That is correct.

Q. Mr. Hugh Hart and Mr. J Desmond Traynor?

A. That is correct.

Q. I think they were described as being Non-Executive directors?

A. That is correct.

Q. I think the officers of Ansbacher were described as Mr. Traynor as Chairman, and Mr. Furze, Mr. John Furze, as secretary, is that correct?

A. That's correct, yes.

Q. And I think the position was that the A signatories were the persons who were authorised to give instructions on one signature alone, is that the position?

A. That is correct.

Q. I think they were listed as Mr. John Collins, Mr. John Furze, and Mr. Traynor?

A. That's correct.

Q. And do you recall from the application form what the position was in relation to the B signatories?

A. Yes. The B signatories were authorised to sign instructions on their own, it didn't require a second signatory.

Q. It didn't require a second signatory. The A signatories who could give instructions

A. Sorry, the B signatories required two signatories and the A signatories required only one.

Q. I see. I think the initial letter in relation to the opening of the accounts was dated the 10th of December of 1990?

A. That's correct.

Q. I think we can put a copy of that letter up on the overhead projector. That is a letter to Mr. Liam Donlon, Executive Director Irish Intercontinental Bank Limited, and I think it is signed by Mr. Traynor?

A. That's correct.

Q. I think it says: "Dear Liam, I have pleasure enclosing herewith completed application forms for the opening of accounts in the names of Ansbacher Limited and its wholly-owned nominee company, Overseas Nominee Limited. Also enclosed are copies of the memoranda and articles of association and certificates of incorporation of both companies and in the case of Ansbacher Limited certificate of change of name. Should you require anything else, please do not hesitate to contact me."

I take it, as an aside, the certificate of change of name related to the change of name from Guinness Mahon Cayman Trust to Ansbacher?

A. That is what I understand.

Q. The letter continues: "In connection with activating the accounts in view of the fact that our financial year-end in Cayman is 31st December, which usually seems to involve a million requests from auditors on balances, I suggest we wait until the 3rd of January, when we will transfer Sterling œ9 million for call accounts." The reference there to "call accounts," is that call-deposit accounts?

A. Yes, it is call-demand account.

Q. It is a demand account, so at any time instructions can be given to withdraw from that account?

A. That's correct.

Q. And then finally it says: "I shall be sending to you within the course of this week a note of additional funds that we will be transferring to you that week. Kind regards, yours sincerely, JD Traynor." Just go back to the top of the letter, I think that is on Ansbacher notepaper with an address in Cayman and then a direction to apply to 42 Fitzwilliam Square, Dublin 2.

A. That's correct.

Q. I think following that letter a sum of €10,000 €10,008,055.35 was transferred to the bank on the 3rd of January of 1991.

A. That's correct.

Q. I think this sum was transferred through the banks' correspondent bank in England for credit to go to a Sterling account opened in the name of Ansbacher, an account number 08087?

A. Yes, I think it is 01087. There may be a typo.

Q. 01087. I think there is then an 81 after it?

A. That's correct.

Q. This was the principal Sterling hub account that was opened and operated by Ansbacher, is that correct?

A. That's correct, yes.

Q. I think on a number of occasions in your previous evidence you have referred to specific transactions across that

call-deposit account?

A. I have, yes.

Q. I think the position then is that further funds were transferred and a series of accounts were opened and held in the name of Ansbacher?

A. That's correct.

Q. I think these accounts were principally held in Sterling, US Dollars, Deutschemarks, and Australian currency, is that correct?

A. Australian dollars.

Q. Australian dollars, although there were also other accounts in other currencies?

A. Yes, that's correct, that's right.

Q. Then I think in relation to the Tribunal has also asked you to provide assistance in relation to the opening of the Hamilton Ross accounts, and again this is something that you have touched upon previously in your evidence?

A. That's correct.

Q. I think the position was that in September of 1992 the bank received instructions from the late Mr. Traynor to open accounts in the name of Hamilton Ross, which was a company registered in the Cayman Island with its registered address at Ansbacher House, P.O. Box 887, Grand Cayman, British West Indies?

A. That is correct.

Q. I think the initial letter of application to open the account was received and under cover of letter dated the

25th of September and signed by Mr. Traynor?

A. That's right.

Q. And I think here again a formal application form was completed, is that correct?

A. That is correct, yes.

Q. I think the application included a certificate of incorporation, a copy of the Memorandum of Association, Articles of Association, and declaration of non-residency?

A. That's correct.

Q. I think the declaration of non-residency relates to the status of the accounts being opened, is that correct?

A. That's correct, yes.

Q. The application also included a certified copy of the resolution of the Board of Directors of Hamilton Ross dated the 18th of September 1992 which listed the authorised signatories, each of whom was authorised to sign on behalf of Hamilton Ross in his or her sole name?

A. That is correct.

Q. I think the following persons were listed as the authorised signatories, firstly Mr. John Furze?

A. Correct.

Q. I think secondly, Mr. Traynor?

A. Correct.

Q. And I think he was named as an authorised agent, is that correct?

A. That's correct, yes.

Q. And what were the distinctions between an authorised

signatory or an officer or an authorised agent?

A. As far as we were concerned, it didn't make any particular difference as long as we had an authorised Board resolution indicating that individuals were authorised to sign. It wouldn't have made any particular difference to us.

Q. So you could accept instructions whether the person was an officer of the company or a signatory as an authorised agent?

A. Correct.

Q. I suppose it would infer, though the particular named person wasn't an officer of the company, would that be fair to conclude?

A. I am not really sure whether that is true or not.

Q. I see. But as far as you were concerned, once the person was an authorised agent and listed on the list of authorised signatories, it was sufficient for your purposes?

A. Correct.

Q. So then there was Mr. Traynor, Mr. D Padraig Collery was also an authorised agent?

A. Correct.

Q. And Miss Joan Williams also was an authorised agent?

A. Correct.

Q. And I think the position was that the day-to-day transaction processing was handled by an account administrator within the bank who was handling the Ansbacher accounts?

A. That is correct, yes.

Q. So the administration of the Ansbacher accounts and the Hamilton Ross accounts was conducted pretty well in tandem by the same accounts administrator?

A. Absolutely so, yes.

CHAIRMAN: Has the letter in question turned up, Miss O'Brien, that of Mr. Traynor on the 25th of September?

MS. O'BRIEN: I think the letter is probably available, Chairman. Certainly we can obtain a copy of it. I think, in fact, it has been on the overhead projector during the course of previous evidence. I think during the course of the first occasion Mr. Barnes gave evidence of all these documents were exhibited and referred to.

CHAIRMAN: Very well.

Q. MS. O'BRIEN: The account administrator name changed periodically over time?

A. That's correct, yes.

Q. So different officers might be dealing with instructions in relation to the account at different times?

A. Indeed, yes. I think there was 6 or 7 over the course of the life of the account.

Q. Now, I think on the 5th of October 1992 we do have a copy of this letter available, I think it can go on the overhead projector. I think you received instructions from Miss Joan Williams, signed by Miss Joan Williams, in relation to

Hamilton Ross accounts?

A. That's correct.

Q. And this was a letter addressed to Mr. Ronan Redmond, Cooperate Services, Irish Intercontinental Bank, and it is signed by Miss Williams for Ansbacher. And it states:

"Dear Ronan, value 30th of September 1992, please open the following Deutschemarks accounts: Hamilton Ross re S2, Hamilton Ross re S6, Hamilton Ross re S7, Hamilton Ross re S8, and Hamilton Ross re S9"?

A. That is correct.

Q. Could you just explain the handwritten account numbers that appear beside each of those accounts?

A. Yes. Yes, they would be the account numbers which we would have allocated to these particular accounts. Yes, the S designate, it wouldn't have meant anything to us. We would have used the internal account numbers which we allocated ourselves.

Q. You would have used your own internal account numbers?

A. That is correct, yes.

Q. So in the case of the S8 account, that was account 392391?

A. That's correct.

Q. And in the S9 account, 39309?

A. Yes, I think I recall that that number might subsequently have changed actually from previous evidence, but for the purposes of the exercise now, I think the number did actually change.

Q. But these accounts were always dealt with in the bank by

their account numbers?

A. Correct.

Q. I think the position is that on the same date you received further instructions from Miss Williams to debit account 040218081, I think that was an Ansbacher Deutschemarks account?

A. That is correct.

Q. I think that Deutschemarks deposit arose from an earlier instruction that had been received in September of 1992 to convert funds from Sterling to Deutschemarks?

A. That is correct, yes.

Q. I think that was referred to by you in evidence which you previously give, I think in the evidence that you gave in December last?

A. December, yes. I think I am not one hundred percent sure, but certainly gave the evidence previously.

Q. Yes. And that was and the amount to be debited was Deutschemarks œ4,055,168.01 and to credit the sum to hand on to Ross Deutschemarks accounts in accordance with the instructions?

A. That's correct.

Q. And the instructions were to credit each of those new S Deutschemarks accounts with various amounts of money as specified

A. That's correct.

Q. Now, the Tribunal has also asked you to provide information in relation to the breakdown of the accounts between

Sterling deposits and non-Sterling deposits as between fixed deposit accounts and demand deposit accounts and between accounts held by Ansbacher and Hamilton Ross?

A. That's correct.

Q. I think that you had approached this matter by providing the Tribunal with a series of tables which I think clarify and deal with that information in tabular form?

A. That is correct, yes.

Q. I think the initial table, if we can put it up, is a composite table showing headed: "Ansbacher Hamilton Ross account balances, Irish equivalent currency balances"?

A. That's correct, yes.

Q. And I think along the top of the table you have various dates and the years from 1991 to 1999?

A. That's correct.

Q. I think it shows the balances of those accounts from the 31st, for the 31st of December 1991, 31st of December 1992, same date in '93, '94, '95, '96 and '97 and '98, and then finally the 30th of November 1999?

A. That is correct.

Q. And then on the left-hand side, if we can move it over to the left, you show the different currencies, there is the Sterling balances, then the other balances, and the total balances?

A. That is correct.

Q. And these are all in Irish pound amounts?

A. It is the Irish pound equivalent of the currency balances.

Q. Of the currencies. So you have taken a global figure for the Sterling deposits and converted that into Irish pounds?

A. That is correct.

Q. And you have taken a global figure for all other currency deposits and you have also carried out the same exercise converting it into Irish pounds?

A. We have actually taken the other currency, currency by currency, and converted it into Irish and totalled it.

Q. And totalled it then. If we just take it year by year, the first year, 31st of December 1991, the figure below that shows the Irish equivalent of the Sterling deposits; is that right?

A. Yes.

Q. And that is €90,966,284?

A. That is correct.

Q. Then below that where it says "others," on the left, is the Irish equivalent of the non-Sterling deposits, is that correct?

A. Correct.

Q. That is 1,377,192?

A. That is correct.

Q. So the predominant currency of the deposits at that time was clearly Sterling?

A. Yes.

Q. And the total then of all deposits in Irish pounds was €21,343,476?

A. That's correct.

Q. Then moving on to December of 1992, firstly the Irish equivalent of the Sterling deposits was roughly the same as it was for the previous year?

A. Indeed, yes.

Q. In excess of 90 million. Then below that it appears that those non-Sterling deposits had grown considerably between '91 and '92, and the Irish equivalent was $\text{€}5,648,911$?

A. That's correct.

Q. And there was a corresponding growth then in the total deposits, the Irish equivalent of the total deposits to $\text{€}25,010,944$?

A. That's correct.

Q. And most of the bulk of that growth, in fact, the entire of that growth represents the growth in non-Sterling deposits in that year 1992?

A. Yes.

Q. Then moving on to in fact, just holding it at 1992 for the moment, I think we can see from the bottom row of figures, that that was the high point in value of all of the Ansbacher and Hamilton Ross deposits that were held in the bank?

A. Yes.

Q. Due mainly to an increase in non-Sterling deposits in that year?

A. Correct.

Q. Then moving on to 31st of December 1993, the Irish equivalent of the Sterling deposits was $\text{€}18,223,163$?

A. Correct.

Q. Which was a slight fall of about 1 million pounds in the Sterling deposits in 1993?

A. Yes.

Q. Could that possibly

A. Some of these could be due to exchange.

Q. Due to currencies, due to currency fluctuations. Below that the Irish equivalent of the non-Sterling deposits was 4,722,325?

A. Correct.

Q. And overall there is a slight reduction in total deposits which had dropped to €22,945,490?

A. That's correct.

Q. And again presumably that that might have been accounted for by currency fluctuations or growth or strength of the Irish pound at that time?

A. Possibly, yes.

Q. Moving on to 31st of December 1994, again the Irish equivalent of the Sterling deposits appears to have fallen to €16,502,794?

A. Correct.

Q. And just below that is the figure for the Irish equivalent of non-Sterling deposits which was 5,609,597?

A. Correct.

Q. And the total figure then for the Irish equivalent on all deposits of Ansbacher and Hamilton Ross for the year ending 31st December 1994 was \$22,112,391?

A. That's correct.

Q. Which is roughly the same as for the previous year?

A. Yes.

Q. Moving on then to 31st December 1995, there seems to have been a significant fall in the equivalent of the Sterling deposits?

A. Yes.

Q. And they stood at that date at 11,336,444?

A. Correct.

Q. They dropped from just over 16 million?

A. Yes.

Q. They dropped by about five million pounds or the equivalent of five million Irish pounds?

A. That is what it appears, yes.

Q. Then below that figure is the figure for the Irish equivalent of non-Sterling deposits, which was again just in excess of 5 million pounds?

A. Correct.

Q. So that the total for that year, which is down about 6 million pounds, is €16,354,113?

A. Correct.

Q. Then the next column deals with the figures for the year end 31st of December 1996?

A. Yes.

Q. And this was the last year end before the establishment of the McCracken Tribunal?

A. Yes.

Q. And the Irish equivalent there of the Sterling deposits was
€11,138,380?

A. Correct.

Q. So again there is no significant fall as between '95 and
'96?

A. No.

Q. And the Irish equivalent of the non-Sterling deposits was
€6,522,264?

A. Correct.

Q. Which is about 1.5 million pounds more than the previous
year?

A. Yes, at 1.3.

Q. Sorry, 1.3 million. So that the total then for that year
is slightly up at €17,660,644?

A. Correct.

Q. Then the next column shows the figures for the year ending
31st December 1997?

A. Yes.

Q. That was the year end following the report of the McCracken
Tribunal and the establishment of this Tribunal?

A. Correct.

Q. And the Irish equivalent of the Sterling deposits has
fallen very dramatically over that year, isn't that
correct?

A. It has, yes.

Q. It has fallen right down to €893,384?

A. Yes.

Q. So there has been a drop of 10 million pounds or thereabouts?

A. Roughly, yes.

Q. And similarly the figure for the Irish equivalent of the non-Sterling deposits has dropped by 5 million pounds to €1,288,050?

A. Correct.

Q. And the total held then for the year ending 31st of December 1997 was €2,181,434?

A. Correct.

Q. And it is down approximately 15 million pounds on the previous year?

A. Yes.

Q. And then the years 31st December 1998, the Irish equivalent of the Sterling deposits was at roughly the same level, €890,000-odd?

A. Correct.

Q. And similarly the Irish equivalent for the non-Sterling deposits was also roughly the same figure, €1,296,821?

A. Yes.

Q. And then the final column on this table shows the balances for the year end 30th November 1999, and that is because I think you prepared these figures

A. I did, yes.

Q. during the month of December, so you didn't have the figures for the year end December

A. Correct.

Q. 1999?

A. It wouldn't have changed.

Q. It wouldn't have changed. So for the 30th of November 1999, the Sterling deposit is up somewhat at €1,032,606, I take it that was due to entirely due to currency changes?

A. That was due to the recent strength of Sterling versus Euro.

Q. And are the changes across those accounts given primarily due to currency fluctuations at that time or could it have been in relation to the application of interest for reductions of interest?

A. There would have been applications of interest and reductions of interest as well, yes.

Q. I see. Then the final figure in that column for non-Irish equivalent of non-Sterling deposits is €1,331,048?

A. Correct.

Q. That appears to be slightly up on the previous year?

A. Yes. Again, that's predominantly due to exchange or interest application.

Q. I see. Then the total figure for the 30th of November last is €2,363,654?

A. Correct.

Q. And I think, in fact, it is shown on some of the more detailed tables which you have prepared, but can I take it that these deposits for 1998 and 1999, were they in the name of Ansbacher or in the name of Hamilton Ross?

A. Both.

Q. Both in the names of Ansbacher and Hamilton Ross. I think the more detailed tables that you have prepared shows each of the accounts that were held for those years?

A. Correct.

Q. So just looking overall at that table, I think it would be correct to say that the overwhelming reduction held in the deposits held occurred in the year 1997?

A. Correct.

Q. When they fell from 17 and a half million roughly to 2 million roughly?

A. Correct.

Q. I think then you also provided the Tribunal with some tables relating to the actual accounts, a breakdown of the accounts held for each of those years. If we can just look at some of them. If we take, firstly, the balance as outstanding for demand accounts, at 31st of December 1991.

I think that is the first one. We might just take the first one and the final one.

I think on that table you have on the left column the account number?

A. Correct.

Q. The next column, I think, is the name of the client holding the account?

A. Correct.

Q. The next column, is that the currency of the account?

A. Yes.

Q. And then finally the second last column is the balances?

A. Yes.

Q. Shown in the currency which the account is held?

A. Correct.

Q. Then finally the Irish equivalent for the total figure?

A. Correct.

Q. And I think the first set of accounts shows the Ansbacher Sterling accounts?

A. That's correct, yes.

Q. And I think the third of those entries shows the hub account which shows just in excess of 10 million pounds on it on that date?

A. Correct.

Q. Then the next set of accounts shows, I think, the US dollar holdings in the name of Ansbacher?

A. Yes.

Q. And that shows, also, the various letters and codes in which the account, the account name, the accounts name the accounts were opened?

A. Yes.

Q. I think the very first one shows an account, Ansbacher REF S8 US Dollars?

A. Yes.

Q. And then further the accounts are RE B/Z, RE C/BT, RE A/A39, A/B Special, RE A/G, RE A/B 46, RE A/A44 and so forth. Then the

A. Correct.

Q. Then the next, we just move it up slightly, the next account is a Deutschemarks account?

A. Yes.

Q. Because of that year there was obviously one account held in Deutschemarks on the call-deposit side?

A. Certainly at that time anyway.

Q. And then the next account, what currency is that CHL?

A. Swiss Francs.

Q. Swiss Francs. Then below that Australian dollars, and then there is a A/A26 and A/A26 C, and B, and an A/A36 and then finally Ansbacher Limited re B/ZXEU. What currency is that that?

A. XEU, the equivalent of Euros at the time.

Q. If we just move on then to the last year, 1999, there is a breakdown of all you have provided the Tribunal with tables for each of the years?

A. Yes.

Q. If we just move on then to the demand side as of 30/11/1999, and this shows separately the Ansbacher accounts and the Hamilton Ross accounts?

A. Correct.

Q. I think the manner which the table has been prepared is the same as the last table?

A. Yes.

Q. Showing the account number, the name of the account holder, the currency which is held, the balance in the currency which the account operated and finally the Irish equivalent

of that currency, is that correct?

A. That's correct.

Q. I think the first set of accounts are Ansbacher Cayman accounts?

A. Yes.

Q. We can see four separate Sterling accounts?

A. Correct.

Q. I think the second column, in fact, refers to account name per client instructions?

A. Yes.

Q. So this would be the name of the account as you were instructed by the particular client?

A. Correct.

Q. And I am just wondering in the year 1997 was there any alteration in the account names or the codes? I think if we just put up 1997 first. Balances outstanding for demand accounts as of 1997. I think you can see there, in fact, that there doesn't appear to be any change in the account names for 1997?

A. No.

Q. And that shows that as of the December 1997, which was the year in which there was the very significant reduction in the deposits, there were in all six Sterling Ansbacher accounts?

A. Yes.

Q. That's but that is on the demand account, demand deposit side?

A. Demand account yes.

Q. I think that below that are the Hamilton Ross accounts?

A. Correct.

Q. And there are four all in Sterling as well?

A. Correct.

Q. And amounting in Sterling to œ505,000 and in Punts to 585,000-odd pounds?

A. Correct.

Q. If we just quickly look, briefly look at the fixed account side, in relation to the Hamilton Ross account in 1997, where it says: "Account name per client instructions".

Could you assist the Tribunal as to, as far as you know, who the client was as of that time?

A. In 1997?

Q. In 1997.

A. Ansbacher Cayman Limited.

Q. In relation to Ansbacher Cayman, but in relation to Hamilton Ross, who to your knowledge was the client at that time?

A. Hamilton Ross.

Q. Hamilton Ross. Do you know from whom instructions were being received by the bank as of 1997 on behalf of Hamilton Ross?

A. Yes. Well, post from my own personal involvement, post the death of Mr. John Furze, Mr. Barry Benjamin become the person who we would have received the instructions.

Q. So that would have been subsequent to July of 1997?

A. Indeed, yes.

Q. And do you know how come contact was first made from Mr. Benjamin?

A. If I recall correctly we received instruction at some stage in July or August, I would have to check on that now.

Q. Yes.

A. At that stage Mr. Benjamin meant absolutely nothing to the bank and, in fact, we replied querying who he was and what authority he had to issue instructions on behalf of Hamilton Ross and we subsequently received a revised Board resolution authorising him as a signatory on the account.

Q. From whom did you receive that?

A. If I recall correctly, I am subject to correction on this now, but I recall correctly it came from Ingrid Furze.

Q. That would be Mr. Furze' wife?

A. Yes, I believe so.

Q. And was she a signatory? Do you know if she was a signatory on the account prior to Mr. Furze' death?

A. I would have to check that now. I haven't got that detail with me today.

Q. Maybe we can check that later.

A. Yes.

Q. If we can just look then at the fixed account side for 1997, which is the next page of the table. When we there don't appear to be any accounts of Hamilton Ross for that year on the fixed account side. There are three for Ansbacher Cayman and the IEP currency, is that Irish

pounds?

A. That is Irish pounds, yes.

Q. I think, in fact, there had been those Irish pound accounts in the previous year as well, in 1996?

A. Yes. You might just put it up so that I can confirm that to you.

Q. We will just put up the balances for 1996. I think we see Irish pound accounts there also?

A. Yes.

Q. And there is a an addition there under the account name for the client instructions, it is "Hypo". What does that signify?

A. It means hypothecated.

Q. Does that mean that those accounts in Irish pounds were blocked accounts?

A. Yes, they were.

Q. So they would be backing some loan that was provided by Irish Intercontinental Bank to a client of Ansbacher?

A. Yes.

Q. Now, I think?

A. Sorry, I should amend that, it doesn't necessarily mean that they were backing a loan to a client of Ansbacher, it could just have been to a client for IIB itself.

Q. A client of IIB itself. But they were blocked?

A. They were blocked, yes.

Q. In relation to a loan facility.

A. Yes.

Q. I think if we go back to the year end 1997, I think we will see that there are still two blocked accounts there on the fixed deposit side?

A. That's correct, yes.

Q. Now, if we look finally at the table for December 1999 or November 1999, on the demand side balances outstanding for the 30th of November, can I take it, by the way, that all of these accounts referred to in this table continue to be open?

A. Yes.

Q. If we

A. As far as I am aware.

Q. If we can just have the demand accounts first for 1999.

Again, we have four Sterling accounts?

A. Correct.

Q. Totalling $\text{€}265,000$ -odd and the Irish equivalent is 331,000 and they are all Ansbacher, in the name of Ansbacher?

A. Correct.

Q. And again we have the same for Hamilton Ross accounts also in Sterling?

A. Correct.

Q. Amounting in total to 562,000-odd Sterling and the Irish equivalent is $\text{€}701,000$?

A. Correct.

Q. Can I take it as regards these accounts that you are still receiving instructions in relation to them from Mr. Barry Benjamin?

A. Well, we haven't received instructions recently from him.

Q. Well, do you mean recently being since the 30th of November last, or in the last number of weeks?

A. In the last number of years at this stage.

Q. In the last number of years at this stage. So you have received no instructions in relation to these Hamilton Ross accounts certainly since the 30th of November and possibly throughout 1999?

A. Correct.

Q. And then if we just look at the fixed accounts, there seem now, in fact, to have been four hypothecated accounts in the name of Ansbacher?

A. I think the the last two hypothecated accounts relate to the middle two. I would have to confirm that. I am not I am not that clear of the detail of the relationship on the hypothecated side.

Q. I see.

A. That would be from instructions from our banking Department.

Q. I see. Maybe Mr. Redmond can deal with that.

A. Possibly.

Q. I see. Mr. Reynolds might be in a position to deal with that, I think it is Mr. Reynolds rather than Mr. Redmond.

A. Reynolds.

Q. Now, the Tribunal, apart from the balances and the breakdown of the accounts between the specific accounts between fixed deposits an demand deposit and so forth, have

also asked you to assist the Tribunal in relation to the general manner of operation of the accounts.

A. Correct.

Q. I think the position is that both the Ansbacher and the Hamilton Ross accounts were very active, is that correct?

A. Correct.

Q. And they there was a high volume of transactions?

A. Correct.

Q. And these transactions included cheque lodgements?

A. Correct.

Q. Cheque payments?

A. Correct.

Q. Lodgements and withdrawals by credit transfer?

A. Correct.

Q. By credit transfer, does that mean transfers from one from one bank to another bank?

A. It does, yes.

Q. Would that mean transfers from banks within this country from domestic banks or from off-shore banks?

A. Predominantly it would be from off-shore banks. It could have included at times the domestic, but predominantly off-shore.

Q. Would that usually be a correspondent bank of Irish Intercontinental Bank?

A. Yes. If funds were being transferred they would be transferred into our corresponding

Q. Yes, then enter deposit account transfers?

A. That would be instructions to transfer funds between accounts within the Ansbacher or Hamilton Ross account setup.

Q. Yes, so you might receive an instruction to transfer a particular amount of money from one Ansbacher or Sterling account to another Ansbacher Sterling account or as between different currency accounts?

A. Correct.

Q. Then spot deals?

A. That would be a request to convert an amount from one currency into another usually to payout on some instruction.

Q. So in your last evidence last December when you were dealing with the cheques payable to or the drafts provided by the bank payable to BEL Secretarial Services, in each instance there I think it involved a foreign exchange deal?

A. That's correct.

Q. And would that be a spot deal?

A. That would be a spot deal, yes.

Q. And fixed deposits. I think fixed deposits would be the placing of sums of money on call deposit into long-term deposits, is that correct?

A. Correct.

Q. I think the position is that fixed deposits were used to avail of high interest rates?

A. That is correct.

Q. I think instructions were received from both Ansbacher and Hamilton Ross to issue Irish pound cheques and to debit the cost of those cheques to Ansbacher Hamilton Ross accounts as directed?

A. Correct.

Q. I think we have seen numerous illustrations and instances of that type of transaction in the course of the evidence that you have already given?

A. Yes.

Q. Now, I think as the deposits were held in foreign currencies this involved the purchase of IR pounds, the debiting of the foreign currency equivalent to the Ansbacher Hamilton Ross account in question and the drawing of a cheque by the bank on its account with Bank of Ireland or AIB payable in accordance with the instructions received from Ansbacher Hamilton Ross?

A. Correct.

Q. This was necessary because the bank was not itself part of a collection system, it wasn't a clearing bank?

A. That is correct.

Q. I think the position is that instructions for the drawing of cheques or the issuing of bank drafts were received frequently?

A. Correct.

Q. And this was often on a daily basis?

A. Yes.

Q. I think they were handled by the relevant account

administrator at the time?

A. That's correct.

Q. And would that be the one same official that was allocated to deal with the Ansbacher and Hamilton Ross accounts?

A. Yes, the official that was looking after it at that time.

Q. I see. Such instructions in relation to Ansbacher were given in writing on Ansbacher headed paper, and up to in or around December 1994, included a request to reply to 42 Fitzwilliam Square?

A. Correct.

Q. So it was on the same we have seen the paper time and again on the overhead monitor, but it was exactly the same kind of stationery and the letter that you initially received in December of 1990 which was just up on the screen a moment ago?

A. Yes.

Q. I think the position is that those letters were usually signed by Mr. Des Traynor or in his absence by Miss Joan Williams who was Mr. Traynor's secretary?

A. Correct.

Q. I think the cheques would then be kept, collected by a courier?

A. Yes.

Q. And the courier by whom they were collected, would that be a courier arranged by Mr. Traynor or arranged by Irish Intercontinental Bank?

A. Actually, I genuinely don't know the answer to that.

Q. But they were normally collected, in any event, by a courier, they weren't sent through the post or delivered through some other way?

A. No.

Q. I think similarly such instructions from Hamilton Ross were received on Hamilton Ross headed notepaper with initially a request for the bank to rely to the same address, 42 Fitzwilliam Square?

A. Yes.

Q. And again in December when you were giving detailed evidence on the payment of the BEL Secretarial cheques, I think time and again we saw Hamilton Ross letters with an instruction to reply to 42 Fitzwilliam Square?

A. Correct.

Q. That was similar letterhead to the letter of the 5th of October from Miss Williams that we have just had on the overhead screen?

A. Yes.

Q. I think, again, those letters were usually signed by Mr. Traynor until his death in May 1994, or by Miss Joan Williams until December 1994?

A. Yes.

Q. So up to May 1994 they were signed by Mr. Traynor, from the date of his death to December 1994 they were signed by Miss Williams?

A. In the majority of cases.

Q. In the majority of cases. Thereafter these letters of

instruction were normally signed by Mr. Pdraig Collery?

A. Correct.

Q. When Mr. Collery took over the running of the Hamilton Ross

accounts in December 1994, he asked the bank for replies to

his written instructions to be directed not to 42

Fitzwilliam Square but to 8 Inns Court, Winetavern Street,

Dublin 8?

A. Correct.

Q. I think in a moment we will be putting up a series of

instructions and we will see that particular letterhead

with the request to reply to Winetavern street?

A. Yes.

Q. Now, I remember, I think, the Tribunal also asked you to

give the indication of the volume of instructions received

on a daily basis from Ansbacher or Hamilton Ross.

A. Correct.

Q. And I think to assist the Tribunal you carried out a

general review of the files and from that you confirm that

instructions were received very irregularly?

A. Yes.

Q. I think there were some days when no instructions were

received but on other days several instructions were

received?

A. Correct.

Q. I think as an illustration you have referred to the three

of April 1995 when the bank received eight separate

instructions from Mr. Collery on behalf of Hamilton Ross?

A. Correct.

Q. I think we can just look at those instructions briefly.

Now, the 1st of them, they are all dated the 3rd of April 1995 and all signed by Mr. Collery. I think the first was to transfer a sum of Sterling œ2,116.10, from our account number 020135481 to the account of Ansbacher Cayman Limited account number 0201062/81?

A. Correct, that would be an example of an inter-account transfer.

Q. An inter-account transfer. I think the first account referred to is the Hamilton Ross Sterling hub account?

A. Correct.

Q. Then the second account to which it was to be transferred is an Ansbacher account?

A. Correct.

Q. And the next one of the instructions which is also dated the 3rd, is a request to transfer the sum of œ9,947.09 from account Ansbacher Cayman Limited 021701981 to Hamilton Ross account 020135481?

A. Correct.

Q. So that is another inter-account transfer?

A. Indeed, yes.

Q. This time in the other direction, from Ansbacher Tottenham on to Ross hub account?

A. Yes.

Q. Then I think the next one is another inter-account transfer, it is again signed by Mr. Collery and it is

requesting this time that €19,633,056 be transferred from the same Ansbacher account to the same Hamilton Ross account?

A. Correct.

Q. Then the next one is another, again, inter-account transfer from Ansbacher to Hamilton Ross for €12,729.45?

A. Correct.

Q. These are all Sterling sums that have been transferred as between Sterling accounts?

A. Yes.

Q. So there is no foreign exchange transaction of any sort?

A. No.

Q. The next one is also a transfer, this time of €9,947.09?

A. Correct.

Q. And this is, I think, a request that you debit an Ansbacher account with €19,462.54 and again transfer that to two Hamilton Ross accounts?

A. Yes 9,900 and

Q. Then the next one is a request that you provide a draft so it is a different requirement, a draft for €500 payable to the Bank of Ireland, which we should be able to get that.

It is again signed by Mr. Collery. "Please arrange to send a draft for €500 payable to Bank of Ireland Limited. Cost of this payment should be debited to our account 020135481"?

A. Yes.

Q. So that was requiring you to debit the equivalent of €500

Punts from the Hamilton Ross hub account, convert it into Sterling and to provide it by way of a draft payable to Bank of Ireland?

A. Correct.

Q. Then the next one is a query on a previous transaction, also dated the 3rd of April 1995. "Yes, a recent transfer of €500 appear to be debited to the incorrect account. It should have been debited to account number 0201087. I should be grateful if you would pass corrected entries"?

A. Yes.

Q. And so that is eight separate instructions all received on the one day, the 3rd of April of 1995?

A. Yes.

Q. In your experience as accounts manager and in the context of the type of business that is conducted by Irish Intercontinental Bank, would it be usual to receive that number of instructions of that type from a particular client?

A. Well, the Ansbacher account would have been slightly different. In terms of the account itself, it wouldn't have been particularly unusual. It is not it is not our normal business. We are a wholesale operation. To say that because of the nature of those transactions we wouldn't have a lot of customers who would be making that many instructions on a day but I couldn't that it is, you know, that absolutely unusual to get instructions of that volume from people.

Q. Did you have any other customer from whom you would have been receiving that volume of instructions on one day and that type of instructions?

A. We wouldn't have had a customer where he would have the level of inter-account transfer. We would have one or two other customers where that volume of transaction would be going on. The administrator would be looking after about 200 accounts. They wouldn't have been as active of that. There would have been one or two others that would have been reasonably active.

Q. What about the provisions of drafts and cheques and so forth, would you have any other customer who was looking for, in some ways, the selection of the 3rd of April, all those inter-account transfers isn't necessarily entirely representative of the instructions you were receiving. I think you would agree that more often than not what you were being asked to do was to provide cheques payable to Bank of Ireland or drafts payable to persons or transfers of sums of money to accounts abroad in the names of particular persons?

A. That's correct.

Q. And would that be would that be unusual in the context of your business as a wholesale banker?

A. The type of instructions wouldn't be unusual, the volume of activity would be unusual in the sense that that was a very active account for the bank.

Q. It was very active?

A. It wouldn't be unusual for us to be issuing drafts and making transfers abroad for customers, that would be quite normal.

Q. While it mightn't have been unusual for you to be doing it, it would be part of your ordinary business, would it not be most unusual to be doing it to the extent that you were doing it on behalf of one client?

A. In terms of actual activity on a given day it would, it would probably have been the most active account.

Q. It would be the most active account. Wouldn't be fair to say it was uniquely the most active account?

A. Apart from one other at the time.

Q. Apart from one other at the time?

A. Yes. It should be also said that we make considerable payments from the bank on any given day, running into the hundreds.

Q. It is not I think it is the volume of small transactions which I think, would you agree, that probably sets these accounts apart from other accounts that you would operate?

A. Yes.

Q. I don't imagine that Irish Intercontinental Bank are pressed or are asked too frequently to provide cheques for œ500 payable to Bank of Ireland or indeed to anybody?

A. Not frequently, no.

CHAIRMAN: If one looked at this type of transaction in isolation, one might have thought a client normally would

have been more satisfied with the recent banking system,
there would be less paperwork?

A. That's probably fair comment, yes.

Q. MS. O'BRIEN: Can I just ask you one matter or one query on
a point of detail. From you, as, generally as a banker, in
relation to the contents of one of the letters of the 3rd
of April, and that is the letter requesting you to provide
the cheque for €500 payable to Bank of Ireland, if you
could put that back up on the monitor, for the draft for
€500. There, as we have already indicated, you were being
asked to provide a draft for €500 payable to Bank of
Ireland. I think in the course of evidence yesterday it
emerged that there may have been a special arrangement with
Bank of Ireland in relation to the cashing of these
cheques?

A. That is obviously not something we were aware of.

Q. No, I accept that entirely, but I am just saying as a
banker, is it the position that in order to obtain cash for
a draft payable to Bank of Ireland, that you would probably
have required some special arrangement with Bank of Ireland
in order to do so?

A. I am not sure I understand the question.

Q. In order to go into any bank with a draft payable to that
bank and in order to cash it, would, in your experience,
would that necessitate the operation of an account in that
particular bank?

A. I wouldn't comment from my experience because it is totally

wholesale because I would be only commenting on it from my own experience of operating my own account.

Q. But if somebody came into I accept I appreciate that you don't have a cash chequeing facility or a cash provision facility in the bank, but in the ordinary course of banking wouldn't it be usual position that if somebody came into any bank with a draft payable to that bank, that they would have to be known to the bank in the first place in order to obtain value for it?

A. That would seem reasonable, yes.

Q. Yes, if they weren't known to the bank isn't it probable that they would have to have some form of an account in that bank, and again I accept fully that you don't operate those kind of accounts, but isn't it probable that they would need some arrangement or some account with the bank?

A. If it was a cheque as opposed to a draft, that that would seem reasonable, a draft would be cashable.

Q. A draft would be cashable, but again you would probably need to be known to the bank?

A. I would presume so, yes, it is not a business that I am involved in.

Q. Thank you. Now, I think the

CHAIRMAN: Seeing as you are going on to a different section, Miss O'Brien, we will resume at 10 to two. Thank you very much.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE HEARING THEN RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF DIRECT EXAMINATION OF THE WITNESS BY MS.

O'BRIEN:

Q. MS. O'BRIEN: Mr. Barnes, I just want to finish the general matters that the Tribunal raised with you and then return to one or two of the matters we touched on this morning, if that's all right?

A. Fine.

Q. Finally the Tribunal asked you to provide details of the Operations Department's dealings with particular persons who were associated with the Ansbacher and Hamilton Ross accounts, and the first of these was Mr. Traynor. I think the position there is as regards the Operations Department, following the introduction of the Ansbacher account, Mr. Traynor as an authorised signature on both the Hamilton and Ansbacher Ross accounts regularly signed instructions on the account, and those instructions were complied with according to the mandates of both customers?

A. That's correct.

Q. And this continued until Mr. Traynor's death in 1994?

A. Correct.

Q. Mr. Traynor would periodically request details of the statements in relation to his accounts, and the requests would either be in writing or by the telephone?

A. Yes. If they were on the telephone it would normally be

followed up by a written instruction.

Q. It would normally be a written instruction?

A. If the original request was by telephone, it would normally be followed up by a written instruction.

Q. In relation to Ms. Joan Williams, I think the position was Ms. Williams was always a signatory on both accounts?

A. Correct.

Q. And that she regularly signed letters of instruction from the date on which those accounts were opened until December of 1994?

A. That's correct.

Q. I think, in fact, between Mr. Traynor's death in December 1994, instructions were exclusively signed by Ms. Williams; isn't that correct?

A. I think almost exclusively. There may have been a number from Mr. Collery.

Q. She would periodically request details or statements of those accounts and they would either be in writing or telephone?

A. Correct.

Q. Again, if they were by telephone would they be followed up by written confirmation?

A. Yes.

Q. In relation to Mr. Collery, the position also was that Mr. Collery was a signatory of the Hamilton Ross account from December 1994 onwards?

A. Actually that's incorrect. Mr. Collery was a signatory

from the opening of the "A" Account.

Q. In fact, I think he was a signatory as an authorised agent?

A. Yes.

Q. You indicated that in your evidence this morning?

A. Yes.

Q. The position is that he would regularly issue signed letters of instructions to the bank, and those instructions were complied with in accordance to the mandate of that customer?

A. Correct.

Q. He would periodically request details or statements in relation to the accounts and those requests would either be in writing or by telephone?

A. Correct.

Q. And again I take it that if telephone instructions were received they would be confirmed in writing?

A. Correct.

Q. In relation to Mr. John Collins, Mr. John Furze and Mr. Sam Field-Corbett, it appears that any dealings which the deposit section of the bank may have had with them would have been infrequent and would normally only arise in the absence of Ms. Williams, Mr. Collery, or Mr. Traynor?

A. Certainly from a review of the accounts that would appear to be the case, they seemed to be involved when people were on holidays or so

Q. And indeed it was related to instructions or requests for instructions of the operation of the accounts and/or

statements of the accounts?

A. That's correct.

Q. Then the final the final person who was raised with the bank was Mr. Barry Benjamin?

A. Correct.

Q. I think we mentioned Mr. Benjamin this morning?

A. Yes.

Q. I think the position there was that as far as you were aware the bank had no dealings with Mr. Benjamin until Mr. Furze's death in the summer of 1997?

A. As far as I know, yes.

Q. And I think thereafter Mr. Benjamin took over the running of Hamilton Ross and issued instructions in relation to the operation of the Hamilton Ross accounts from that date?

A. Correct.

Q. I think I just want to deal with some documents which the Tribunal has extracted from documents produced by Irish Intercontinental Bank in relation to Hamilton Ross?

A. Okay.

Q. These related to the handover from the existing directors subsequent to Mr. Furze's death and the assumption of authority for the giving of instructions by Mr. Benjamin?

A. Yes.

Q. I think the first of the documents is a copy of a fax from Irish Intercontinental Bank to Mr. Barry Benjamin, Hamilton Ross. I think we can see it on the monitor there. It's dated the 12th of September, 1994. It's to Mr. Barry

Benjamin and it's from Maureen Collins.

"Dear Mr. Benjamin, I acknowledge receipt of your fax dated 9th September. I look forward to receiving the original resolution by post."

Now, the Tribunal hasn't been able to obtain from it the documents produced by the bank, a copy of that fax dated the 9th of September, but I take it, it enclosed a faxed copy of the resolution.

A. I presume so, yes. I haven't looked at that in detail up to today, but I expect that that's what happened.

Q. It says: "As per our telephone conversation I confirm that IIB requires the following additional details:

1. Directors' addresses, home and business, occupations, and dates of birth."

A. Correct, yes.

Q. I take it that would be to new directors that had been appointed by Hamilton Ross?

A. Yes, as far as I'm aware there was a question-mark as to who was authorised to act on behalf of Hamilton Ross post Mr. John Furze's death, and that there seemed to be a little bit of confusion at the time and we were seeking appropriate authority.

Q. And appropriate clarification?

A. Yes.

Q. And then 2: "Non-resident declaration, updated form attached." That would have related to the status of the

accounts?

A. Yes, correct.

Q. Would there be any particular reason to obtain a fresh non-resident declaration at that time?

A. Yes, because obviously at that stage the McCracken report, I think was available or certainly we were aware there were question-marks over the account, and we wrote at the time and asked for clarification of the status given the findings of the McCracken Tribunal.

Q. I think you had what might have been subsequently at the end of September but I'll refer to that letter shortly.

A. Yes.

Q. And then thirdly: "Authority to contact bankers, form attached." Is that a type of bank reference that you were seeking at the time?

A. Indeed, yes.

Q. Would it be usual for IIB to look for bank references in relation to directors of an existing customer?

A. Well, in the circumstances that would what would pertain at that time, we would certainly have looked for that. It would be particularly unusual, if we could get references from bankers, we look for them.

Q. I don't think there's any record in the documents that the Tribunal has seen of you seeking similar bank references when the accounts were initially opened?

A. Based on the introduction at that stage, Mr. Traynor at the time was, I believe, the Non-Executive director, we would

have been satisfied with the bona fides of the individuals. Mr. Benjamin meant absolutely nothing to us, we know nothing about him whatsoever.

Q. And Mr. Furze was in the same position?

A. Exactly, yes.

Q. Then you said: "We should be glad if you would return the above by fax ASAP and the originals by post. Please do not hesitate to contact me should you have any queries. Yours sincerely Maureen Collins."

A. Yes.

Q. I think in response to that a letter was received from Mr. Benjamin on the 18th of September, 1997?

A. Correct, yes.

Q. It's there on the overhead, on the monitor beside you: "Dear Miss Collins, in respect of your request for account documentation, please find enclosed herewith the executed forms. Please contact me should you require further information." It's signed "Benjamin".

A. That's correct.

Q. And I think a series of forms were enclosed with that fax.

And perhaps firstly we can look at a copy of the resolution of Hamilton Ross. It's an extract from the minutes of the meeting from the Board of Directors, dated the 7th of August, 1997. Firstly well, if we can stay with that at the moment. It's the extract minutes of the 7th of August, 1997, and present, it records that the persons present were Mrs. Ingrid Furze, Director, and Mr. Barry B Benjamin. The

Chairman is recorded as Mrs. Ingrid Furze to the Chair.

Secretary Mrs. Ingrid Furze took the minutes of the meeting. Then quorum, "The Secretary advised the meeting that a quorum of directors was present". And below that directors and it states: "Consequent on the untimely death of John Furze, Ingrid Furze, the sole surviving director wished to appoint an additional director to fill the vacancy. The following resolution was proposed and passed."

It appears to be the following terms: "(B) It resolved that Barry B Benjamin be appointed a director of the company with immediate effect, to hold office until confirmation or otherwise until the company's next general meeting, and the Registrar of companies be advised of the appointment."

And under the subheading: "Banking Arrangements." "It was resolved that signatory on company accounts shall be any director. Specimens of the signatures of the said directors are attached hereto and form an integral part of the minutes of this meeting executed..."

And then on the next page under the heading "Termination": "There being no further business the meeting terminated." It's signed by Ingrid Furze in her capacity as Chairman?

A. Correct.

Q. If we can look at the specimen signatures then which I

think formed part of the minute: There is the name "Ingrid Furze, Director" and there's Mrs. Furze's signature and "Barry B Benjamin, Director" and there's his signature?

A. That's correct.

Q. And do I take it that on the basis of the extract from the directors, minutes of the directors' meeting, that you would have considered that the mandate on those accounts had now changed?

A. We certainly would have considered that Mr. Benjamin was authorised to issue instructions.

Q. And Mrs. Furze, I take it?

A. And Mrs. Furze.

Q. Do I take it that all further authorised agents who were authorised under the previous mandate and the previous account opening authorization and forms, that you would have taken it that they no longer had authority and capacity to give instructions?

A. Yes.

Q. And at the time when you were considering those minutes, would you have required as to inquired as to whether there was a valid quorum at the meeting of the directors?

If we can put up the first page of the extract minutes again. It's under the heading: "Quorum". "The Secretary advised the meeting that a quorum of directors was present." There was only one director present at the time?

A. Yes, because there was only one director in the company at

the time at that stage.

Q. At the time do you recall did the bank raise any inquiries as to whether that was a valid or sufficient quorum to constitute a meeting of the Board of Directors?

A. I don't recall, no. I wouldn't be able to answer that question at the moment. I'd have to check further.

Q. I think with that letter there were also a number of other forms that were included, that was on foot of the request that had been furnished. Firstly, an authorization to contact bankers in respect of Mr. Benjamin. You can see that there? I can hand you up a set of these documents.

(Documents handed to the witness).

Presumably this document enabled you to take bank references in respect of Mr. Benjamin?

A. Yes.

Q. The customer is Mr. Barry Benjamin, his address is given, PO Box 31472, SMB, Treasure Island, No. 320, Grand Cayman, BWI, which is British West Indies. And his customer's telephone number. I take it that's Mr. Benjamin's telephone number. It's authority to Irish Intercontinental Bank to contact his bankers "as listed below" so that they could authenticate the correctness of "the details contained herein". Is that correct?

A. Yes.

Q. If we could move the document up slightly, you can see that the bank you were authorised to contact was Cayman International Bank 949772. I'm not quite sure what

that's the bank's telephone number. And it's to the attention of Neil Mayhard; is that right?

A. I think it reads Maynard.

Q. And the bank's registered address, Cayman National Bank, Box 275, Cayman National House, Grand cayman, BWI. Signed by Mr. Benjamin. Dated the 16th of September, 1997.

A. Yes, that's correct.

Q. And I think, in fact, that authority is limited to you inquiring as to the correctness of the details on that particular form?

A. That's correct.

Q. And that's just his name and address and telephone number?

A. Yes.

Q. It's not a bank reference that was being sought or authorised by that?

A. No, it's not. We were just looking to see was there a Mr. Benjamin and did he exist.

Q. I think there's a similar form then which was completed by Mrs. Furze, Mrs. Ingrid Furze. Again it gives her permanent address. Below that her telephone number, and this time the bank that you were authorised to approach was the Bank of Butterfield International?

A. That's correct.

Q. And the telephone number is given and the registered address, and that's also a Cayman bank?

A. Yes, I think so.

Q. Could you indicate what the purpose of these forms was?

A. Particularly just to try and get some details on the individuals, that they existed. We had known nothing about them until that particular date.

Q. And in the ordinary course of opening an account, would a customer be asked to complete a form like this?

A. Certainly you would look for references. Whether they're always asked to complete it or whether we get contact details and permission for us to contact the bank, certainly it would be normal practice to check out from a, bank references on somebody opening an account.

Q. And at the time the accounts were initially opened back in 1991 in the case of Ansbacher and 1992, this particular course wasn't followed?

A. No. But the distinction in 1991 was Ansbacher was a bank. Hamilton Ross wasn't. At this stage we were on particular notice that perhaps there were matters that needed to be considered further in relation to Hamilton Ross, and we would have been on notice to be careful in what we were doing.

Q. What particular matters did you have in mind at that time?

A. The McCracken Tribunal and the report.

Q. Are you saying that initially when the Ansbacher accounts were opened back in 1991 it would have been the bank's usual practice to require or seek an authorization to contact bankers, that you didn't do so?

A. Only for people that we wouldn't have known. We wouldn't have been seeking a bank reference for Mr. Desmond Traynor

back in 1990.

Q. Purely because of the manner in which he was introduced?

A. Yes, he was a well-known and respected businessman. He would have been known in the banking world.

Q. In relation to the McCracken Tribunal report and the findings of that report which prompted you to enclose this authorization, what particular aspect of the report caused you to have concern at that time?

A. Well, in this particular case remember that the in relation to Hamilton Ross, the communication we were getting at this stage was from individuals we had never heard of, had any involvement with before, purporting to be representing Hamilton Ross. Obviously at that stage we wouldn't have known anything about these individuals or who they were. So we were attempting to try and establish that they were bona fide.

Q. But what particular aspect of the report itself caused you to have those concerns? You were saying it was due to the contents of the report that you were you were caused to have concerns, that on this occasion prompted you to require these authorizations be completed?

A. Yes, there was an implication that accounts relating to Hamilton Ross may have been held for the benefit of residents rather than non-residents.

Q. And it was that particular element and that particular aspect that caused you to require

A. Not only that. If there had been nothing to do with the

report at all, if we'd been dealing with a company and contact over a number of years and that person dies, we're purporting to get instructions from somebody who has not been a previous authorised signatory on the account, we would try to establish, (1), that they're authorised and (2), get some sort of reference that they are who they say they are.

Q. But prior to that Mr. Collery had been furnishing you with instructions in relation to this account?

A. Yes.

Q. Did you ever at any time receive instructions from anybody else that you should no longer accept Mr. Collery as a source of instructions?

A. No, not officially, no.

Q. I think also with those forms that you obtained non-resident declarations?

A. Yes.

Q. Would you have a look at those. They're both dated the 16th of September, 1997.

A. That's correct, yes.

Q. And this is a standard form also?

A. It is, yes.

Q. And it's headed "Non-Resident Declaration". It's a declaration in accordance with Section 37 of the Finance Act. Deposit taker is Irish Intercontinental Bank Limited, and I don't think the area of the form that deals with account numbers, I think that appears to be blank, that

part of the form.

Beneficial owner of interest or depositor under that is named "Hamilton Ross Company Limited, PO Box 1369". It's Bank of America Building, Grand cayman, BWI. Country of residence: Cayman Islands, and it declares:

"I hereby declare that the company mentioned above, the beneficial owner of the interest, is not a resident of the State at the time this declaration is made, and undertake to notice you if the company becomes resident in the State." The signature of the Company Secretary is Ingrid Furze, and that's dated the 16th of September, 1997.

A. That's correct.

Q. There appears to be a second of those forms in identical terms in relation to account number 3923681?

A. Yes. I must admit I'm not as familiar with these particular forms. I'm only looking at them there again for the first time in the last few minutes. Probably not as helpful in your questions as I could be if I had more detail.

Q. Again, could you assist the Tribunal as to why you would have requested that a fresh non-resident declaration form should be provided in September of 1997?

A. Because of the implications in the McCracken report, that the beneficial owners of the interest on the deposits may not have been non-resident and that they could be Irish.

Q. If you had those concerns, naturally you would have had

those concerns arising from the McCracken report, was there anything in this form that could have allayed those concerns in that regard? If you look at the form.

A. Certainly in relation to that account, no. I mean, we were obviously trying to establish whether statuses had changed from the original report original declarations or what was the response really from the people in Hamilton Ross.

Q. Because really all that tells you is what you already knew?

A. Indeed.

Q. It doesn't take matters further?

A. No.

Q. Doesn't progress your inquiries?

A. No.

Q. Couldn't have, in fact, allayed your concerns in any respect, could it?

A. No, and it didn't.

Q. I take it by that you're referring to subsequent correspondence?

A. Yes.

Q. I think there's a further letter of the 1st October, 1997, which relates to the personal persons with authority to receive information or give instructions on these accounts, and that's to Mr. Barry Benjamin from Ms. Maureen Collins. She attaches a copy of a letter which she received from Mr. Padraig Collery requesting information relating to transactions on accounts in the name of Hamilton Ross?

A. Yes.

Q. And she asks Mr. Benjamin to confirm that Mr. Collery is authorised to receive the information requested?

A. Yes.

Q. I take it that by then you had received the extract minutes of the meeting of Hamilton Ross, so that by then you were fully aware that Mr. Collery was no longer a signatory on the account?

A. Certainly that was the assumption, yes.

Q. I think with that you enclosed a copy of this letter from Mr. Collery dated the 20th of September, 1997, to Irish Intercontinental Bank?

A. That's correct.

Q. And it says: "Dear Paula, I should be grateful if you would please arrange to send me copies of John Furze's instructions to transfer GBP 2.2 million pounds from Hamilton Ross 02/01354/81 and to close Poinciana fund Japanese Yen by converting the balance to GBP and transferring the GBP balance. Please also let me have the details of the GBP amount transferred." Signed "yours sincerely Padraig Collery"?

A. Yes.

Q. And there's some handwritten notes. It says: "Letter sent, not responded as at 9th of October."?

A. Yes.

Q. On the right there: "Info not provided to PC"?

A. That's correct.

Q. Can you assist us as to what those notes refer to?

A. I can only assume that what she was referring to is that we hadn't gotten a response to our letter by the 9th of October, and in absence of a response or authorization we wouldn't have provided the information.

Q. You think the reference of the first note is, to your query of the 1st of October to Mr. Benjamin, and the fact of that having been responded to?

A. I think so, yeah.

Q. And then a confirmation that the information had not been provided to PC, presumably referring to Padraig Collery?

A. Presumably.

Q. I think with that letter to Mr. Benjamin you also enclosed a copy of a letter which you forwarded to Mr. Collery yourself, which appears to be a sort of holding letter, also dated the 1st of October, 1997. Do you have a copy of that?

A. Yes.

Q. Addressed to Mr. Collery from Maureen Collins: "We refer to your letter dated 20th September, 1997, addressed to Ms. Paula Hartnett. Your authority to receive the information requested in your letter related to Hamilton Ross and Poinciana fund is not apparent to us. Accordingly we have sought authorisation from those entities that it is in order to release the information to you. Yours sincerely Maureen Collins."

A. That's correct.

Q. I think can you confirm to this day that you have never

received a direction from Mrs. Benjamin that you were authorised to release information of this type to Mr. Collery?

A. I really am unsure. I haven't looked over that particular correspondence recently. I don't think so, but I really would have to check.

Q. Well, certainly as of the 9th of October, you had received no authorization by the 9th of October, 1997?

A. Certainly per the note on the actual document, that would appear to be the case. I really am guessing at this stage because I haven't looked at the file.

Q. And then finally if I can bring to your attention a letter of the 26th of September, 1997, which I think is from you to Mr. Benjamin?

A. That's correct.

Q. "Dear Mr. Benjamin, I note that you have recently been appointed to the Board of Hamilton Ross Company Limited. You're probably aware that the operation of your accounts with us was the subject of comment in the recently published report of the Tribunal of Inquiry (Dunnes Payments), a judicial Tribunal set up by the Irish Parliament. The Tribunal found that beneficiaries of the funds held in your accounts with us were, in fact, Irish resident. This is at variance with the non-resident declarations made by Hamilton Ross Company Limited to us on 18th September, 1992, and 16th September, 1997." That's the one we just referred to. "And therefore a matter of

great concern to us. I should be obliged for your urgent comment on this as we are reviewing whether we are in a position to provide further facilities to Hamilton Ross Company Limited. Yours sincerely Tony Barnes."

A. Yes.

Q. I don't know, certainly the documents available to the Tribunal don't include any copies of correspondence by way of response to that request.

A. I think there is I think there was some response subsequent to that which, again, unfortunately I haven't looked at that very closely in the last while, but I think there was some correspondence or some contact indicating that Mr. Benjamin felt that the beneficial owners were still, in fact, non-resident. We didn't accept that that was or was not the case. And given the number of ongoing investigations and inquiries, we didn't act on any further instructions.

Q. You acted on no further instructions after that time?

A. No.

Q. I think the money continues to be on deposit in Irish Intercontinental Bank?

A. That's correct.

Q. It certainly continued to be as of the 30th of November, 1999?

A. Yes.

Q. What do the bank consider is the status of the money that is held on those accounts as of now?

A. Well, I think Mr. Benjamin has agreed not to issue any further instructions on the account, and the status is as it is until the various investigations and deliberations are complete.

Q. So you've had dealings with Mr. Benjamin in relation to this matter?

A. I think the last conversation or contact was back in October or November of '97, where we indicated that pending completion of the various investigations we wouldn't be able to act any further on his instructions, and he agreed not to issue any further instructions until further notice.

Q. So I take it until the work of this Tribunal is complete?

A. Well, I think that and other investigations that are going on.

Q. Other investigations that are ongoing?

A. Yes.

Q. So at the moment money is simply standing on deposit in Irish Intercontinental Bank?

A. That's correct.

Q. What's the position in relation to the funds held in the name of Ansbacher? Do the same apply to those funds that we saw, that there were substantial deposits still held in the name of Ansbacher with Irish Intercontinental Bank?

A. As far as I'm aware those accounts are, as you use the term, "blocked", against loan facility

Q. I think they were

A. I'm not sure exactly the status of those in terms of

responsibility for release of those wouldn't be with me.

Q. I see. Just one further matter that I was wondering have you had any communication with Ansbacher or anybody on behalf of Ansbacher to a similar type of the communication you had with Mr. Benjamin?

A. I'm not involved in dealing with the communication from Ansbacher in relation to the hypothecated type accounts, so I'm not able to answer that question.

Q. Apart from the hypothecated accounts, because I think we saw earlier there were some call deposit accounts still held in the name of Ansbacher?

A. Yes. Since that time there would have been some communication with Ansbacher. Those accounts would have, as far as I know, apart from the ones relating to loan facilities, would have operated, as far as I know, reasonably normally.

Q. What do you mean by "reasonably normally"?

A. We wouldn't necessarily have had the same concerns about them.

Q. You wouldn't have had the same concerns about them arising out of the McCracken Tribunal report?

A. Yes.

Q. And why would that be?

A. Well, we just didn't have the same concerns.

Q. Just in relation to Ansbacher, while you stated you were dealing with Mr. Barry Benjamin in relation to Hamilton Ross, who was the equivalent person that you were dealing

with in Ansbacher since the McCracken Tribunal?

A. That's a good I haven't been dealing with anybody in relation to Ansbacher, because those accounts are related to the loan facilities, they're not I don't deal with the Ansbacher people.

Q. So you only deal, therefore, on accounts on the deposit side not on the loan side?

A. Yes.

Q. Maybe Mr. Reynolds can assist us on that.

A. Possibly.

Q. Just one final matter that I want to return to from this morning as well, Mr. Barnes, and that was, again, the instruction of the 3rd of April of 1997, which was an instruction of the type whereby Mr. Collery requested that you would provide a cheque for €500 and to debit the cost of that cheque to one of the Hamilton Ross accounts. And I think you agreed with me that that particular instruction was far more typical of the instructions which you received in relation to these accounts rather than the interaccount transfer instructions?

A. Certainly an instruction to make a payment out of an account and convert that amount into Irish pounds would have been typical.

Q. It would have been

A. It would have been typical. The actual amount seems particularly low. I wouldn't have thought that that was normal.

Q. Yes, there were very frequent instructions, weren't there, to provide cheques for œ5,000, œ10,000, œ15,000 or perhaps a little more?

A. Yes.

Q. And when we were looking to the cheques payable to BEL Secretarial, there was at least one a month payable to BEL Secretarial throughout the period of the account information?

A. Yes.

Q. That was only one of very many similar instructions; isn't that right?

A. Yes.

Q. And, in fact, the reality is that Irish Intercontinental Bank, as you say yourself, are a wholesale bank; isn't that right?

A. Correct.

Q. In the ordinary course you don't provide current account type facilities?

A. No.

Q. You're not in a position to provide your customers with cash by way of drawings on their accounts?

A. No.

Q. And, in fact, the kind of services you can provide to customers would be similar to the kind of services that formerly building societies could have provided to their clients, it's this type of service, isn't it, that a building society would provide to a customer who held an

account?

A. No, I don't think that's true, that's not the type of service that we would be providing.

Q. No, I accept it's not the type of service you would normally provide, but in terms of the number and volume of instructions to provide cheques which were then debited to these accounts, isn't that similar to the kind of service that a building society would provide to a customer?

A. It's similar to the kind of service that normal clearing banks or building societies would provide, yes.

Q. In fact, it's similar to the kind of services, you say yourself, that a normal clearing bank would provide?

A. Yes.

Q. So that, in fact, if I had had a current account, Mr. Traynor had had a current account, that facility could have been provided with a chequebook, that would be visually equivalent to the actual service he obtained from the bank?

A. Certainly in relation to the Irish pound payments, yes. It's important, actually, also to say that while there were a large number of Irish pound payments, there were also a significant number of non-Irish pound payments.

Q. Of Sterling payments?

A. Sterling and other payments.

Q. But the bulk

A. The bulk would have been Irish, yes.

Q. The bulk of the drawings on the account were in Irish

pounds.

A. I'm not actually sure that's correct.

Q. The drawings from the accounts wouldn't be in Irish pounds

because the accounts were in Sterling

A. What I'm saying is I'm not exactly sure that the majority

of the drawings out of the accounts even into conversion

into Irish pounds, were Irish pounds, if you know what I

mean? I think it was more payments of non-Irish pounds

actually in other currencies after being converted.

Q. But there were also a very large volume, were there not

A. There were a large number of volume

Q. of drawings in Irish pounds?

A. Yes.

Q. Which were made by way of being payable to cheque to Bank

of Ireland or we've seen many of them already?

A. Yes.

Q. This was similar almost to the kind of service that a

retail bank would provide to the holder of a current

account?

A. It would be similar to that, yes.

Q. It would be similar to that.

MS. O'BRIEN: Thank you, Mr. Barnes.

THE WITNESS WAS THEN EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Just one or to two matters, Mr. Barnes. At

the stage you were querying with Mr. Benjamin what was the

status of instructions from Mr. Collery, was a decision made that the bank were not going to take instructions directly from Mr. Collery in relation to these accounts?

A. No, I don't think so. I think we because of the revised instructions that we'd received from the Cayman Islands, it didn't appear he was an authorised signature anymore.

Q. From that time onwards then, do I take it then there were no direct instructions heeded by the bank from Mr. Collery or from Ms. Williams?

A. I'm actually not aware apart from the example that was called, that there were any.

Q. So from the letter that we've seen on the screen, from that time onwards you ceased taking instructions from Mr. Collery and Ms. Williams on these accounts?

A. Yes. On the basis we didn't regard them as being authorised signatures anymore.

Q. All right. It appears then from the balances that were shown on the screen this morning, in the fixed account balances for the 30th of November, 1999, there were three new Ansbacher accounts for relatively small accounts?

A. Yes.

Q. 700, 1,400 and œ1,600 odd?

A. Yes.

Q. Who authorised the opening of those accounts?

A. I'm not sure. I would need to check. I think they would probably be applications of interest from the deposit accounts. I would need to check that. In other words,

they would have been done internally within the bank, not from an external source.

Q. But in any event they weren't fresh accounts being opened by Mr. Collery or Ms. Williams, we can take that as clear?

A. Absolutely, yes.

Q. But probably they're interest accounts being put into accounts

A. Why, I would need I would caveat that, that I would need to check that.

Q. It's possible they were bank accounts opened at your instigation, in other words to have some place to place interest?

A. That's what I think they are, yes. We can check that but I think that's what they are.

THE WITNESS WAS THEN EXAMINED BY MR. COLLINS AS FOLLOWS:

Q. MR. COLLINS: Mr. Barnes, were the day-to-day operations of these accounts handled by persons known as "Junior Account Handlers"?

A. Yes.

Q. They would be relatively junior personnel in the bank, sometimes in the course of training or perhaps shortly after they had received some training?

A. Yes. I think if we look at the range of names on the letters even produced today, I think there was three different names we saw over the course of the day. I think there was about seven, approximately one per year?

Q. And those officers were often given accounts which were high volume and high activity so they would get experience in handling payments and debits and interaccount transfers and so forth?

A. That's correct.

Q. Any one of these account handlers who numbered among the accounts that they were looking after the Ansbacher accounts or the Hamilton Ross accounts, they might have 200 or more accounts that they would be looking after apart from Ansbacher accounts; is that so?

A. That's correct.

Q. Of the payments which were made out of the Ansbacher accounts, would it be fair to say that something approaching half of the payments went to investment-type companies?

A. Certainly from a review of the accounts, the names relating to those accounts would appear to be investment-type companies.

Q. Can you make any estimate of what percentage of the total payments out would have gone to individuals?

A. Certainly in Irish pounds, I think if we take individuals and companies that I wouldn't necessarily know who they were, I think the total was somewhere in the region of 20 percent.

Q. Can I just bring you on to the opening of the account in 1991. The accounts were introduced, you told us, by Mr. Traynor, who was obviously well known to you. At the

time was Ansbacher Cayman a subsidiary of Henry Ansbacher
or do you recall who it was a subsidiary of?

A. I think it was a subsidiary of Henry Ansbacher at the time.

Q. Henry Ansbacher was a London bank?

A. Yes.

Q. Mr. Traynor was the Chairman of Ansbacher Cayman?

A. Yes.

Q. You didn't feel it necessary in those circumstances to get
a banker's reference in relation to Mr. Traynor or in
relation to Ansbacher Cayman?

A. Certainly not, they're in the bankers almanac confirming
their status.

Q. Finally, in relation to the term "wholesale bank", I think
the primary difference between that and a retail bank, a
retail bank would open its doors to customers off the
street to open current accounts, who may maintain small
accounts but maintain a high volume current account
service?

A. That's correct.

Q. Whereas a wholesale bank such as yours doesn't do so?

A. No.

Q. And another practical distinction is, while people in the
retail high scale bank might have small accounts of money,
it only makes sense for a bank like yours to take on board
comparatively larger deposits?

A. Yes.

Q. But once a customer has money with you, you would provide

him whatever service he needs in terms of payments, transfers, interbank transfers, bank drafts or whatever it may be?

A. Certainly, as long as the instructions complied with the bona fide mandate and authorised signatory, we would comply with instructions, yes.

CHAIRMAN: Thank you very much.

THE WITNESS THEN WITHDREW.

JOHN REYNOLDS, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

Q. MR. HEALY: Mr. Reynolds, you're an Executive Director of Irish Intercontinental Bank, and I think you've described your responsibilities as being for the Lending Department of the bank; is that right?

A. That's correct.

Q. How long have you been with the bank?

A. Since 1985.

Q. So you've been with the bank throughout all of the period covered by the evidence given by Mr. Barnes?

A. That's correct.

Q. Now, I take it you'd agree with him that the main business the bank does is wholesale banking and not the type of retail banking that is done by most of the clearing banks through their numerable or innumerable branches around the country?

A. In the sense of personal accounts, yeah.

Q. What do you mean by "in the sense of personal accounts"?

A. The term "retail" is a loose term. By that I mean current accounts, chequebook facilities, cash dispensing, typically for individuals but also for businesses.

Q. You don't give people chequebooks, people can't go in and get cash over-the-counter in your branch?

A. That's correct.

Q. But you provide a service to customers which may entail the customers doing a lot of, if we'll call it, over-the-counter business with you every day?

A. We have as part of our business a home loans business which is retail.

Q. I understand that, but I'm talking about the type of business that was being conducted here, I think as Mr. Barnes said in answer to Mr. Collins, that where a client has a deposit account or an account with the bank, the bank will provide whatever service the client needs to service that account; is that right?

A. Surely.

Q. Even if the servicing of that account in the end turns out to be no different, effectively, to that provided by an ordinary clearing bank giving an over-the-counter service on a regular basis?

A. Yes.

Q. Involving, really, uniquely a large number of transactions in this case; isn't that right?

A. Yes.

Q. You have given evidence or provided the Tribunal rather with assistance, and you can give evidence I think in relation to, apart from general matters obviously, loan facilities secured by Ansbacher/Hamilton Ross and a company called Tristan?

A. Correct.

Q. Or Tristan Securities?

A. Yes.

Q. You say: "In order to deal with the specifics of these loan facilities, it is necessary to set out the background to the introduction of Ansbacher to the bank following which such loan facilities were almost immediately put in place."

And you say that "In November 1997 a Mr. Richard Fennells, Managing Director of Henry Ansbacher & Company, a well regarded merchant bank in London, contacted the then-Chief Executive of the bank, Mr. Patrick McEvoy to introduce one of its subsidiaries, namely Ansbacher. Mr. Fennells was a former Non-Executive Director of the bank." By that I take it you mean a former Non-Executive Director of Irish Intercontinental Bank?

A. That's correct.

Q. "Prior to joining Henry Ansbacher & Company, Mr. Fennells had been a Managing Director of American Express International Banking Corporation, the United Kingdom subsidiary of the American Express Group, and an Executive Director of International Marine Banking, the UK subsidiary of Marine Midland Bank in New York. Mr. Fennells indicated

that the Chairman of Ansbacher was Mr. Desmond Traynor who was well known to the bank by reputation and was a highly and was highly respected in Irish industry being a director of a number of prominent State-owned companies"

I think we heard a number of those mentioned yesterday, Aer Lingus and also of Chairman CLH PLC, and also a former Chief Executive of Guinness and Mahon.

"In recognition of the quality of the introduction, the Chief Executive and a director of the bank met with Mr. Traynor and discussed the banking facilities which Ansbacher wished to obtain from the bank. They consisted in the main of deposit accounts for Ansbacher itself, along with occasional loan facilities for clients of Ansbacher where the credit risk would be guaranteed by Ansbacher by means of a guarantee secured by Ansbacher's deposits."

In other words, the business consists of or would consist of deposits being made by Ansbacher and then the provision of loan facilities to clients of Ansbacher where those loan facilities would effectively be secured or backed by Ansbacher deposits. If we can cut through or make a short-cut through the guarantees you've mentioned. If you have a guarantee backed by a deposit, effectively it's the deposit that the bank is really looking to as the security or the comfort for the loan it's making; isn't that right?

A. From a commercial perspective the security that the stronger security is the cash security guarantee.

Obviously from a legal perspective it's idealistic.

Q. You have a lending or loan facility provided to a client of Ansbacher. That's guaranteed by way of Ansbacher and that guarantee itself is supported by a cash deposit over which you have some control, whether that deposit is in your own bank or elsewhere?

A. Yes.

Q. The bank satisfied itself that Ansbacher was a properly constituted bank licensed in the Cayman Islands, and the necessary documentation was completed in respect of the opening of accounts by Ansbacher, which included the furnishing of a Certificate of Incorporation, Memorandum and Articles of Association, mandates, Board resolutions and list of directors and officials authorized to sign in respect of the accounts. Ansbacher commenced operating deposit accounts with the bank in January of 1991. So as far as you were concerned and as far as the bank was concerned, this was a perfectly acceptable client coming to you by way of introduction from a person whom you trusted and whom you believed to be a reputable banker,

Mr. Fennells?

A. That's correct.

Q. You satisfied yourself that the bank itself was a properly constituted and licensed bank in the Cayman Islands, and you went through all of the normal checks and balances to protect yourself to ensure that you were dealing with a regular and properly constituted entity?

A. That's correct.

Q. And you had the additional guarantee that you were dealing with what you believed to be a reputable person with a very high profile as a respected member of the business community in this country?

A. Correct.

Q. And you were also getting what I presume was a very good bit of business, in that at the end of the first year that you were dealing with this bank, you had 21 million pounds on deposit from the bank?

A. That's correct.

Q. You say almost immediately after the establishment of the relationship between the bank and Ansbacher in November of 1990, Mr. Traynor asked the bank to put in place a facility for a client of Ansbacher, I don't want to mention the client's name, but it was a property company which was an Irish company.

"This facility by way of loan given to the borrower would be secured by a guarantee from Ansbacher which in turn would be secured by a cash deposit. In this particular case Mr. Traynor directed that the cash deposit in this particular case Mr. Traynor directed that the cash deposit backing the guarantee should be placed on deposit with a bank outside Ireland in order to ensure as much control as possible, IIB suggested that the deposit should be placed with its parent company Creditte Bank in London, and this was acceptable to Mr. Traynor.

Following Credit Committee approval, the facility was put in place, the structure of which can be summarized as follows:-

IIB agreed to provide a loan facility to a client of Ansbacher, which was a corporate entity within this jurisdiction." So IIB is going to give a loan to a property jurisdiction in this country?

A. That's correct.

Q. That loan was backed by a guarantee provided by Creditte Bank in London. That, in fact, was your parent company in London?

A. That's correct.

Q. That guarantee was a security for the amount of the loan facility, and included some top-up for interest as well?

A. Correct.

Q. Creditte Bank, your London parent, would obtain a guarantee from Ansbacher for the amount of the facility. So in order to give you a guarantee, they obtain account indemnity or account guarantee from Ansbacher?

A. Correct.

Q. Ansbacher in turn would give Creditte Bank in London a lien over a cash deposit placed with it on Mr. Traynor's direction, equivalent to the amount guaranteed by Ansbacher?

A. Correct.

Q. So if we can, for the moment, just for ease, remove the reference to the guarantees, you were loaning money in

Dublin to an Irish company and the security ultimately for that loan, if anything went wrong with it, was a lien you had via a number of guarantees over a deposit of monies made by Ansbacher in London?

A. Ansbacher, correct.

Q. You said the bank then arranged for its documentation department to operate the appropriate contractual documentation sorry, "The bank then arranged for its documentation department to prepare the appropriate contractual documentation to ensure that the necessary security was in place and that it was enforceable. As part of this process a facility letter was drafted, based on the information contained with the formal Credit Committee approval and sent to Mr. Traynor for his approval.

The facility letter included a security clause which referred to the security being provided by Ansbacher.

Mr. Traynor then asked if the reference to security could be deleted from the security letter in its entirety. The bank was not prepared to accede to this request. It was essential for the bank that there was an acceptable reference to security within the security letter and, therefore, the bank sent a further facility letter to Mr. Traynor which incorporated an alternative form of wording for the security clause which would still protect the bank's position. This wording was accepted by Mr. Traynor and the wording was as follows:-

Any and all indebtedness or liability of the borrower to IIB is to be secured, et cetera, et cetera, and such security in such form as shall be required by IIB at its absolute discretion from time to time."

I have the actual security letter which can be put on the overhead projector. If I can just go through the mechanics once again.

The application for credit would in the first instance be considered by the bank's Credit Committee?

A. Correct.

Q. At the Credit Committee some note or memorandum of the purpose of upon application of the loan being sought, the type of security being offered, the term and so forth would be discussed and some minute made of the decision of the Credit Committee approving or disapproving, in this case approving of the loan, and adding any terms that had not been mentioned in some memorandum to the committee or some such procedure?

A. That's correct.

Q. And that arising out of that procedure the bank would then write to its customer indicating the terms upon which it was prepared to make the loan available?

A. That's correct.

Q. And in this case a facility letter was sent to Mr. Traynor, and that facility letter included a security clause which described the security probably some in terms somewhat

along the lines that we discussed a moment ago when you identified the various elements of the loan?

A. The different items, including the specific Ansbacher security.

Q. So the security clause, it's not the one that's on the overhead projector now, but the security clause would have described the fact that the loan was being backed by guarantees provided by Creditte Bank which, in turn, were being secured by or supported by a guarantee from Ansbacher supported by a deposit?

A. Words to that effect.

Q. Or words to that effect. And Mr. Traynor then contacted the bank and said "Could you delete any reference to the security from the facility letter?" Just to be clear about this, I don't think he was suggesting the security would disappear, he just didn't want it to appear on the security letter; isn't that so?

A. It would appear so.

Q. Now, the Tribunal, in the context of other operations conducted by Mr. Traynor, has seen security letters which do not mention the actual security being provided in the case of loans approved by or, if you like, arranged by Mr. Traynor for clients of his or for persons associated with clients of his. And in the context of Mr. Traynor's activities in Guinness and Mahon, you may be aware that evidence has been given that where a loan was backed by a security provided by Ansbacher, the Credit Committee

approval or memorandum would contain no reference to the Ansbacher deposit supporting the loan, and a code reference or coded expression such as "suitably secured" or some similar expression you may be familiar with some of that evidence in general. In those cases, Mr. Traynor would then omit any reference to that in the security letter.

There may be a reference to some other security but the actual security would not be referred to in the letter. In this case he wanted your security letter to contain no reference to any security?

A. That seems to be the case.

Q. You were not satisfied to accede to that request, for perfectly obvious reasons; if at the end of the day, if push ever came to shove, you were going to have to rely on a contract and the contract or agreement between yourself and Mr. Traynor was what was going to be obtained in the facility letter?

A. And the contract with the borrower.

Q. Of course, yes. And the facility letter is an offer, effectively, to a customer or his agent, to make a loan on certain terms, and they usually, or facility letters usually provide that the customer or his agent would sign the letter to indicate his agreement or his approval of the terms?

A. Correct.

Q. Now, what Mr. Traynor was asking in this case was for a letter which would contain a reference to the loan but

which would contain no representation indicating the basis of the security for the loan, and in particular the reference to Ansbacher?

A. Correct.

Q. Apart altogether, and this, of course, has nothing to do with your bank, apart from the fact that your bank would be left in a slightly exposed position if that were the case, the document would also contain a misrepresentation; isn't that right?

A. How do you mean?

Q. It would enable anybody uttering or using the document for any purpose to give the impression, whatever security was in place, if there was any place, there was no mention it didn't make any reference to Ansbacher?

A. Wouldn't reflect the additional security.

Q. The true nature of the arrangement would not be apparent from the face of the facility letter?

A. Correct.

Q. And so the bank decided that they wouldn't remove all references to the security, but they indicated that they would try to come up with an alternative form of wording for the security clause which would still protect the bank's position?

A. Correct.

Q. And the alternative form of wording was the wording that I read out a moment ago, and which is now on the screen, it's on if we could just have the full letter for a moment,

the front page of the letter just for a moment. The letter is addressed to the company in question, I think, and it's for the attention of Mr. Sam Field-Corbett, who was the individual dealing with this as a conduit to Mr. Traynor, and it's dated the 21st of January, 1991, and it confirms the willingness of the bank to provide a facility on certain terms. And the terms including interest are then set out and at paragraph 5 or Item No. 5, the security is described as: "All and any indebtedness or liability of the borrower to IIB is to be secured by the guarantee of Mr. Blank and such other security in such form as shall be required by IIB at its absolute discretion from time to time."

The bank's position, you go on to say, is that there was nothing strange or unusual about negotiating the terms of documents such as the facility letter, and provided the bank's security position was adequately protected, the bank had no difficulty in altering the security clause.

"The security clause in question was commonly used in this jurisdiction by reputable financial institutions. The clause was particularly flexible, particularly when lenders were dealing with borrowers who provided security by way of guarantee, guarantor letter of credit. This type of security clause provided flexibility and enabled lenders to provide facilities without having to continually amend security agreements as facilities changed over the life of

a facility.

In addition, this type of security clause was drawn very much in favour of the lender, and for that reason was very much favoured by lenders when drafting loan agreements and facility letters. This was particularly so during the 1980's early 1990s and the banking sector was less competitive and was and it was more likely that this type of clause would be agreed by a borrower.

Furthermore, it must be remembered that there was no reason for the bank to have any concerns that this request was anything other than part of the normal negotiation process with regard to the contractual documents as part of the lending structure. This was particularly so when the borrowing company was owned by a prominent and well-respected businessman within the jurisdiction.

Equally, the request was made by Mr. Traynor who was, in the view of the bank and in the view of the business and State sector, generally a man of high repute. Similarly, the request was made on what was a well-respected and reputable banking institution, namely Ansbacher, which had been well introduced to the bank in the circumstances referred to above."

Now, I think what you're saying is that the bank's willingness to change the terms in which the security was described was nothing strange. You're saying that there was nothing unusual about negotiating the terms of

documents such as facility letters, and provided the bank's security position was adequately protected the bank had no difficulty in altering security clauses.

Now, I understand, I appreciate that if a bank is negotiating a loan, then the security to be provided may be a matter of debate or discussion or negotiation between the bank and its customer. And a customer may be prepared to provide X security and the bank may want 2 X, if you like, or a customer may be prepared to provide 2 X but the bank want 2 X and may be something else down the road, if it feels conditions were changing, or the bank may want a degree of flexibility that the bank is not willing to give and so forth, but in this case the terms of the loan had already been agreed, the basis upon which the security was going to be put in place had already been agreed; isn't that right?

A. Correct.

Q. What was at issue where Mr. Traynor was concerned was not the security or the nature of the security, but the words that would be used to describe it; isn't that right?

A. That's correct.

Q. So the bank were quite happy with the security being provided by Mr. Traynor?

A. Correct.

Q. They were happy with the Ansbacher deposit. After all, the loan was cash-backed, you had cover for the loan and for the interest. If anything happened you could look to that

cash. There would be no troublesome or tedious litigation trying to enforce your security, it was the best security you could want?

A. We could rely on the bank guarantee.

Q. In terms of risk, there was no risk, because you were looking to a security equal in terms of account and accessibility to what you were losing in the loan terms; isn't that right?

A. Apart from documentation, that's the case.

Q. I appreciate that. You would have had to seek to enforce the guarantee against so-and-so who would have enforced it against so-and-so, but nevertheless when you went through the various steps in the enforcement of the security there was no tedious as long as the documentation was valid and correct?

A. Yes.

Q. And Mr. Traynor wasn't saying to you or to the bank, "Look, I don't want to provide this security." He was saying, "I do want to provide this security but I don't want it mentioned." That was his first gambit or his opening gambit?

A. Well, I don't know in gambit terms, I don't know, but specifically he was asking for the wording to be amended.

Q. Well no, his first request was that there should be no security clause?

A. That's right.

Q. That's the first. When I say "opening gambit", what I mean

is that at this stage the deal had been done, there was no negotiating the terms of the deal, it was the words that were going to be used that were being negotiated?

A. Correct.

Q. From the bank's point of view, all the bank wanted was a form of words that would protect it in the event of it wishing to enforce this agreement if any trouble arose down the road; isn't that right?

A. Correct.

Q. And the bank didn't want to be faced with a situation where somebody might say there may be a security in place, but you have no agreement to look to it, and in fact you agreed to delete it, and Mr. Traynor agreed that you could put in an alternative form of wording which provided that the borrowing was to be guaranteed by a particular individual and "such other security in such form as shall be required by IIB at its absolute discretion from time to time."

Now, to make that effective, I suppose, IIB had to arrange for the security actually provided to be put in place?

A. Prior to disbursing the money, yes.

Q. So that could be seen to be the security at which its discretion the bank had sought to be put in place pursuant to the terms of the agreement?

A. Correct.

Q. But the letter, nevertheless, enabled or would enable Mr. Traynor or the borrower to give an impression that there was a loan which was not backed in the way in which

it was, in fact, secured; that in this case it was secured

by a deposit; isn't that right?

A. That wasn't apparent in the letter.

Q. It wasn't apparent. So if somebody if an independent third party looked at this letter, it wouldn't be clear to that person that Ansbacher had provided this security?

A. Not that Ansbacher had, no.

Q. Now, you say that you saw you had no concern about this, and you think it was reasonable for you to have no concern about it because you were dealing with a reputable person?

A. Correct.

Q. If you hadn't been dealing with a reputable person, is it something that would have caused concern?

A. Of course, that and the entire transaction would have been a cause of concern, obviously.

Q. So what would your concern have been but for the standing of the people you were dealing with?

A. In relation to the request in the clause

Q. In relation to the request of the wording of the clause?

A. In relation to that clause and in relation to the entire loan, the concern would be that the bona fides behind the transaction

Q. So but for the standing of Mr. Traynor, you would have looked askance at a request that you change the wording in this way?

A. Two circumstances. Mr. Traynor's standing and the fact that we were lending to a company whose principal was

somebody, again, of prominence and repute.

Q. Yes. But from what you say, am I right in concluding that but for the standing of those individuals, you would have had a concern that this was a somewhat unusual request and that's what you're seeking to explain in your statement?

A. Our response to that request was entirely informed by the people we were dealing with.

Q. Yes. You felt that they had some reason for making this request which, because of their standing, must have been a good reason?

A. Correct.

Q. Because but for that, one would have to be somewhat concerned, or at least one might look at the arrangement as somewhat irregular, I won't say "improper" but certainly irregular, that a borrower would want the wording of a facility letter changed so as to not reflect the true nature of the security?

A. Ideally we wouldn't have got to the stage of issuing an offer letter if the people we were dealing with weren't satisfactory to us, but in the circumstances we had we would be more cautious about that.

Q. In other words, did you give the borrower the benefit of the doubt that there was nothing irregular here because the borrower was a person of such repute, that's my point?

A. That's correct.

Q. You go on to say: "The original facility granted to this corporate borrower was two million Sterling, this facility

subsequently reduced to 1.35 million, and this facility is still outstanding. Once the formal facility clause had been negotiated for the facility it was repeated in nearly all subsequent facility letters where facility was and subsequently Hamilton Ross. I will now provide a general description in relation to those subsequent facilities."

I think what I'll do at this point, Mr. Reynolds, although it may cause some inconvenience to you at a later point, I won't refer to a number of these facilities because the companies in question have not had full notice of all of the relevant documentation. So if I could pass on in your statement to your reference to Kentford Securities, and to the bank's dealings with that entity.

You say that: "In April of 1981 the bank was asked to provide a facility to Kentford, and the bank was aware that Mr. Traynor was a director of this company. The bank agreed to provide a guarantee to the Bank of Ireland as security for a guarantee given by the Bank of Ireland on behalf of Kentford. The guarantee was for the sum of 40,000. The facility letter was drafted from the Credit Committee and the security clause specifically referred to the fact that a guarantee from Ansbacher would be provided as security and this, in turn, would be supported by a lien on a deposit of Sterling 50,000 to be placed by Ansbacher with the bank. Mr. Traynor made no subsequent request for the wording of the security clause to be changed."

Can you, even in retrospect think of any reason why there was no request for a change in the security clause in that agreement by comparison with the request made in the case of the earlier two million pound facility?

A. Without speculation I couldn't. The only distinction between that company and the other borrowers was apparently that was Mr. Traynor's company.

Q. Well, it was a company under his exclusive control?

A. Yeah.

Q. "In April of 1992, the period of the facility was extended until the 30th of April, 1993, then in April 1993 the facility was reduced to 25,000 and the period of the facility was extended to the 30th of April, 1994. In September of 1993 Hamilton Ross replaced Ansbacher as the guarantor of this facility, and similarly the deposit backing the facility was then placed by Hamilton Ross instead of Ansbacher. An amended facility letter was issued which referred to the guarantee and the backing deposit of Sterling 30,000 being provided by Hamilton Ross. In May of 1994, the period of the facility was extended to March of 1995. On the 27th of April of 1995, the bank received a letter from the Bank of Ireland confirming that the Bank of Ireland was no longer relying on its guarantee and therefore the bank's liability was duly discharged."

The last matter mentioned in your memorandum refers to an

inquiry that the bank received from the Western Australia Police Authority. And you say that you've been asked to give evidence in relation to inquiries received by the bank from the Western Australian Police Authority and the steps taken on foot of that inquiry. You say that having reviewed the files you note that the bank received a fax from a Mr. Joseph Lieberfreund on the 20th of December of 1991, in which he confirmed that he was a chartered accountant working for the West Australia Solicitor's office which was investigating the collapse of a merchant bank in Western Australia, and the activities of the merchant bank's former Chairman. The bank provided a copy of this inquiry to Mr. Traynor who copied the bank with a response to his inquiry. The bank also gave Mr. Lieberfreund an address for Ansbacher. No further action was required by the bank.

I think what happened, in fact, was that the inquiry went to it was in relation the inquiry arose in the manner in which it arose because of a confusion over accounts between two banks with similar names; is that right?

A. Beyond what's there, I don't know.

Q. Well, you refer to a copy of the letter that Mr. Traynor gave to you, and I think in that letter Mr. Traynor confirmed that what had occurred was a confusion over names, if my memory serves me right?

A. You may be right. I don't recall.

Q. Mr. Reynolds, on the overhead projector a moment ago we had an indication of the movements or increases or decreases, as the case may be, in the size of the Ansbacher/Hamilton Ross account balances at IIB between 1991 year-end and the 30th of November, 1999. Can you see those on the overhead projector?

A. Yes.

Q. Or on the monitor in front of you? You'll see that the major change in the balances occurs in 1997; isn't that right?

A. That's right.

Q. So that whereas at the beginning of that year there was some 17.66 million on deposit, by the end of that year, the balance was down to 2.181 million?

A. Correct.

Q. So that during that year most of the funds on deposit were moved out of the bank?

A. Correct.

Q. Do you know, and I may be getting some assistance now to indicate when this occurred, but do you know when this occurred, when the movement occurred?

A. No, I don't.

Q. The bank has provided the Tribunal with all of the relevant bank statements in which some of the information on the overhead projector has been extracted, and you may not have had the benefit of examining these documents. But I simply want to take you through them, and you may take it that

what I'm going through is the documentation provided to the Tribunal by the bank, and what I have in front of me is the Hamilton Ross GBP account, which is the account with an address on Winetavern Street in Dublin for the year 1997.

The balance on that account on the 22nd of April of 1997 was 4.071 million. There was an amount of activity on that account during the year, so that the balance went down to as much as 50-odd thousand pounds. And then up to quite substantial figures, up to 8 million at one point. But by the end of February it was of that year, it was down to I don't think it's going to be possible without delaying the work of the Tribunal too much to do this at this point, Mr. Reynolds, because I'm not sure I have all the relevant documentation. But it would appear in any case that during that year, which was the year of the McCracken Tribunal, the substance of the account was effectively removed from the bank; isn't that right?

A. Okay, yes.

Q. And what was left appears to have been informally frozen, at least where the Hamilton Ross end of it is concerned?

A. Yes.

Q. In that Mr. Barry Benjamin has, as I understand it from the last witness, agreed that he will not issue any instructions on the account pending the completion of investigations in this jurisdiction?

A. That's my understanding.

Q. Which is a somewhat unusual situation to find yourself in

as a banker, isn't it? That someone agrees for no reason connected with any order of any court not to interfere with his account?

A. This has become a very unusual situation.

Q. Could I suggest to you, with hindsight, that the whole account is a very unusual one from the very beginning, now that you have all the information that you didn't have when you were first dealing with Mr. Traynor?

A. Sitting where we are today, it has an unusual history.

Q. An account which started with a reputable person asking you to provide loan facilities and suggesting that the terms under which those loan facilities were being provided would be altered, not that the actual security would be altered, but that the description of it would be altered, that if you take that as a starting point, with the benefit of all the knowledge you now have, you might not be so happy to have gone on dealing with the individual in question?

A. You can take it we wish we weren't here.

Q. Yes, fair comment.

Thanks very much.

THE WITNESS WAS THEN EXAMINED BY MR. QUINN AS FOLLOWS:

Q. MR. QUINN: As I understand the arrangement as outlined by you to Mr. Healy in relation to these loans, you had a situation whereby you were asked by Mr. Traynor on behalf of property companies to make advances to those companies in circumstances where those advances were secured in the

first instance and primarily secured, as I understand it, by the deposit of monies which were available to you in the event of the monies advanced not being repaid by the borrower; is that correct?

A. Ansbacher monies were available as security.

Q. Yes. Now, that would seem to imply then that the borrowing company, property company, had available to them the monies which were there to back those monies which they were borrowing?

A. No. It implies that the borrowing companies had the facility with Ansbacher, where Ansbacher was prepared to guarantee the property company's loan in question.

Q. They weren't just guaranteeing them, they were actually putting on deposit monies equal to or greater than the monies that were being borrowed; isn't that right?

A. That's correct. Otherwise the guarantee of Ansbacher wouldn't have been acceptable.

Q. I understand that. But doesn't it appear curious to you that the borrower wouldn't go directly to Ansbacher and take the monies that were being put on deposit to secure the borrowings from you?

A. That didn't appear to be possible for Ansbacher.

Q. Sorry?

A. That didn't appear to be possible.

Q. Did you ever investigate with Ansbacher why they didn't advance those monies directly to the borrower?

A. No.

Q. Did it not appear curious to you that that wouldn't have occurred?

A. It wouldn't have been unusual to us to have bank guaranteed facilities provided to companies.

Q. Would those be in circumstances where those companies themselves had the money on deposits with the other banks?

A. No.

Q. What advantages would there be to a company in borrowing from you, if they had available to them the similar amount of borrowings elsewhere?

A. I don't know the answer to that. I know that in this case Ansbacher were prepared to write a guarantee supported by its cash in favour of the bank to facilitate us providing a loan to these companies.

Q. Of course in the case of borrowing borrowings by a property company during this period, the interest paid to you on those borrowings would be deductible as an expense; isn't that right?

A. I presume so.

Q. And would reduce their profits and accordingly reduce any liability to tax?

A. I assume so.

Q. In relation to the negotiations that you had with Mr. Traynor on the facility letters as outlined by Mr. Healy, did you ever, in any of your facility letters to these various property companies, prior to Mr. Traynor's time or in respect of non-Mr. Traynor business in

Mr. Traynor's time, did you ever record the true nature of the security, namely the guarantee by the other banks?

A. Sorry, in other loans did we use this form of wording or did we not use it

Q. Not this form of wording, but did you ever reflect the true nature of the actual security?

A. I think as we described in our original letter to the borrowing company in question, we detailed the security that was in place, and at Mr. Traynor's request that clause of the letter was amended, and the the original draft letter that went out was, if you like, the was typical of the facility letter we would send out to other companies.

Q. So can I take it that in the case of Mr. Traynor's borrowings, if I can call them that, in respect of property companies, those borrowers would have actually received two letters from you, whereas other borrowers would have received just one letter showing the actual security?

A. No, sorry. What happened is in this particular case, which was the first transaction, a letter went out which was intended, as far as we were concerned, to be the facility letter, and

Q. Taking that letter, did

A. That was the letter

Q. did that letter contain the true nature of the security?

A. The reference to the it contained the reference to the

Ansbacher quote, yes.

Q. And the fact that there were monies on deposit in Ansbacher to guarantee the security?

A. It probably did.

Q. Then a second letter was requested and the contents insofar as the reference to security is concerned was the subject of some negotiation, and the compromise was the paragraph which we have seen here in relation to the security?

A. Correct.

Q. Did that negotiation in relation to that second letter, did that not seem unusual or curious to you? That you would, first of all, be asked to revise your facility letter, and secondly that you would be asked to revise it so as to not make any reference to the true nature of this primary security, namely the monies on deposit in Ansbacher?

A. The two questions, firstly it's very common to revise a facility letter with borrowers and with guarantors. Second question, in relation to the specific request from Mr. Traynor, as we discussed earlier, our response to that was predicated by the context with which we found ourselves, which was we were dealing with a reputable company which happened to be a property company and with Mr. Traynor. So in that circumstance we were prepared to accept the proposal.

Q. But presumably you would have known, in issuing that second letter, that other people other than the company might come to see the letter or view the letter?

A. We wouldn't have been conscious of that.

Q. That it was well, presumably there would have been no necessity, if you had already sent out a letter, to revise the letter?

A. Well but by the same token the letter was only of use to the transaction if it was accepted, and if the letter in the form it was sent out wasn't acceptable

Q. But how could a term which adequately reflected the nature of the security, how could a company object to a letter containing that term?

A. Well, it in this case Mr. Traynor was requesting it to be changed for his own reasons and, as I say, given our perspective on Mr. Traynor, and probably secondly the company, we were prepared to accede to that.

Q. Did you ask Mr. Traynor his reasons for watering down the terms of the facility?

A. I understand we didn't.

Q. In hindsight do you think it unusual that you wouldn't have asked Mr. Traynor why he wanted no reference to the Ansbacher deposit in the security facility, that second facility letter?

A. In the context that I've described, I don't think it was our response to Mr. Traynor was unusual.

Q. Was his request of you an unusual one?

A. It certainly it wouldn't have been the normal negotiation, but it would have been there would have been facility letters prior to that which would have the

same wording.

Q. So there were other facility letters with this wording?

A. There have been, yes.

Q. Would that wording reflect the same security as in this case?

A. Typically they would have been relating to bank guarantee facilities.

Q. Where monies were on deposit?

A. No.

Q. Well, therefore, I was it normal for Mr. Traynor to ask you to revise your facility letters?

A. The specific incident, which as I understand took place in a short phone call, arose from the original facility letter that was issued pursuant to the first credit application, that was the event. My understanding is that subsequent to that particular facility letter being issued and accepted, there were no negotiation of the offer letter, so that that, if you like, negotiation was the extent of the negotiations with Mr. Traynor on the format of the offer letter that was used for his clients.

Q. So therefore could we take it from that, that in subsequent similar type advances that

MR. HEALY: If I could just interrupt here for a minute.

I'm not quite sure what interest the Revenue could have.

But in fairness to this witness, we did exclude reference to other companies where there may have been similar

arrangements because those companies are not on notice, and I don't think it would be right if that evidence were to come out now under examination by the Revenue Commissioners when it's been decided to exclude any reference to those entities today because they simply are not on notice that they could be mentioned.

CHAIRMAN: I certainly accept, Mr. Quinn, we can't go into particular cases that are comprised in the statement that's been served on you.

Q. MR. QUINN: I'm not seeking to do so, Mr. Chairman. I'm just talking about the general situation.

Without going into any specifics, in subsequent advances, similarly backed, did the facility letters go out similar to the first facility letter in this case or carrying the amended security clause that is identified here?

A. I've given evidence that the that the once that facility letter was negotiated for the company in question, that was the basis on which subsequent facility letters were issued.

Q. So when you said that Mr. Traynor didn't ask you subsequently, he didn't have to ask you because it was agreed between you that subsequent facility letters would carry that

A. Well, to the extent that the negotiation had taken place in respect of the facility, there was no need to renegotiate the thing.

Q. So what really was renegotiated was not just the facility letter in relation to this particular advance, but facility letters generally in relation to similar type advances?

A. At the point in time when the facility letter was negotiated, there was just one facility on the horizon and we were dealing with that. Subsequently, as would be the case in any related transactions, there was a precedent and that was used, and it wasn't a matter of deliberation by the bank.

MR. QUINN: Thank you very much.

THE WITNESS WAS EXAMINED BY MR. COLLINS AS FOLLOWS:

Q. MR. COLLINS: Mr. Reynolds, is it correct to say that loan facilities issued by your bank or any bank which are secured by a guarantee from another bank are a common feature of the banking world?

A. Correct.

Q. Is it correct to say that there are many other transactions in which your bank is involved and other banking transactions of which you would be aware, which are so secured?

A. Correct.

Q. Is it correct to say that it's a common feature of banking transactions that a borrower would seek to negotiate or renegotiate the terms of the facility letter?

A. Correct.

Q. Your concern first and last, I take it, was to ensure that

contractually you had the proper security and the entitlement of the security that you were borrowing for?

A. Correct.

Q. Mr. Traynor wanted no reference to security in the facility letter; isn't that so?

A. That's correct.

Q. And that facility letter would record the terms of your contract?

A. Correct.

Q. And you had the concern that you wouldn't, therefore, have an enforceable right in terms of enforcing the security unless the facility letter gave you that right?

A. Correct.

Q. Your primary objective was to ensure that while accommodating the customer as far as you could, first and foremost you would have an enforceable right to security?

A. Correct.

Q. The term of the security or the facility letter which was put in place referred to the fact that there was to be a guarantee, I think from the promoter of the company who was the borrower, and any other security that the bank required?

A. Correct.

Q. And that gave you the necessary assurance and the necessary degree of certainty as of the enforceability of that other security?

A. Yes.

Q. That other security was, in fact, wholly and exclusively the guarantee from your own parent bank?

A. Correct.

Q. You had no further entitlement in relation to either the money on deposit in London or a lien on that money or anything of that sort. You had no rights good, bad or indifferent to that. Your own security was the guarantee from your own parent bank in London?

A. That's correct.

Q. It was then a matter with Creditte Bank that they had, in turn, the security of the deposit that was placed with them and the lien or charge that they had over it.

A. That's correct.

Q. It was obviously a commercial concern globally, if I can put it that way, to ensure that all of that structure would hang together and would be legally enforceable?

A. Correct.

Q. Your facility letter, so far as you knew, gave you all of those rights that you needed.

A. Correct.

MR. COLLINS: I'm going to ask this witness, unless another witness is proposed to be called in relation to certain legal advice pertaining to it, if they're going to deal with it in another witness?

MR. COUGHLAN: Mr. Donlon is going to be called oh, no.

MR. COLLINS: I know Mr. Donlon is going to be called

MR. HEALY: No, Sir, I decided not to call him.

CHAIRMAN: If we can save the duplication, if Mr.

Collins

MR. HEALY: I didn't see any reason to go through it. We've been provided with all of the documentation and we fully accept that the bank sought advice on the formal wording used, which is true, and we've been provided with all of the documentation.

MR. COLLINS: Perhaps I can deal with it briefly.

CHAIRMAN: I think it's preferable that you do so.

Q. MR. COLLINS: Mr. Reynolds, when this proposal was put forward by Mr. Traynor in the spring of 1991 you sought legal advice from a firm of solicitors in London in relation to the transaction?

A. In the first transaction we didn't to the extent that the Creditte Bank used London lawyers to perfect their security. In a subsequent in the immediately subsequent transaction, because at that point it became apparent there was going to be another transaction, we provided all of that documentation to these London lawyers.

Q. Yes, you're quite right. Subsequent to the first transaction that we've been dealing with, there was a second similar type transaction put forward by Mr. Traynor

and it appeared and turned out to be the case that there were a sequence of such transactions all using the same documentation?

A. Correct.

Q. So you went to Creditte Bank's London solicitors and you furnished them with all that copy documentation?

A. Correct.

Q. And you asked them to review the documentation, and in particular to advise you as to whether the charge on the deposit was effective as security for the loan facility?

A. Correct.

Q. And you got back a written opinion from the London solicitors in which they advised that it was effective and it was in order?

A. Correct.

Q. And they raised no concerns with you on the wording of the facility letter or otherwise in relation to the transaction?

A. Correct.

Q. You were asked by Mr. Quinn as to whether this was an unusual transaction or out of the normal, perhaps with the benefit of hindsight. But even with the benefit of hindsight, and leaving aside what is undoubtedly unusual, which is that a normal banking transaction producing the chain of events that these and other events have produced, leaving that unusual aspect of it aside, even now with the benefit of hindsight, would you tell the Tribunal whether

you consider there was anything unusual or abnormal about the facility that was put in place backed by a guarantee from your parent bank in London?

A. No.

Q. I take it that the Credit Committee which approved the loan in the bank must have known of the fact of the bank having the benefit of the guarantee from its parent in London?

A. That was fully spelled out.

Q. And insofar as Mr. Healy suggested to you that you were given the benefit of some doubt to the borrower, is it the case that there was no doubt the benefit of which was to be given?

A. Correct.

Q. And finally, the security which was put in place, and in turn the security which your parent bank in London took, namely the deposit and the lien and so forth, is fully documented in the bank's file; isn't that so?

A. That's correct.

Q. So that if, as Mr. Quinn was suggesting, anybody were to come and were to investigate and look into the bank's files to see what occurred, all of the detail of it, including the London connection and the deposit in London and the charge over the London deposit, is all there on the bank's records; isn't that correct?

A. That's correct.

MR. COLLINS: Thanks very much.

CHAIRMAN: Would it be right to say, Mr. Reynolds, that to a third party who might be reading the facility letter such as that of the 28th of January, 1991, and saw the reference to security to such a person, there might be certain elements in common with the older formula that we heard of, of describing a security as "considered adequate", in that there do appear to be elements of it being a further security beyond the guarantee being (A) undisclosed, but (B), sufficient to reassure the bankers in the case?

A. Yes.

MR. HEALY: Just one or two matters, Sir.

THE WITNESS WAS THEN FURTHER EXAMINED BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Just to clarify something, Mr. Reynolds. I had the impression from what you said to me when I was taking you through your statement, was that while the transaction in question was one which was perhaps complex, it was not an unusual one, but that what was unusual about this matter was not the transaction but the fact that Mr. Traynor requested that a reference to the security and to the identification of Ansbacher be removed. I understood you agreed with me that that was an unusual request?

A. I can't, at this point, recall

Q. Would you agree now with me that that was an unusual request, for somebody to say to you, "I want you to remove

the reference to security in the letter", that is

definitely an unusual request, isn't it?

A. Okay. Yes.

Q. You would not do that. And the next request was to ask you

to remove any reference to Ansbacher or to produce an

alternative form of wording which would remove reference to

Ansbacher. Is that not an unusual request?

A. It wasn't a typical concern of guarantors.

Q. What Mr. Collins said to you was, there was nothing unusual

in this because the security you were looking to was a

guarantee from your own parent bank, Creditte Bank, that's

all you had?

A. What I understood he was asking, was it unusual to be

was the dialogue with Mr. Traynor unusual, and that

negotiation wasn't unusual.

Q. We'll just tease it out a little. Firstly, I think Mr.

Collins put to you, this is a simple matter from your

bank's point of view, that is the entity in Dublin, IIB,

was relying on a guarantee of Creditte Bank, as simple as

that?

A. That's the transaction.

Q. Why doesn't the doesn't the letter say that?

A. The original letter did.

Q. This letter doesn't

A. Because Mr. Traynor requested it be amended and we agreed.

Q. This letter doesn't say what it is your bank was relying on

a guarantee from Creditte Bank, it doesn't say that?

A. Right.

Q. Why doesn't it say that? Why doesn't it say something as simple as that, "Security guarantee of Creditte Bank", just that, nothing else?

A. The original or the first issued letter to in this case, as I understand it, included a reference to the security, and as we've been discussing, the clause in question was requested by Mr. Traynor to be amended.

Q. It didn't just refer to the security consisting of the guarantee of Creditte Bank, it referred to the fact that the Creditte Bank guarantee was backed by an Ansbacher deposit, that was the offending part of the document where Mr. Traynor was concerned; isn't that right?

A. At this point I don't know.

Q. Isn't that what I think you said in your Memorandum of Evidence, and I think that was the clear impression I had, as I think anyone in this room must have had, that the offending part of the document was the reference to the backing deposit of Ansbacher?

A. True.

Q. Now, you did, of course, seek the advice of your solicitors on the form of wording you were going to use in this case, and it is true to say that you had quite a lengthy correspondence with solicitors in England and with solicitors in the Cayman Islands concerning various aspects of the transaction, including the wording of the reference to security. That's right?

A. Correct.

Q. But at no point, am I correct in saying, did you say to your solicitors, "Look, we've been asked to remove any reference to security and we didn't agree to that, and in addition to that, we've been asked to change the wording, and it seems somewhat unusual, but do you think we should do it?" You never asked your solicitors that question?

A. No.

Q. And that's what was unusual about this transaction, the fact that the true nature of the transaction, of the whole transaction, was not going to appear on the face of the documents; isn't that what was unusual? Nothing else was unusual about the transaction?

A. No, that aspect is different.

Q. I want to be clear that the impression I had earlier is still the correct impression, that the difficulty in this case was the wording of the document, and all your solicitors were asked to do was to agree that the ultimate wording relied on was an effective wording to protect the bank?

A. Correct.

Q. They were not told anything about the background of the requests by Mr. Traynor?

A. No.

Q. So they didn't know that Mr. Traynor was anxious that no third party looking at this matter should discern the involvement of an Ansbacher deposit; isn't that right?

A. No, that's correct.

Q. They weren't aware that the bank was being asked to give an impression to give a certain impression or to allow

Mr. I won't say for a moment the bank was being asked to give an impression, but the bank were being asked to use a form of wording which would certainly allow somebody else to create a certain impression concerning this transaction?

A. They weren't asked that they weren't asked.

Q. They weren't asked that, yes. What I'm suggesting to you is when you agreed with me that this was a transaction that but for the involvement of persons of repute would have given cause for concern, what would have given you cause for concern was the somewhat unusual requests from Mr. Traynor?

A. Correct.

Q. And I understood you to agree with me, and I take it that this is your evidence, that but for Mr. Traynor's involvement and for the fact that he was an influential and reputable man, you would have looked askance at it, you would have said "there's something wrong here, I want to look into it a bit more"?

A. That's true.

MR. HEALY: That was my impression.

MR. COLLINS: Sorry, Sir, one point just rising from the issue of the legal advice, and it's more comment than

anything, although perhaps Mr. Healy's questions were comment, and it's simply this and easier

CHAIRMAN: I won't shut you out.

MR. COLLINS: Just this: Mr. Healy was putting the point to the witness that the issue of the change, the request for the change in the facility letter was something that the solicitors in London had not been informed of. But of course what they were given was the facility letter, which on its face contained no reference at all to the very security structure which the solicitors were now being asked to advise upon. So it was abundantly clear to them that there was no reference in the facility letter itself, the very thing that Mr. Healy maintains is unusual, that was apparent on the face of the matter and would have been apparent to the solicitors.

CHAIRMAN: You're saying that they were asked to advise on a banking problem in the abstract, rather than perhaps the full instructions as to what transpired between all relevant parties?

MR. COLLINS: They weren't given the history of the negotiation that led to the facility letter but they were furnished with all of the documentation as it stood, in terms of what was executed, including the difference between the actual structure which was the charge and the deposit which they knew about, and they were given the

documents and asked to advise upon, and the facility letter which contained no reference to it, and the actual request for advice was: "As discussed we would appreciate if you could review all of the above documents, and in particular advise us whether in your opinion Kay B London is effective of the loan facility."

They were asked to review all the documents, and I'm making the comment if the matter is so unusual, as Mr. Healy is inquiring, it's surprising that it didn't strike the solicitors as unusual or they didn't make any comment.

CHAIRMAN: I note what you're saying, but I think it's preferable that we defer aspects of that until submission stage in writing or a latter stage of the Tribunal.

MR. COUGHLAN: Mr. Donlon, please.

CHAIRMAN: Is this a short witness?

MR. COUGHLAN: I think so. Reasonably.

LIAM DONLON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: I think you're a Director of Irish Intercontinental Bank?

A. That's right.

Q. And I think in 1990 you were the Director responsible for banking?

A. That's right.

Q. I think you've informed the Tribunal that in November 1990 you were asked by the then-Chief Executive of the bank, Mr. Paddy McEvoy, to accompany him to a meeting with Mr. Traynor, Mr. Desmond Traynor, to discuss banking facilities which Ansbacher, a Cayman bank, wished to obtain from the bank; is that correct?

A. That's right.

Q. And I think you've informed the Tribunal, Mr. Traynor was a highly respected figure in Irish industry and was known to you by reputation, being the Chairman of CRH PLC, a director of a number of prominent State-owned properties and the former Chief Executive of Guinness and Mahon?

A. That's correct.

Q. And I think at the meeting you had with Mr. Traynor and Mr. McEvoy was it only the three of you present?

A. Yes.

Q. At this meeting Mr. Traynor requested facilities on behalf of Ansbacher which consisted in the name of deposit accounts for Ansbacher itself, along with occasional loan facilities for clients of Ansbacher, with such facilities being granted by Ansbacher by means of a guarantee secured by Ansbacher deposits?

A. That's correct.

Q. Now, you go on then to deal with a specific loan which was the subject matter of discussion a few moments ago?

A. Yes.

Q. Now, if I could come back to the at the initial meeting

in November of 1990, which you were requested to attend with Mr. Traynor by Mr. McEvoy, what did Mr. Traynor say to you?

A. He asked us for banking facilities, I think as you have said, he indicated that he wanted to have available to him within the bank certain banking facilities, primarily deposit facilities and subsequently probably a limited number of loan facilities which would be secured on the basis you've described.

Q. And the basis described is a guarantee from Ansbacher and that, in turn, being supported by a cash deposit?

A. That's correct.

Q. And, of course, these deposits were the deposits which would be placed in Irish Intercontinental Bank?

A. Yes, indeed.

Q. So would you agree with Mr. Reynolds, leaving aside the whole question of the legal interpretation of the positioning of the guarantee in between the deposit and the borrower or the loan being granted, what was being put to the bank here was simply this, you know, "I'm going to have deposits in the bank, on occasion there would be loans sought, but they're all secure because the cash is there to support on deposit"; isn't that correct?

A. With the guarantee of Ansbacher.

Q. Oh, yes, I know we talk about that, and we can talk about that until doomsday, but the real thing was this, that the bank knew that the money was there in banking terms?

A. That is important, but Ansbacher being responsible is equally important.

Q. Ansbacher?

A. Yes.

Q. Ansbacher Cayman?

A. Whichever entity whichever entity it would be at that time.

Q. Are you saying, so, it would be as important in the consideration of Irish Intercontinental Bank that the guarantee was as important as the actual cash deposit?

A. I think they go together.

Q. Yes, that's what I mean.

A. Yes.

Q. They don't go they don't go separately, is that correct, in banking terms? I'm not talking about the legality?

A. Indeed.

Q. Now, Mr. Traynor had indicated that he wished to place money on deposit. Did he tell you where it was coming from?

A. He told us that it was he was moving the entire business of Ansbacher from Guinness and Mahon and he specified the reasons why he wished to do that.

Q. What were those reasons?

A. The reasons were Guinness and Mahon had become other had been sold to a Japanese bank and he did not feel comfortable with the credit standing, given the large amount of money that was involved, that he did not feel

comfortable with the credit standing of Guinness and Mahon in its subsequent ownership.

Q. I see. And that was his reason for moving the money?

A. That was his reason indicated to us.

Q. Indicated to you?

A. Yes.

Q. How did the money move to you?

A. The money started I can't give you detail on that.

Q. In general terms.

A. In general, I think my colleague Mr. Barnes has given evidence on that issue. It's not something I would have been involved with, so I can't tell you the detail, but I think Mr. Barnes' evidence

Q. Yes, it didn't seem to come straight from Guinness and Mahon, James' Street, across to Irish Intercontinental Bank on Merrion Square, it didn't take that direct route?

A. As I said I can't really answer that question.

Q. I don't know what the reason for that might be. I was just wondering if you could give any explanation as to why that might be so?

A. No.

Q. And when Mr. Traynor had that initial meeting, can I take it that you and Mr. McEvoy understood that this might be a good sum of money coming into the bank on deposit, there won't be that much movement in respect of the account?

A. Yes.

Q. And from time to time we may be asked for a loan and we go

through the procedure of the guarantee

A. Yes.

Q. And the deposit

A. Indeed, the focus was primarily on the deposit.

Q. That's not what transpired at all?

A. Indeed, you're right.

Q. In fact, your bank ended up acting like an ordinary retail bank for Mr. Traynor; isn't that correct?

A. Yes, indeed.

Q. And dealing on a regular basis, providing facilities here in Dublin in respect of these particular alleged foreign deposits?

A. Indeed.

Q. You understood them to be foreign deposits?

A. Yes.

Q. And how did that come about? Did it just evolve or

A. I can't really give you any assistance on that because I had no involvement, once my involvement was very limited after that initial meeting and a number of conversations I had on it and signing specific letters, but I didn't have any involvement subsequent to that, so I couldn't explain that. But I think it's fair to say it evolved.

Q. And would that have been to do with the position of Mr. Traynor in the business community, would you think?

A. I think partly. Also, I think as one of my colleagues explained earlier, once you take an account, although you may have had a particular intention in the beginning, you

do seek to facilitate what somebody wants to do, you try to provide the services at the moment.

Q. Of course.

A. Even if it hadn't been your intention at the beginning.

Q. Of course, but can I take it as your colleagues have previously stated, you were in the wholesale banking business?

A. Yes.

Q. The type of transactions you would hope to be engaged in would be of the more substantial nature?

A. Yes.

Q. Fewer but more substantial than retail banking would be engaged in; isn't that the reasoning behind it?

A. Yes.

Q. And the administrative charges relating to a large transaction may well be just the same as that involved in conducting smaller types of transactions; isn't that correct?

A. Yes.

Q. So on the whole you wouldn't want to have too much of the smaller type of business because it's costing the bank really; isn't it?

A. That's right, yes.

Q. And whilst I can understand that to maintain the bigger business, one does on occasion facilitate a customer to hold on to that bigger business, what is your view about the level of servicing of this particular account in the

overall context of the type of administration

administrative cost it was to the bank?

A. It's unusual for us certainly, and not something we would have normally, if we had been aware of that sort of detail at the outset indeed may well have taken a different view.

Q. Yes. And was it just because it was a reasonable enough deposit account, I take it, was it?

A. It was a very substantial one.

Q. A substantial deposit account. And the bank just found itself in a position to maintain the larger business of this position evolving, that you may have bitten off more than you intended because of the amount of work that went into this particular account?

A. Yes, but also I think it's fair to say that these things would be done at an administrative and relatively junior level, and we may not necessarily be aware of the amount of of administrative work all the time it's going on.

Q. If you were to do a serious review of the situation, you might think there was an awful lot of work going into this particular account?

A. Indeed.

Q. Could I just ask you this, and it really is for your general view then: What was envisaged as being just taking a deposit and the odd substantial loan, I take it you would have hoped, turned into providing a service here in Dublin which was just a form of retail banking effectively?

A. I don't think I'd go as far as that, but it certainly

Q. Close to it?

A. I wouldn't care to speculate whether or not it meets that or not.

Q. And one wonders whether, again, if you'd have a view as to whether that might raise the question in somebody's mind as to who were the beneficiaries of these deposits?

A. Well, I just did not have a sufficient involvement subsequently to make any comment on that.

Q. I see. I see. Now, if I might just move on, so, in your statement for the moment, that subsequent to that first meeting that you had with Mr. Traynor, and perhaps even at that first meeting there was a discussion about providing a facility or a loan for a client of Mr. Traynor or Ansbacher, I don't want to mention the name of the company, if you don't mind?

A. Yes.

Q. And that this facility was to be secured by a guarantee provided by Ansbacher, which would in turn be secured by a cash deposit. And I think you've informed the Tribunal that you would have requested the deposit be placed with the bank, but your recollection is that Mr. Traynor asked that the cash deposit should be placed in a bank outside Ireland in order to ensure as much control as possible, that the deposit should be placed with the company's parent company, Creditte Bank, in London and this was acceptable to Mr. Traynor?

A. Yes.

Q. So there had been discussion about a loan to an Irish company; isn't that correct?

A. Yes.

Q. That was to be supported or secured by a guarantee from Ansbacher?

A. Yes.

Q. And that, in turn, was to be supported or secured by a cash deposit; isn't that correct?

A. Yes.

Q. Now, the deposit which was placed first of all, you saw no reason why that cash deposit shouldn't be in your bank; isn't that correct?

A. Yes.

Q. It seems perfectly reasonable. Mr. Traynor wanted it outside the country.

A. Yes.

Q. The deposit which was placed with Creditte Bank, your parent bank, was that as a result of a transfer of monies from Irish Intercontinental Bank into Creditte Bank to secure the guarantee, or was it placed from some other source do you know?

A. I can't honestly tell you that, but I assume it would not have been from Irish Intercontinental Bank, but I can't honestly tell you.

Q. I just wonder did it come out of the deposits which were being placed in Irish Intercontinental Bank or if you don't know you don't know?

A. I'm afraid I don't know.

Q. Now, I think you informed the Tribunal that you recollect that subsequently you received a phone call from Mr. Sam Field-Corbett in which you discussed the loan, that's this particular loan, and you confirmed that you would arrange for it to be put to the Credit Committee for approval?

A. Yes.

Q. And the loan was subsequently approved by the Credit Committee in early December; is that correct?

A. Yes.

Q. And the structure of the loan is as follows: That the bank was providing a loan facility to the company, a client of Ansbacher incorporated in this jurisdiction; is that correct?

A. Yes.

Q. The bank was to receive a guarantee from the Creditte Bank (London) as security. Creditte Bank (London) was to obtain a guarantee from Ansbacher for the amount of the facility. Ansbacher was then to provide a lien to Creditte Bank (London) over a cash deposit placed with Creditte Bank (London) on Mr. Traynor's instruction to credit, I believe, the amount to Ansbacher?

A. Yes.

Q. Then in accordance with normal procedures, Siobhan Lynch had the document drafted, the documentation based on the Credit Committee approval, and your understanding is she sent out a facility letter to Mr. Field-Corbett for his

approval?

A. Yes.

Q. That would be normal standard proper practice?

A. Yes.

Q. You informed the Tribunal although you specifically did not recall the detail, you believe that you subsequently received a telephone call from Mr. Traynor requesting that the security clause in the letter be deleted. And you believe that you indicated to him that you would not delete this clause, as this would leave the bank unprotected, but that you would replace it or that the bank would replace it with a more generous security clause and that such a clause was commonly used by the bank and other reputable financial institutions at the time.

You then believed that you spoke to Siobhan Lynch who drafted the original facility letter, and updated her as to the contents of your conversation with Mr. Traynor, and it was agreed that you would amend the wording in the matter that would include such a clause that would give the bank such protection if required?

A. Yes.

Q. That's the clause we saw?

A. Yes.

Q. And you informed the Tribunal that you were willing to agree such an amendment, as this clause was simply aimed at protecting the bank's position, and once this was achieved,

you would not have given much consideration to Mr. Traynor's request, particularly giving the status and reputation and Ansbacher's position as a respected banking institution. The security documentation would set out very specifically the guarantee and the cash backing in it.

Now, can I ask you this: Mr. Reynolds himself, not Mr. Healy, but Mr. Reynolds himself, expressed the view that it was surprising that Mr. Traynor would have asked that the reference to security be left out of the facility letter. Did it come as a surprise to you when you had the conversation with Mr. Traynor?

A. I don't recall being particularly surprised that he asked it.

Q. Was it

A. I don't have a very detailed recollection.

Q. No, I can understand that.

A. It's certainly not the first time I'd come across such a request.

Q. Being asked to leave the security out of a facility letter?

A. Indeed, asked from time to time but we would never accede to such a request. It's not an everyday occurrence, of course.

Q. But this was a situation where the terms had been agreed; isn't that correct?

A. Yes.

Q. Everything had been put in place?

A. Yes.

Q. The guarantee, the deposit, everything, as far as you were concerned?

A. Yes.

Q. This was a rock solid matter. Did it not surprise you in those circumstances?

A. I think it would be a little surprising, yes. As I said not it's not the first time I'd come across it.

Q. The form just tell us about the conversation, could you?

A. Well, insofar as I can recall, it was you know, it was a request to delete the security clause, which we did not accede to. We said we would not do that. And

Q. Yes, but he rang you up and said "This is Des Traynor", this was a big loan; isn't that correct?

A. Yes.

Q. And I understand Mr. Traynor's position in the or perceived position in the community at the time. But you were being asked as a director of a bank to provide a facility letter in respect of a matter which had completely been agreed, omitting the security from it; isn't that correct?

A. Yes.

Q. Now, can I take it that you had no doubts about Mr. Traynor's bona fides in terms of being the businessman and being honorable?

A. Yes.

Q. And that what was being negotiated here wasn't something to which the bank was going to be at any risk; isn't that correct?

A. Yes.

Q. The money was in your parent bank in London; isn't that correct, as far as you were concerned?

A. Yes.

Q. And Ansbacher were giving a guarantee; isn't that correct?

A. Yes.

Q. And you believed them to be reputable and good for it, if I could put it that way?

A. Yes.

Q. What conceivable purpose from the banking point of view could Mr. Traynor have requested that the facility the security be removed from the facility letter?

A. I wouldn't like to speculate on his reasons, but, you know, he may I'm sure have had his reasons but it wasn't for me to pursue him for his reasons once because we did not agree to it.

Q. But I'm asking you as a banker, what conceivable Mr. Traynor being a banker, what conceivable considering everything that was in place, what conceivable reason could there be for a request being made from a banking point of view, to remove the security from the facility letter?

A. For example, confidentiality.

Q. Secrecy?

A. Yes.

Q. Not confidentiality, secrecy?

A. I said confidentiality.

Q. You didn't think Mr. Traynor was trying to pull a fast one to get it out of the facility letter so that you would have difficulty collecting at the end of the day?

A. No.

Q. So whilst the bank may have gone through great lengths at getting legal advice in relation to the form of wording that was going into the facility letter as to whether it was an appropriate protection for the bank's position and very wisely

MR. COLLINS: The question isn't correct there, it wasn't just advice on the wording.

A. If I may say so, we did not at that stage take advice, it was a clause which was commonly used for many years before that, you know, that's what I was able to agree with, because it was a clause in common usage, we didn't need to devise the clause or to take legal advice on it then, we just simply took a clause which had been used many times before.

Q. MR. COUGHLAN: You weren't seeking advice on the change of the wording, you were seeking advice on the form of the wording that was used. What I'm concerned about, and to get at here, if I can, is haven't you put your finger on it, what Mr. Traynor was looking for was secrecy in relation to this transaction; isn't that right?

A. I really don't know what Mr. Traynor was looking for.

Q. You used the term "confidentiality" yourself?

A. Yes. No, you asked me to speculate.

Q. No, I asked you for your view as a banker. There was no conceivable reason from a banking point of view why the security shouldn't be on the facility letter; isn't that right? From a banking point of view?

A. Not that I'm aware of, no.

Q. What Mr. Traynor was looking for here was to have it removed altogether in the first instance?

A. Indeed.

Q. And in the second instance to have an agreement that wouldn't disclose the full agreement of the

A. As an alternative, yes.

Q. Isn't that right?

A. Indeed.

Q. And both of those positions, I would suggest to you, were to ensure, and I'll use your own words, "confidentiality" in relation to the true nature of the transaction; isn't that right?

A. Now, again I must say that you asked me to give a reason in a general basis. I cannot say what Mr. Traynor wanted.

Q. I'm asking you here in this particular transaction to which you were a party to in some way?

A. Indeed.

Q. That there was no conceivable reason

MR. COLLINS: He's now answering that question four

times.

MR. COUGHLAN: And he'll be asked it another time

MR. COLLINS: He's been asked four times about

Mr. Traynor's motives, and he said he can't say what

Mr. Traynor's motives were.

CHAIRMAN: We do seem to have breakdowns between confidentiality and secrecy. You would, I understand from your response to Mr. Coughlan, Mr. Donlon, insofar as you've been asked to speculate conjecture, that it may well have been in keeping the transaction either confidential or secret, may have been at the forefront of Mr. Traynor's mind?

A. That's correct.

Q. MR. COUGHLAN: And the bank were prepared to facilitate Mr. Traynor in that regard, provided the bank was satisfied that its own position, in terms of the security, wasn't put at risk; isn't that right?

A. Yes.

MR. COUGHLAN: Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. QUINN:

Q. MR. QUINN: If I may ask you one question, if I may. In relation to secrecy as being put forward by you as an explanation as to why Mr. Traynor might have asked this, would it be fair to say, therefore, since you've come up

with that possible explanation, that it's obvious to you as a banker that that letter was going to be seen by people other than the people who knew the real nature of what had transpired, namely third parties?

A. I was not aware of that. Clearly we were dealing between the parties involved that we were concerned with.

Q. I accept that, but you you see, secrecy has to imply keeping something from people who don't know what's involved, and obviously the company who had received the letter would have known the true nature of the transaction, Mr. Traynor would have known the true nature of the transaction, you weren't sending the letter to anybody other than Mr. Traynor or the company. So if you put forward as a possible explanation as to why Mr. Traynor might have asked that you amend the letter, I suggest to you that it is obvious to you and to everybody that it was to keep the contents of the letter from other third parties who might have sight of the letter?

A. I do not agree with that.

Q. Who do you say then, and how do you say that secrecy may have been a motive for Mr. Traynor asking you to keep this or alter this term of the letter?

A. I never used the word "secrecy".

Q. Confidentiality. I'll use your word "confidentiality" then. To keep it confidential, doesn't that mean that you have to keep it from somebody that doesn't know the true nature of what's transpired?

A. I don't necessarily agree with that definition, but as I said, we were dealing with our client, we were seeking insofar as possible to facilitate him and protect our position, and that was our objective. I think I would remind you that the letter is one of several documents which clearly set out the nature of the security, the cash deposit and the guarantee, all of which are together on the file and obviously available.

Q. Can I ask you about that. Did you recall the first letter that you had sent out?

A. No, I didn't send out the letter

Q. Well, did the bank recall the first letter that it sent?

A. I would imagine we did not, but I don't know.

Q. Who would have received the second letter? Mr. Traynor or the company? Or the borrower?

A. I could not answer that because I wasn't involved in sending the letter.

Q. Did the bank keep copies of both letters?

A. The bank certainly kept copies of the letter as was signed. We would not have kept copies of the drafts which were not subsequently used.

Q. Are you suggesting that the first letter was a draft and not a letter at all and therefore wasn't signed?

A. I don't know that.

Q. But you seem to be implying that the reason that it wasn't signed or that it was a draft?

A. Well now, I didn't mean to imply that, I really don't

know. Sometimes we send out letters in a draft form, but normally we send out signed letters. But if they're not accepted they have no further purpose and therefore they're not kept, and we did not keep that letter.

Q. You did not keep the first letter?

A. Not as far as I'm aware.

Q. How can you say that both letters would have to be read together to get the true meaning of what had transpired

A. I don't think I

Q. if the first letter didn't exist?

A. I don't think I said that.

Q. Okay. In December of 1992 you had almost 26 million on deposit in relation to these accounts; isn't that right?

A. I can't

Q. I think it's 25.9?

A. I think that was confirmed, yes.

Q. What percentage would that have represented of your overall deposits at that time?

A. 1 percent, 2 percent, I can't remember exactly.

Q. In relation to these, what I call "similarly-type secure arrangements" of the 25, 26 million in December 1992, what percentage of that money would have been represented by monies held in respect of advances made and secured in this fashion?

A. Sorry, can you repeat the question?

Q. By December of 1992, you had let's say 26 million pounds on deposit or had control over that type of money?

A. Yes.

Q. In relation to these similar-type advances that we're speaking about, about what percentage of that money would have been the subject of those type of advances?

A. I don't know is the answer, it would be quite small.

MR. COLLINS: No questions.

CHAIRMAN: Thank you, Mr. Donlon. Half-ten tomorrow.

THE HEARING WAS THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY THE 24TH OF FEBRUARY, 2000.