

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 8TH MARCH
2000 AT 10:30A.M.:

CONTINUATION OF EXAMINATION OF ADRIAN BYRNE BY MR. HEALY:

Q. MR. HEALY: Thank you, Mr. Byrne.

Now, I just want to go over one or two aspects of the evidence we dealt with yesterday. In relation to what you, as an inspector, were told by Guinness & Mahon, that in relation to what the other inspectors were told, judging from the reports they've produced and without going into the details of the reports that we went into yesterday, I think I can safely say that what you were told is there were deposits made in Cayman or in the Channel Islands.

You were also aware from your analysis of the GMCT account in Dublin, that they and the Channel Islands entities had placed deposits in Dublin. You were aware that loans were made in Dublin. And you were informed that the Dublin loans were put in place under an arrangement whereby the Dublin borrower effectively secured the loans by a deposit put in place in the Channel Islands or in the Cayman Islands.

A. Correct.

Q. Now, the Channel Islands money and the Cayman money that was in Dublin, and you were able to track that from time to time, there were large amounts of Cayman and Channel Island money in Dublin, were not labelled, as far as you were

aware, as belonging to any one depositor, isn't that right?

A. That's correct.

Q. But needless to say, though of course I accept that you weren't aware of the bureau system, the money that was put on deposit in the Cayman or the Channel Islands ultimately found its way back to Dublin?

A. Correct.

Q. The full record of the individual interests in that money in Dublin was, we now know, kept on a bureau system and we know from recent evidence that not only was it kept on a bureau system, but bank statement paper was obtained from printers in Dublin to send out statements to the various people entitled to the interests in those deposits.

So we now know from evidence that people in Dublin had access to information concerning their accounts which are supposed to be in the Cayman Islands, information that was generated in Dublin as a result of records kept in Dublin, entered in Dublin, and transactions passed over those, if you like, accounts in Dublin by a number of officials initially in Guinness & Mahon.

So you're nodding. I think it might be easier for the stenographer if you were to say yes or something like that.

A. Sorry, that's as I understand it from what I read and

Q. Yes, I'm just trying to assist the stenographer who can't

record your assent.

CHAIRMAN: You don't disagree with anything Mr. Healy has put to you by way of summary so far.

A. I don't disagree with anything, no.

Q. MR. HEALY: Your inquiries, so far as they went, didn't penetrate through to the bureau system.

A. That's correct.

Q. You came up against, what I'll call, Mr. Traynor's reluctance or protestations that there was nothing untoward involved?

A. That's correct.

Q. Mr. Traynor had said to you at an early point, not at the time of your earliest inspection, but I think in 1977, he said, "There's no avoidance and no evasion going on here."

Now, you personally didn't accept that and those colleagues of yours who thought avoidance was the appropriate way to describe his activities must not have accepted that either.

So in the Central Bank there was no acceptance that what

Mr. Traynor was saying was reliable.

He then came up with an explanation that what he was doing involving these discretionary trusts was something that

international companies engaged in

A. Yes.

Q. that they used this method of transferring money and assets from one country to the other?

A. Yes.

Q. As an accountant you'd have some knowledge of the basic principles of Trust Law, wouldn't you?

A. Very little.

Q. I'm not trying to suggest for a moment that you'd have any knowledge, but I'm wondering whether as an accountant you had any knowledge?

A. It would be very limited.

Q. Is that sort of knowledge usually confined to tax accountants and people who specialise in that?

A. I would expect that, yes.

Q. I see. You'll recall that in his opening, Mr. Coughlan indicated that a lawyer wouldn't be very impressed by that explanation, the notion that international companies were prepared to put their assets under the control of discretionary trustees who might give it away, in this case

A. Yes, I recall him saying that.

Q. Did that explanation cut any ice with you?

A. At the time when we were told that, we were being told it by Mr. Traynor who I think we regarded as an expert in tax affairs, including the inspection of trust and this type of thing. Mr. Traynor was a man at that time who we had confidence in and no reason to doubt what he was telling us as an expert that this is what was done.

Q. I see.

A. In hindsight I'm sure one can say we should have

Q. I accept that. And the only point I make and I'm not

making this point necessarily as a criticism, but do you think that with the benefit of hindsight you may certainly think it do you think you should have had that explanation valued by an appropriate expert such as a tax lawyer or tax accountant?

A. We didn't think it necessary at the time because of the fact that we accepted Mr. Traynor's word for it.

Q. Right. At the same time, you were satisfied and again I'm passing on to other explanations contained in the notes of the meetings and in the reports you were satisfied that the borrower in Dublin and the depositor abroad were effectively the same person and that the whole purpose of the machinations was to break the link of identity between them?

A. Yes.

Q. So, so much for discretionary trust, so much for any kind of trust, the fact is that the man in Dublin had at least some use of the money that was in, or supposed to be in the Cayman Islands?

A. Yes.

Q. Which we know was back in the form of a lump sum Guinness & Mahon trust deposit in Dublin?

A. Yes.

Q. You were not impressed by his obsession with secrecy?

A. Absolutely not.

Q. And you noted the fact that he was reluctant to give you access to documents?

A. Absolutely, yes.

Q. So can I summarise by saying apart from the fact you accepted he was a tax expert, some officials believed he was involved in tax evasion, some believed he was involved in, if I can put it this way, inappropriate tax avoidance, all of the officials, as far as I can see, noted his unwillingness to make documentation available. He was putting up the shutters in some way whenever you got whenever the hounds got close, as it were.

What I'm suggesting to you, is did it occur to you, and I'm asking for your own opinion based on the views you formed, that Mr. Traynor was not a wholly reliable or proper person to be fulfilling the position he was fulfilling, having regard to those activities?

A. Could I just say on that that, you know, the Central Bank supervises banks, expects that people who take up directorships are people of the highest integrity. The Central Bank believed at the time of the appointment of all of the directors in Guinness & Mahon that they were such people. Now, the prudential issues which emerged in the 1976 Report, those over and above the tax issue

Q. Yes.

A. would have led us to believe that some of the some of those directors on the management were not the most competent people to run a bank.

In addition to that, because of what had emerged on the tax position, one could have said that they weren't, indeed

suitably fit and proper people to be in charge of the bank. The bank was faced with a situation, it had to review what its options were and it had a number of things it could have done. One, it could have sought to revoke the licence. That required the consent of the Minister and we would have to give good reason.

Q. That's a somewhat radical step.

A. Another one would have been to seek to have the directors resign.

Now, both of those options carried serious implications for the bank itself because they would be there would be public knowledge, the result would be probably wrong on the deposits in the bank which would probably lead to its collapse, and depositors would have lost money. Against that we had an undertaking from Mr. Traynor who, you know, regardless of what doubts we may have had about him, we were still prepared to go on and trust him to honour the undertaking which he had given us in the utmost good faith that he would see these back-to-back Cayman loans, etc., wound down. We opted to trust Mr. Traynor to do that rather than face the much more serious implications for the bank. And remember, our prime responsibility as supervisors was for the safety of depositors' funds. We did not want another collapse of the bank particularly in 1976 because we'd already had one in that year. That was Irish Trust Bank. So the collapse of another bank, you

know, we were then getting into part two of our responsibility, the stability of the banking system. So, you know, one can look back and say we did or didn't do the right thing, we could have done different things, we could have done it differently.

Q. It's true.

A. At the end of the day one can say, you know, we did the right thing because the bank did not fail, no depositor lost money, and in 1994 the bank was sold to Irish Permanent in a fit and healthy condition.

Q. Could I just explore that a little more.

Firstly, can I say that it may be necessary to approach this from the point of view of hindsight as well as from the point of view of the decisions made at the time. You say you must have done the right thing because in the end the bank survived.

A. I don't think I say we must have done the right thing.

Q. I'm sorry.

A. That's a judgment call whether we did or didn't.

Q. Yes.

A. But the fact is depositors didn't lose money, the bank didn't collapse and I mean, that to us was our prime objective.

Q. Yes, that's what I'm trying to get at. What I'm saying is that the way you're suggesting it should be approached and I'm not indicating or I'm not proposing that this is the only way you're suggesting it should be approached

but you're saying whatever judgment call we made, the depositors were protected ultimately. But we can't judge, just as we can't judge or it wouldn't be appropriate to judge the actions of people on the ground at the time by reference to what we now know what Mr. Traynor was doing, conducting a bank within a bank and the potential consequences that might have had. Likewise, it's probably not right to judge the actions or judgment calls people made at the time on the basis that the bank did survive, the depositors' funds were protected. So can I leave those two things out of it for the moment, if you like. Leave out of the equation that ultimately we know the most unlawful type of activity imagined from a banking point of view was being carried on and also leave out that ultimately the bank was sold in a healthy condition to Irish Permanent building society. Because we do know, just to digress for a minute, that between the time of the initial inspections which gave rise to these misgivings and the ultimate sale to Irish Permanent Building Society, the bureau system was detected and was moved out of the bank and ultimately the bank severed, for whatever reasons, the connection it had with Ansbacher, for a whole number of reasons. So that by the time of the ultimate sale to Irish Permanent Building Society, the Ansbacher tail might have been wagging, the dog had disappeared or moved on somewhere else, I suppose.

So can he go back to the knowledge you had, and in particular now that you mention the Irish Trust Bank case, the issue that arose in that case was I think a judgment made by the Central Bank as to the suitability of an individual to be a part of the management of and indeed also, I suppose more seriously, to own a bank, isn't that right?

A. That's correct.

Q. And one of the issues that arose in that case was that that individual, in supplying a curriculum vitae to the bank, omitted to mention a business failure he'd been involved in?

A. That's correct.

Q. As I understand it, the view taken by the bank as disclosed from reports of court cases at the time was that the bank, as you've indicated, had to be able to rely on the highest standards of probity and integrity in anybody involved in such a pivotal position in the bank, director of a bank and so forth, and indeed in the case of every official of a bank.

And the complaint, or one of the major complaints made by the Central Bank through its witnesses was that the individual involved in the Irish Trust Bank had misled the bank.

A. Yes.

Q. Not that he'd been involved in a business failure.

A. No.

Q. But that he had misled the bank in relation to it.

A. Yes.

Q. That he was not a person upon whom the bank could rely for information in relation to the conduct of its affairs or the regulation of its affairs under the Banking Supervision Regulations.

A. Yes, that's true.

Q. What I'm trying to explore at this point is whether at the time that the Bank was expressing the misgivings it was expressing about Mr. Traynor's activities and the Bank's activities involving offshore banks, what I'm suggesting is that the Bank at the time were being given explanations, there were protestations by Mr. Traynor which were not being accepted or to which the Bank were not giving credit. And what I want to suggest is that without taking the radical steps that you mentioned a moment ago, and I suppose we can put revocation of the licence out of it, there were many things you could do before you ever get to that stage. Without taking any of the other radical steps, would it have been appropriate for the bank to say "We're not happy with the explanations, we're not happy with the protestation that there's no tax avoidance or tax evasion going on and we're not happy that we're not getting access to documents and we now want every document."?

A. Yeah. I think Mr. Traynor was in no doubt that we were not happy.

Q. I accept that. And he gave you an assurance, I'm not going

to continue with this anymore, I'm going to run it down?

A. That's right.

Q. But what I'm suggesting is can you put the prudential side of things aside for a moment, you had an individual in a pivotal position in a bank who was saying things to you that you didn't credit and who was not giving you access to documents. What I am suggesting, and I'm only suggesting it, is that would it not have been appropriate to press him harder on the question of access to documents which was, after all, the key features of the powers that you had as a regulator?

A. In hindsight, probably yes, again we should have. But again, we go back to a man that we trusted. We while we had very strong suspicions about what he was at, some of us may have believed it was evasion, it was another question of proving that this was the case.

Q. But I don't think you have to prove it, did you, Mr. Byrne? I don't think the bank had to prove things. The bank couldn't operate as a regulator surely if it had to prove everything. You simply had to have very good reason for forming a particular view. And can I suggest to you in this case you had a very good reason, you had a very good reason to take a very dim view of these protestations of not being involved in avoidance or evasion.

A. I don't disagree with you. It was an option. We didn't take that option. We took the option of accepting he would run it down and carry on.

Q. Can I go back now to the actual steps that were taken within the bank at the time.

There seems to have been a divergence of view in the bank as to whether the activities which were giving rise to concern should be characterised as tax evasion or tax avoidance. You were in the tax evasion camp.

A. I think so, yes.

Q. Clearly there were others who were in the tax avoidance camp.

A. It was debated as any other issue in the bank.

Q. Absolutely. Absolutely.

The matter, by the time it got to Mr. Murray, who was the Governor, was being characterised as an issue of tax avoidance, isn't that right?

A. I think so.

Q. If you recall the letter that was sent out under the Governor's name?

A. Well, I didn't have any part in the drafting of that.

Q. You were at that stage much more junior than you are now, and taking your role even as a reviewer you were still more junior than you are now?

A. Yes.

Q. But by the time the issue got to the sending of a letter from Mr. Murray, from the Governor to Guinness & Mahon, to the chairman of Guinness & Mahon, the view of the Central Bank was that there was an issue of tax avoidance.

A. Yes.

Q. So that between your level or the level at which you were operating and the level at which Mr. Murray was operating, a decision was taken that this issue should be resolved on the basis that tax avoidance is going on?

A. Correct.

Q. So people higher up than you took that view?

A. That's correct.

Q. Can there be any doubt but that if the bank were unanimously, or if you like, was at one on the question of whether it should be characterised as tax avoidance or tax evasion, and if the bank were at one, or even, in fact, if the Governor alone was of the view that it was tax evasion, that it could not have been countenanced

A. That it could not be?

Q. That that activity, the carrying on of that activity in the bank, and that it would not have been sufficient to run it down, that action would have to have been taken against the executive of a bank insisting that he was entitled to do that?

A. If they were satisfied and had evidence that it was tax evasion, I have little doubt that very severe action would have been taken, no question about it.

Q. Whether they had evidence or not, if they were of the view, if their view was, look, whether this is tax avoidance or tax evasion, I'm not sure, but I think it's more likely to be tax evasion because we're not being given access to

documents, go away and we'll stop all this activity, is what we're being told. If that view had been taken by the Central Bank, by the Governor, he would have had no option, one assumes, but to take the sternest action?

A. Yes, absolutely. Could I just say to that, you know, it wasn't very normal, even to this day, for the Governor to assign letters to the chairman. It normally goes out from the head of supervision or somebody above that. But in the case of Guinness & Mahon, it was the Governor that signed the letter. And it really I don't think that he got involved purely because of the tax issue. The tax issue was, I have to say, of secondary importance in those days and what we uncovered here was something new, we hadn't dealt with it before, and we felt we could handle it. This bank, remember, had problems in relation to its capital adequacy. You know, very serious prudential issues were involved here, lack of capital, poor asset quality, weak management, poor profits, liquidity that was quite underlying, mismatched. These were very serious prudential issues. And I would suspect that it was on those grounds that the letter was brought to the Governor for signature rather than

Q. To indicate the seriousness with which the bank viewed the prudential issues?

A. Yes, that this was a bank that could fail. And the tax issue was of secondary concern, you know. I have to say that.

Q. But isn't it the case that one of the leading executives of the bank was seeking to deal with these prudential issues by hoping to bring into the calculation of the bank's capital or free resources ratio funds that were probably the fruits of tax evasion?

A. Exactly. This was one of the things he tried to do, was set off allow these deposits to be set off

Q. Can I suggest to you that that is an activity that should have raised eyebrows, that should have caused the bank to take an even sterner view, that here you had identified not just a qualitative issue, if you like, but a straightforward substantial prudential issue and the bank were seeking to solve that by relying on unlawful activity. Surely the bank should say we cannot how can you trust a man whose solution to a problem is to resort to illegality, or even to resort to the suggestion of illegality?

A. Again, as I said yesterday, we were Mr. Traynor was the chief spokesman for the bank as the chief executive, but his fellow directors were partly aware of what he was doing and what he was saying. So it wasn't just a one-man show on a solo run.

Q. I accept that, but they didn't speak up.

A. And once more, clearly some of the staff of the bank knew what was going on. When our inspectors go in, one of the advantages of going on-site, it gives the investigators an opportunity to meet with the loan officers and the middle

management people and talk to them on a very informal basis and it's very often during those conversations that one gets information that one mightn't get from the top. But they got nothing at low management level during the course of

Q. But can you agree with me

A. So where you have a conspiracy of that nature, it's very difficult to prove anything.

Q. Can you agree with me, Mr. Byrne, that's a cause for further concern. When I asked you when you put into the melting pot all the concerns the bank had included that, the fact that Mr. Traynor's staff, or the bank staff, were putting up the shutters, the place where you might expect to get really deep information was not accessible to you and you were instead being referred to this one spokesman and nobody questioned what he said.

A. Well, all signs pointed to tax evasion, no question about that.

Q. But not only that, it was being proposed as a solution to a prudential

A. Well he wanted to use these deposits.

Q. Wasn't that a potential solution?

A. It was something we didn't allow.

Q. Of course you didn't allow it and the Tribunal has made it clear in its Opening Statement that you wouldn't allow it.

What I'm asking you to do is pass from the prudential issue and look at the man who was proposing that solution and to

say to yourself, was the Central Bank right to continue to allow that man to have a role in this bank or should the Central Bank, leaving aside what other information we have about him, however difficult that may be, should the Central Bank not have said, this man is not a reliable man to have in this position?

A. In hindsight, and knowing as what has come out about the man

Q. Of course take that out.

A. of course. But as we knew the man in the seventies, you know, we had no proof against him, he had a very high reputation, he was very highly regarded in accountancy and banking circles and we had no firm evidence. We had suspicion. We had all bits and pieces, but we had no firm evidence to show he was he was committing illegal acts.

Q. But is it the case, in other words, that where an individual had a very high reputation and was perceived to be a very influential person, that it was harder, if you like, to contemplate the notion that he might be up to something irregular, unlawful, unsatisfactory?

A. Oh, I think so, if the person is known to you and

Q. But even in the teeth of your own misgivings, is that still the position?

A. Well, it probably would be. Persons who are in banks today and you'd know them for a long time and you've seen them get into trouble and get out of it and so on, you have high regard for them as bankers. But we didn't have, I must

say, very high regard for Mr. Traynor as a banker because he wasn't running his bank very well from a prudential point of view.

Q. But what aspect of his reputation prompted you to put to one side the misgivings that you had?

A. We believed he was a man who could work his way out of this and he would stop what he was at and we could get back and get the bank up and running properly. It was a judgment call at the time and that's I can't say more than that about it.

Q. Not only were did you have concerns about tax avoidance or tax evasion, you had somebody running the bank who was himself evasive, isn't that right?

A. Who was himself?

Q. Evasive.

A. Yes.

Q. And I'm just asking you to compare the judgment call that was made in the ITB case with the judgment call that was made in this case. In the ITB case a view was taken that a bank director, admittedly a proprietor as well, was misleading and evasive.

A. I'm not so sure how free I am to talk about the Irish Trust Bank case.

Q. You can talk about anything that's in the public domain.

CHAIRMAN: I think it's been widely reported, Mr. Byrne.

A. There were differences in that case, and one of the key

issues was that we received a letter from the Bank of England, for instance, telling us that a certain individual was not a fit and proper person to run a bank.

Q. MR. HEALY: That's true. But do you remember the evidence given at the court case by Mr. O'Grady Walsh who was then, I think, senior to you, isn't that right?

A. Yes.

Q. And I think was he then the deputy general manager or

A. I think he would have been.

Q. General manager of the bank?

A. Probably deputy, yes.

Q. His view was that the major, if you like, complaint the bank had against the individual, Mr. Bates, who was in a prime position in that bank, was that he had, according to the Central Bank now, Mr. Bates didn't agree with this, but according to the Central Bank, he had misled them.

A. Yes.

Q. That was their concern. It wasn't the failures he was involved in, it wasn't exclusively the failures he was involved in, it wasn't solely the letter from the Bank of England, but the major concern and if you like I can refer you to the newspaper reports which Central Bank very helpfully made available to the Tribunal I think in those newspaper reports it was made clear that the concern of the Central Bank was that a person running a bank had misled them.

I think what Mr. O'Grady Walsh said, according to the newspaper report which was made available to the Tribunal, is that in the report of the 23/11/1973 would that be right?

A. Probably, yes.

Q. In the Irish Times, "... when asked by the late Mr. McCarthy was he aware of any suggestion that Mr. Bates might have been responsible for the insolvency of Howeth and Burnley, Mr. O'Grady Walsh implied that he might have drawn that inference from the information he had. The advice he had tendered" - meaning the advice he had tendered to the Governor presumably - "... had been based upon the fact, primarily in his mind, that Mr. Bates had omitted any reference to this matter in the application that had gone into the Central Bank. He considered the effect of that was to mislead the Central Bank."

And elsewhere he went on to point out that his concern was that there was a lack of forthrightness and a failure to measure up to the extremely high standards to be expected of which the Central Bank expected of individuals involved in banking at a high level.

A. Yes.

Q. I accept what you say that there were other distinguishing features, but in this case could I suggest to you that in applying those tests there was reason to believe that Mr. Traynor, as the spokesman, perhaps other members of the bank were either not measuring up to those standards or

required deeper investigation. Would you agree with that?

A. I would, yes. One other slight difference between the Irish Trust Bank case and the Guinness & Mahon was that the Irish Trust Bank case was a sole ownership.

Q. Yes, I accept that.

A. It was a one-man show.

Q. Of course.

A. Whereas Guinness & Mahon was a long-established bank with a very respected London parent. So there was those differences.

Q. So in the Irish Trust Bank case you had misgivings not just about a director or a prime mover in the bank, but about, effectively, the proprietor?

A. That's correct.

Q. In this case I agree you didn't have that complication. So therefore, all I'm suggesting is that what you had was enough to make you wonder should this man be examined more vigorously, more deeply?

A. Yes.

Q. And I'm suggesting that that was the appropriate step at the time on the basis of the information you had.

A. Yes, with the benefit of hindsight I can't disagree with you.

Q. I want to suggest to you that taking the information we now know out of the equation, that you still had a case where if you apply the standards applied by Mr. O'Grady Walsh in the Irish Trust Bank case, you would have had to take one

of two steps against Mr. Traynor. You'd have to either insist on removal or say you want to see the documents you won't let me see.

A. Yes.

Q. At the very least the second of the two steps would have been appropriate would have been proper at the time.

A. Yes, and yes. I can't say any more than that.

Q. Now, if I could just deal with two other matters.

CHAIRMAN: Just before we leave that, Mr. Byrne, would it be an accurate summary to say that perhaps taking your distinction from yesterday that the micro prudential factors in the particular case may have tended to outweigh the macros, your intention to ensure that there wasn't another bank in collapse in the aftermath of the earlier misfortune may have induced the judgment to take perhaps a somewhat optimistic view that Mr. Traynor might make matters come out?

A. Well, it certainly put more pressure on us to ensure that Guinness & Mahon did not fail.

Q. MR. HEALY: Now, I want to deal with two other matters, Mr. Byrne.

One of them, I think, has been brought to your attention and I'm not sure how much progress we can make in relation to it. It's in connection with the assurances that Mr. Traynor gave that the call it the offshore activities were going to be wound down, that they would

stop, there would be no new offshore activities and the existing scale of those activities would be reduced.

Mr. Byrne, I want to give you a book of documents, I'm not putting these documents up on the overhead projector, or very few of them in any case, and they have not been distributed to generally as the other documents have been for the purpose of this inquiry, because the documents I'm putting contain vast amounts of material that have nothing whatsoever to do with the Tribunal's business, but as an official of the Bank you are fully familiar with all of them.

A. Okay.

Q. And I think you have a copy of that book, Sir, the confidential book.

I want you to go to leaf 3-1. If you go to the second last page, I think the last page of that leaf, you'll find the appendix to the Appendix 10 to the 1978 Report. In fact, we also have a copy of that on the overhead projector with most of the relevant information in terms of names obscured except in the case of Mr. Ken O'Reilly-Hyland's name which will be mentioned in a different context later on.

Now, that's an appendix of major loans backed by what the bank call "deposits" held in Cayman Jersey trust companies.

A. Correct.

Q. And I think as was mentioned by Mr. Coughlan in the opening, you have about 5 million in loans and about 3.8 million in total deposits between Cayman and Jersey.

A. That's correct.

Q. And all of that information was, of course, furnished to the Central Bank by Guinness & Mahon.

A. That's correct.

Q. Now, subsequent to that meeting there was another memorandum, which I don't think we need to go into in detail, of a meeting that was held on the 7th of March where you got the assurance in

A. Yes.

Q. perhaps the first or the second time from Mr. Traynor that this activity was going to cease and that it would be wound down from then on.

A. That's correct.

Q. If you could then pass on to a minute of the meeting of the 9th of August, this is in fold 3-5, and if you go to, I think it would be the it's on the overhead projector as well. If you go to the seventh page in that leaf. And you have a list of the 20 largest loans as of the 30th of April 1979. Have you got that?

A. Yes.

Q. On the overhead projector, again, only one loan has been identified.

Now, these loans are described at the bottom as "Note

Cayman loans not included in the above list." Do you see that handwritten note?

A. Yes.

Q. I don't know who would have written that, but can I take it it would have been written as a result of some information given by Guinness & Mahon?

A. What I think it means is that loans granted by the Cayman Island bank are not included in this top 20 loans, that they're only related to the Dublin books, not the Cayman books.

Q. But did you ever get a list of loans granted by the Cayman bank?

A. Not that I'm aware of. Because in the main, most of the money lent by Cayman was to its parent or the Dublin subsidiary, or the Dublin parent.

Q. These are this list of 20 largest loans, it's presumably on foot of the type of request that we're aware the Central Bank would send to supervise banks looking for the top 20 loans, top 50 loans, whatever.

A. Yes.

Q. What you're looking for are the top ten loans made by the bank

A. Yes.

Q. being supervised.

A. Yes.

Q. So can I suggest to you that Cayman loans here must mean Cayman-backed loans.

A. No, I don't think that's what it means.

Q. I understand. You think it didn't include Cayman bank loans?

A. I think what that means, that note at the bottom, what I think it means is loans granted by the Cayman bank to customers in the normal way are not included in this list, in other words, it's not a consolidated list.

Q. But I accept that and we're digressing for a minute. But did you ever make a request for the top 20 loans to include loans granted by the Cayman bank?

A. No. What we did get from the Cayman was a copy of the financial balance sheets which they submitted to the Cayman

Q. I understand.

A. I think these were in the days before what we now know as consolidated supervisory.

Q. I see. Can I take it, therefore, that when you got the top 20 largest loans and if Cayman loans not included does not mean that Cayman backed loans are not included, that that list of the top 20 largest loans would include where they came within the top 20 any Cayman bank loans?

A. Yes. Any loan backed by a deposit in the Cayman would be included in that, yes.

Q. So comparing that list, as of April '79, with the list that you had and that we had up on the overhead projector a minute ago from 1978 Appendix 10, and you can have the other one open in front of you.

A. Yes.

Q. You'll see that loan number 4 on Appendix 10 appears as loan number 6, isn't that right?

A. Yes.

Q. And it's reducing.

A. Yes.

Q. So that would appear to be in accordance with the assurance.

A. Yes.

Q. Loan number 2 on Appendix 10 is €595,000.

A. Yes.

Q. And that loan is increasing as of April 1979 to €744,000, isn't that right?

A. That's correct, yes.

Q. Loan number 3 on Appendix 10 is increasing, but only slightly, probably accounted for by interest.

Loan number 5 on Appendix 10 is increasing again, but only slightly.

And loan number 6 on Appendix 10 is, in fact, decreasing, isn't that right?

A. Yes.

Q. That's Mr. O'Reilly-Hyland?

A. Yes.

Q. So what you have at this point is an increase in item number 7 on the 30th of April, an increase of approximately €150,000, is that right?

A. I think so, yes.

Q. And some slight decreases in the other loans.

A. Yes.

Q. Together with some slight increases in some of them.

A. Yes.

Q. Now, amongst the 20 largest loans listed on the 30th of April 1979 was one loan, item number 12, do you see that on the list? Item number 12, œ437,265?

A. Yes.

Q. Then if you go into the manuscript in Appendix 3 which gives details on selected loans

A. Yes.

Q. they may have been selected for any number of reasons, I don't know, you see that there are references to whether some of these loans are backed by Cayman deposits or not, but there are loans included in that list and certainly the one I've just mentioned, number 12, is a loan to describe as being backed by a deposit. If you look at Appendix 3 you'll see it at item number 9.

A. Yes.

Q. Now, you were not to know that that deposit was a Cayman deposit well, at least you don't you haven't recorded it as being a Cayman deposit?

A. Yes.

Q. Where you were faced with a situation where a loan was backed by a deposit, do you think it would have been appropriate to have looked for the material, the

documentation to satisfy yourself that the deposit was an onshore and not an offshore deposit?

A. Yes, I would have expected the inspectors at the time

Q. To do that?

A. Yes.

Q. So where the loan is described here as being backed by a deposit and no reference is made to Cayman, can I take it that either the inspectors were told that and accepted it, or that they were given documentation and that documentation did not disclose a Cayman deposit?

A. I think that's fair, yes.

Q. And if the former is the explanation, then from the information the Tribunal has, they must have been misled and if the latter, they must have been given documents which, I suppose, must have misled them?

A. Yes.

Q. If the latter is the explanation, that they were given misleading documents, then that would seem to suggest that the bank had gone to an awful lot of trouble to put the Central Bank off the trail. Is it not more likely that, in fact, they were simply told and they accepted what they were told, that this is a deposit and you needn't worry, it's not a Cayman deposit?

A. Well, I don't know, they shouldn't have.

Q. They should have pursued it?

A. Yes.

Q. They should have said we want to be sure that it's a Cayman

deposit, they should have sought the documents?

A. Yes.

Q. And if they had been refused access to the documents, presumably that should have alerted them to the fact that these were probably documents relating to Guinness & Mahon Cayman Trust?

A. Well, the least I would have expected they would have noted that in their report.

Q. Bearing in mind that this was, in fact, a Cayman-backed loan, what we now had was some slight up and down on the figures of the various loans that you had identified in Appendix 10 as being Cayman-backed loans and the creation, so far as we can see, of a completely new, or the introduction, at least, of a new loan. Now, it's possible that loan was in existence at the Appendix 10 time but that you weren't given access to it. But here it is, in any case, as a loan which we now know to be a new loan. So the assurance, whatever you were told, was not being complied with, isn't that right?

A. It looks that way, yes.

Q. If I could now ask you to go to Divider 5, Mr. Byrne, and to what is described as Appendix 2(a) and it's about eight pages from the back of the Divider. It's a schedule and has what are described as 'Comments on Larger Loans'. Do you see that?

A. No. 2(a), is it?

Q. Yes, it's about the eighth document of the back of that

leaf.

CHAIRMAN: It's on the monitor now, in fact.

A. Okay, that's fine.

CHAIRMAN: If that's easier.

Q. MR. HEALY: I think you may need to work off the hard copy, Mr. Byrne, because you have to be able to identify the loans. It's page 9, working from the back of the folder.

A. What are we on, 3-5?

Q. No, 5.

A. 5, sorry. Yes, I have it.

Q. Now, here you see item number 3, which was one of the loans we noted at an earlier point, one of the ones that was noted on Appendix 10, and one of the loans which I mentioned was increasing by 1979.

A. Yes.

Q. And here it is again going up further.

A. Yes.

Q. It's gone up to 795 now in just over a year, I think, from about 740. So that between the time that the assurance was given in '78 and this date, it has gone from 595 to 795, which is a 50 percent increase.

A. Yes.

Q. Now, the next item on that list, item number 4, is one which has also increased dramatically, again by about 50 percent or perhaps slightly less, from I think originally a

figure of 1.179 million to 1.601 million?

A. Yes.

Q. Now, could I suggest to you that in the first instance, that would indicate that on the face of the documentation that was made available to you, the loans were not being reduced and that these increases are very marked?

A. Yes.

Q. And that it was something that should have attracted some comment.

A. Yes.

Q. Can I suggest to you that Mr. Traynor was, at this time, not in compliance with his assurance and that perhaps the bank should have taken some view of that.

A. Well, on the basis of the evidence you've just produced there, certainly that would seem to be the case. I really am not in a position to comment on individual loans without the backing of documentation and explanations as to why these loans had varied. And, I mean, I don't think I could even speculate as to the reasons, what was involved.

What I do know was that in 1979 Mr. Traynor gave us this undertaking and that our inspectors monitored the position many times between that and 1982, for instance, and through my statement, which you read out yesterday, I noted that we we looked at it in April 1979, again in February 1980, October of 1980, February of 1982, and in 1982 we carried out the third inspection. On that third inspection, by reference to the 1978 list, which was 5

million or whatever

Q. Yes.

A. that list had been reduced to 1.9 million. So, you know, whether there were hiccups, ups and downs, which you can take on an individual basis, I can't explain that just from here. Certainly, if the information is available in the books and records of Guinness & Mahon, it could explain it to you. But the bottom line in this, as far as we were concerned, we did check on it several times. I can't explain the hiccups, maybe they were explained to us as they happened, but when it came to the 1982 inspection, we could see that those loans benchmarking the '78 position had gone down.

Q. That's true. On the face of the documents that you've produced between the date the Appendix list 10 was drawn up, and 1982, there was a marked reduction?

A. Yes.

Q. The reason I'm drawing this 1980 analysis to your attention is that at that time, I'm suggesting, on the face of the Central Bank documents now

A. Yes.

Q. they may not contain as much information as the inspectors actually had, but somebody reading it at that point might have said, the assurance is not being complied with, because looking at the face of the documents, and one imagines that the Central Bank staff, other than the inspectors, would only have the document, isn't that

right?

A. Yes.

Q. Might readily reach the conclusion that the assurance was being lowered if he did the calculation I've just done.

A. That's right, without full explanation as to what it's about, there may be, and I'm sure there is, a full explanation as to why those loans appear to have gone up.

Q. Bearing in mind

A. There may well have been permeative lines that he had to honour, I don't know. So one would have expected him to honour the commitments he had given prior

Q. He may have agreed a line of credit and he may have been obliged to sustain that line of credit.

A. Yes. It may have had to go up. Without looking at the documentation on each loan

Q. But are you not surprised, as certainly I am, that the report itself doesn't contain a comment indicating that the assurance was being monitored and that Mr. Traynor and that Guinness & Mahon, were within the, if you like, ambit of the assurance they'd given that they were going to cease creating new loans and they were not and they were going to reduce the scale of the existing ones. In other words, should there not have been some narrative to explain that the monitoring was continuing and that the loans, which on the face of it, appeared to be out of line, having regard to the assurance, were not something to be worried about?

A. Yes. One could say it should have been documented more

carefully within the Central Bank, I accept that.

Q. Now, I want to ask you to refer to folder number 6, to the third page. You'll recall that in Appendix 10 a loan was mentioned at item 4 as being at the level of 1.1 million.

A. Yes.

Q. This is the first item mentioned at paragraph 3, subparagraph A, on the page that I think you have open in front of you.

A. Yes.

Q. And the balance is described as being 6.939 million.

A. Yes.

Q. Now, this has been brought to your attention recently and I think in fairness you've said that you think that that's a different loan, is that right, to the loan that's referred to at an earlier point?

A. I'm speculating but I think so, yes.

Q. Assuming for the moment that it isn't, for the sake of argument then, there's a massive increase, isn't there?

The loan goes from 1.17 million to almost 7 million.

A. Yes.

Q. The Tribunal believes from some other information, that this was a backed loan and that it's the same loan, or essentially the same loan, i.e. between the same parties, as the loan mentioned in Appendix 10.

A. Yes.

Q. If that is so, then there was a flagrant breach?

A. Yes, no question. Mr. Traynor was telling us lies. No

question about it.

Q. Would you have expected the narrative to have explained what, on the face of it might seem to be a flagrant breach of the assurance to ensure anyone reading the document that this loan is not a loan of the class mentioned in Appendix 10?

A. Yes, I would. I would have expected inspectors to explain that.

Q. Well, we may have to furnish you with more information in relation to it, Mr. Byrne, to enable to you comment more fully on it, but as of this minute from the information available to the Tribunal from Guinness & Mahon, that is a loan to an Irish resident company backed by a Cayman deposit in that order as of that date, and certainly it came to the attention of the inspectors to the extent that they mentioned it, but they don't seem to have mentioned or were unable to acquire the information to describe the backing.

A. Yes.

Q. It's described

CHAIRMAN: Perhaps we should leave it on the basis, Mr. Byrne, that if your further reserves substantiate the fact that it may be an entirely different loan, you can revert to the Tribunal.

A. I certainly will.

Q. MR. HEALY: It's certainly a loan that's described as

apparently backed by a Cayman deposit, isn't that right?

It's apparently backed, but the position isn't clear, the company has 9 million cash on deposit in the Cayman, but there is no normal guarantee.

A. That's what it says. I personally don't know the details and it's probably best to check it out and I can come back to you.

Q. I would then have brought you on to the 1982 report and as you say yourself, you've pointed out that by that time certainly the figures you had suggested that the assurance was being adhered to.

A. That's correct.

Q. Now, can I mention one other matter concerning the layout of the reports, Mr. Byrne.

The first report that was produced was the 1976 Report.

A. Yes.

Q. And that Report alluded to the potential tax issues arising in connection with these offshore deposits.

A. That's correct.

Q. At that point it was an item mentioned at page 9 of the narrative, and it was not certainly a headline item in the Report, though there were subsequent correspondence which certainly gave it some prominence, isn't that right?

A. Yes.

Q. The reference to offshore subsidiaries in that Report is on the overhead projector.

A. Yes.

Q. Now, if we could go to the Report that was produced and reviewed by you, I think, on the 30th of April for the period as of the 30th of April 1978, we see that in the summary of the main findings on the first page of the Report, the first item is described is as follows: "The bank is participating in tax avoidance, in taxation avoidance arrangements."

A. Yes.

Q. And then if you go to page 9, which is the first page of the narrative in that, between the summary and the narrative there are references to balance sheets at different dates, profit and loss accounts, consolidated profit and loss accounts and so forth.

A. Yes.

Q. And ultimately the schedule of key ratios, including the free resources ratio that we've mentioned already. You come on to the main part of the narrative and the first item under 'Main Findings' is described as 'Taxation Avoidance Arrangements'. And we've gone through these already. And there's fairly extensive account of the bank's views on these arrangements.

A. Yes.

Q. Elsewhere in the report there are also references to the securing of loans by Cayman or Jersey deposits.

A. Yes.

Q. The conclusions and recommendations on page 17, the first

item, as you might expect once again is the reference to a taxation avoidance scheme.

A. Yes.

Q. And that's also on the overhead projector.

If you go to the 1982 Report, which was also reviewed by you, the layout is the same with a slight difference.

Firstly, there's a foreword , and then on the next page there's a new section, I think, which did not appear in the '78 Report described as 'Results of Previous Inspections'.

A. Yes.

Q. And firstly you have the 1976 inspection and the legend is 'The Main Points to Arise out of the Inspection were...', and there's a list of items.

Now, there's no reference in that list of five items to any offshore activities, the offshore activities that gave rise to, I suppose, a low priority reference in the '76 Report, but some fairly important correspondence afterwards.

A. Yes.

Q. Then if you go on to the reference of the '78 Report and the main points arising out of the inspection are described as being three in number.

A. Yes.

Q. One, two, three, lending to the property sector I don't want to go into the details of them. We've mentioned some of them already in evidence.

A. Okay.

Q. But there's no reference to the fact that the main point, the first main point mentioned in the '78 Report was taxation avoidance. Can you account for that?

A. Not really. I really can't. I don't know the answer to that. When people wrote the reports, that was one of the few times, I think, that the summary of previous reports might have gone in. It was a different style. They would then look through the files to identify the major issues that had arisen probably since the last inspection and for whatever reason they didn't list tax evasion or avoidance as a priority in the '82 headlines, or whatever. I don't know.

Q. Yes. I mean, it is a fact that it was a it was a main issue.

A. Yes.

Q. Isn't it?

A. Oh, yeah.

Q. It was a main issue in the '78

A. Yeah.

Q. And nevertheless it wasn't mentioned. Whoever looked at the '78 Report must have decided for some reason to exclude it even though it was mentioned as a main issue.

A. I have no I mean, the inspectors write these reports on their own free will, there's no influence put on them how to phrase it and what to put in.

Q. I understand.

A. So why they, they as individuals, chose not to include it,

I don't know.

Q. If you go to the 1985 Report, there's again a survey of the results of previous inspections and all that has happened, in fact, is that the 1985 inspector has abstracted from the 1982 Report the results of the previous inspections in '76, in '78 and then he's putting his own analysis of the results of the '78 Inspection.

But now you have, if you like, the trail of documentation being built up from one document to the next where understandably one inspector takes the main points as identified by a previous inspector and the trail has allowed the offshore issue to drop out of sight.

A. Yes. I don't know why, but there's certainly nothing sinister in that whatever.

Q. It's certainly unsatisfactory though, isn't it, that a major item should be left to drop out of sight?

A. Yes. It should have been picked up on.

Q. And the same thing is replicated in 1988, again this whole issue has dropped out of sight so far as the summaries are concerned. Now, in fairness, the matter is not lost sight of in the body of the Report, but it is given from having been given a very high degree of prominence in '76, in the post Report correspondence in '78 in the Report, it is excluded from any headline

A. Headlines in the beginning, I agree.

Q. Yes. And the last item I want to mention is the fact that in the course of carrying out these inspections, it would

have come to the attention of the inspectors - if we can put Appendix 10 on the overhead projector - that Mr. Ken O'Reilly-Hyland had a substantial loan from the bank which was backed by what the Tribunal what the inspectors described in quotation marks as a deposit held in Cayman or Jersey. In this case I think it was described as being held in Cayman.

Now, I take it that as of that date, the 30th of April, I think the inspectors would have been aware that Mr. O'Reilly-Hyland was a director of the Central Bank?

A. Yes.

Q. And what the Tribunal is seeking to ascertain is whether any attention was paid to the fact in the Central Bank that here you had a director involved in an activity which, if I can use a fairly neutral term, had given rise to serious misgivings.

A. Yes.

Q. Can you tell me whether that, to your recollection, gave rise to any further consideration in the Central Bank?

A. Well, I can tell you that the normal reporting procedures or inspection of reports would have been followed. Other than that, I don't know anymore.

Q. Well, can I just go through those procedures.

In the first place, an inspection would have been carried out?

A. Yes.

Q. Over a period of time?

A. Yes.

Q. During that inspection, I suppose a file would have been built up?

A. Yes.

Q. Eventually that file would have been converted into a report?

A. Yes.

Q. Between the commencement of the inspection and the conversion of the file into the report, there may have been meetings?

A. Yes.

Q. Meetings with the supervised bank?

A. Yes.

Q. And perhaps internal meetings in the Central Bank?

A. Correct.

Q. In the course of the building up of that file, in the course of assembling the information on site, this fact would have come to the attention of the inspectors?

A. Yes.

Q. The fact that there was a loan outstanding to Mr. Ken O'Reilly-Hyland which appeared to be backed by, in quotation marks, "a deposit held in the Cayman"?

A. Yes.

Q. At that point would the when I say at that point I mean between the time the inspection began and the time the report was prepared, would the inspectors have occasion to

discuss the contents of the Report or their findings or their working conclusions, I suppose, with more senior officials?

A. Yes.

Q. At that time you were the person who reviewed this Report, isn't that right?

A. Yes.

Q. Does that mean you review the work as it's going on or that you review the work after it's completed?

A. It's ongoing, yes.

Q. Do you recall whether an issue was raised with you concerning the fact that a director of the bank was involved in these activities?

A. No. It was I became aware of it and it went into the Report and it passed along the line.

Q. Well, can I just ask you what you mean when you say "I became aware of it"? What did you become aware of?

A. That Mr. O'Reilly-Hyland was on that list.

Q. Yes. And you were aware that he was a director?

A. Yes.

Q. Did you think that it was something that required to be addressed in any specific or particular way - not necessarily in the Report now?

A. I think that that was in 1978 my job was to report the fact.

Q. You reported the fact

A. Yes.

Q. the bald fact that Mr. K.P. O'Reilly had a loan, that there was a Cayman involvement and you didn't address the issue of his role in the Central Bank board?

A. No.

Q. You didn't think that that was your business?

A. No.

Q. From where did the document go higher up in the hierarchy in the bank?

A. My guess would be as Mr. O'Grady Walsh, who was the then deputy general manager who signed the post inspection letter to the chairman, it went as far as him. Beyond that, I don't know.

Q. The signing of the post inspection letter to the chairman is based on the contents of the report, isn't that right?

A. Yes.

Q. And that, of course, raises matters between the Central Bank and the supervised bank?

A. Yes.

Q. But the issue that arises in connection with Mr. O'Reilly-Hyland's name was not an issue as between the supervised bank and the Central Bank, at least not primarily. It was, of course, primarily an issue within the Central Bank, isn't that right?

A. That's correct. Absolutely, yes.

Q. And I take it you'd agree with me that there was it was certainly an issue, the fact that a director was involved, was something that required to be addressed?

A. I think so, yes.

Q. But not by you at the level you were operating at?

A. Correct.

Q. Perhaps thankfully, you might think, but in any case, it was an issue that as a Central Banker you could recognise that it would have to be addressed somewhere else in the Central Bank?

A. Oh, absolutely, yes.

Q. Because what the Central Bank was doing in writing the letter to the Governor, or writing the letter, sorry, to the chairman of the supervised bank, was, it was saying this is this is the Central Bank's view of your bank, you're either giving them an overall centre of good health or you're not, you might insist on some changes, you might even impose a condition, but as long as you don't put the bank out of business, or as long as you don't impose a condition, I suppose, you're not taking an unfavorable view; is that right?

A. Yeah, but in fairness, I have to say, that anybody appearing on any of those lists shouldn't automatically be seen as a tax evader.

Q. Absolutely. I'm not suggesting that, Mr. Byrne.

A. And all those individuals that we have listed, 18 of them, I have no evidence

Q. Of course.

A. that they're tax evaders.

Q. Absolutely.

A. So one tends to assume if you're on a list you're a tax evader.

Q. And I want to make it absolutely clear I'm not suggesting that either.

A. Yes.

Q. What I am saying is that, and what I am suggesting is that an issue arose as to whether an activity being carried out in the bank savoured of tax evasion.

A. I take that fully, but being on the list isn't a conviction.

Q. Absolutely. I want to make that clear. But being on the list nevertheless and being involved in this activity, bearing in mind that the bank were taking a certain view of it

A. Yes.

Q. was something that could potentially involve, for instance, a conflict, isn't that right?

A. Yes.

Q. And that was a matter that should have been addressed and one hopes was addressed further up the line from your position.

A. Correct.

MR. HEALY: Thank you very much.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. MR. CONNOLLY: I want to ask you some questions on behalf

of the Revenue Commissioners.

Mr. Byrne, from what you know of the bureau system that was operated by Mr. Collery, are you satisfied that even the most scrupulous inspection carried out in Guinness & Mahon was unlikely to unearth its existence or the nature of its operation?

A. Yes. All I know about the bureau is what I read in the McCracken Report and in subsequent publication and documents.

Q. But there were regular inspections carried out of documentation in Guinness & Mahon by the Central Bank and it certainly wasn't unearthed by monitoring by the Central Bank.

A. I don't believe that any normal inspection that we would carry out would ever uncover a system like that which is designed and

Q. It was designed to be clandestine?

A. Absolutely.

Q. Whether it was the Central Bank or any other state agency it was unlikely to be unearthed given that it was put in place for the most clandestine of motives.

A. Yes. Where you get colluding of various people within an institution, you're either very lucky to stumble on it or you rely on some official to tip you off.

Q. Well, the system that was in the statutory system that was in operation from 1976 to 1989 was that the Central Bank were precluded under statute from revealing to the

Revenue Commissioners any misgivings they had from the Revenue point of view about any information that came to their notice; isn't that the position?

A. And still are.

Q. And still are.

And likewise, the Revenue, under such powers as they had during that period of time, they were never in the position to have access to documentation that was being scrutinized by the Central Bank or to acquire information to be divulged by the Central Bank which had been obtained by the Central Bank under its supervisory powers, isn't that correct?

A. Yes.

Q. And insofar as information was passed on by the Central Bank to the Department of Finance under its obligations to do so, likewise, finance officials were precluded from passing on any of this sensitive information to the Revenue, isn't that the position?

A. I presume so.

Q. So that during this period of 1976 to 1989 which you've described in great detail to Mr. Healy for the Tribunal, there were a great many items which came to your notice which gave rise to misgivings on your and your colleagues' part?

A. Yes.

Q. Which simply was precluded from being divulged to the

Revenue Commissioners in that situation, isn't that the situation?

A. That's true, yes.

Q. So we had a situation that arose under a statutory scheme in operation where responsible officials of the state agency, the Central Bank, held a view that Guinness & Mahon, over a period of years, were actively facilitating widespread activity of a questionable nature from a revenue or taxation point of view

A. Yes.

Q. and yet were precluded from divulging their misgivings to the Revenue Commissioners.

A. That's correct.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FEENEY:

Q. MR. FEENEY: Mr. Byrne, if I could just ask you a few questions. You gave evidence in relation to the Central Bank's apprehension concerning the financial stability and viability of Guinness & Mahon in the '76-'78 period. How acute was that?

A. Well, potentially it was very acute. I mean, the bank was not it was not in good financial condition and rumours alone about a bank having some difficulties are likely to spread and lead to people withdrawing deposits which itself exacerbates the problem. Any bad rumours going around about the bank at that time could well have brought about

the failure of that bank.

Q. Now, you gave evidence in relation to, when you were questioned by Mr. Healy, in relation to the matter, you gave evidence about placing the prudential aspect of the matter as the first matter on the agenda in relation to dealing with this particular bank.

A. That's correct.

Q. Guinness & Mahon was a long-standing bank with depositors who had deposited money with it over a considerable number of years.

A. That's correct.

Q. Because I want to bring you on to an aspect of what happened and compare it in relation to the Irish Trust Bank situation which you have been questioned by the Tribunal in relation to.

The Irish Trust Bank had was involved with the Central Bank, I believe, at the time that it was proposing to set up; is that correct?

A. That's correct, yes.

Q. And, therefore, the issue of current depositors who had deposited over a number of years was not a potential problem in relation to the Irish Trust Bank.

A. Irish Trust Bank had been established in 1971.

Q. And it was by 1973 the issue was before the courts?

A. Yes, I think so.

Q. And, indeed in November of 1973, the then President of the High Court, Mr. Justice O'Keefe, gave judgment that the

bank effectively had to give reasons if it desired to impose conditions.

A. Yes.

Q. And it also it also determined that law in law, that the bank would have to prove, as reasonable, those conditions.

A. Correct.

Q. So the suggestion that the bank, on a suspicion, or a serious suspicion, could proceed on the basis that that would be sufficient to impose conditions, was that, in fact, the position which pertained for the Central Bank in 1976/78?

A. The Bank could have imposed conditions, yes.

Q. And if they were challenged, what was the position in relation to the Bank having to deal with that challenge in court arising out of the Trust Bank decision?

A. Well, one had to justify it to the judge in court, yes.

Q. And would it be your view, as a person involved in the Central Bank, that suspicions would be sufficient to discharge that obligation to the courts?

A. Well, I don't know. It was challenged I think conditions were challenged only in one case that I am aware of, that was the Irish Trust Bank case, and we lost that.

Q. They were challenged successfully.

A. Yes.

Q. Indeed. Now, in relation to just a number of other matters which were raised during the matter. If I could get you to

look at the view of affairs of the 28th of February 1981, I think it's number 6, and on the second page of that, item 3(a) there is a company name with a balance of 6.939 million.

A. Yes.

Q. Not naming the company. Now, I think the Chairman asked you that you might look at matters and come back to him.

I'm correct in saying that the Central Bank has provided all and any documentation that it has in relation to these matters.

A. Yes, it has.

Q. So that if documentation is to be looked at, just to clarify this matter, it would have to be external or third party documentation which would be made available?

A. Yes, I should have said that it would involve us going back to Guinness & Mahon probably to get more information.

Q. There is no remaining documentation available at the Central Bank

A. No.

Q. that has not been made available to the Tribunal?

A. No, that's right.

Q. And indeed, on the face of the report, if you stay on the same here and you identify the name of the company with 6.939 million, Mr. Healy suggested that that was, in fact, an Irish company. If you go later in that report some seven or eight pages in from the end, you will see the 20 largest loans, and number one in that is the same named

company identified by the same name with UK Limited after

it. If you see that.

A. Okay, I accept what you're saying.

Q. So that on the face of it, the information given from the

face of the report at that stage was that that was not an

Irish company, but was a UK company.

A. Resident company, yes. Okay, thank you.

Q. And obviously if any third-party documentation is made

available and the Tribunal want you to look at it, you will

do so.

A. Certainly do so, yes.

Q. Now, just one other matter.

Towards the end of the examination, reference was made to

Mr. O'Reilly-Hyland's position as a member of the board of

the Central Bank and the suggestion that there could be a

conflict. Just to deal with the matter. His name appeared

in your 1978 Report as one of the lists of the Cayman

depositors, to use a shorthand.

A. That's correct, yes.

Q. Now, I think if you go to paragraph 28 of your statement,

you will see that Mr. Traynor was urging you that the loans

which were backed by Cayman should be regarded as

non-risk

A. Yes.

Q. and that, therefore, there was effective backing.

A. That's correct.

Q. And I think the bank, in fact, determined that they were full-risk assets and gave zero percent in relation to that?

A. That's correct.

Q. So as regards any benefit in relation to the list of people on that, that their loans were in some way to be treated as non risk assets, that was not, in fact, what the bank did?

A. Correct.

Q. Thank you very much.

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

MR. HEALY: Just three small matters just arising out of that.

Q. Just to deal with one matter that Mr. Feeney took up with you, Mr. Byrne, that was the concern that the bank might fail.

A. Yes.

Q. You were I think your response was that acting on the information you had, if you were to cause a run in the bank, that could be a very serious matter for the depositors?

A. Yes.

Q. But of course you did have a guarantee from the London bank, isn't that right, of all of the Dublin bank's obligations.

A. I think that may certainly we did ask for it. I can't remember.

Q. You may recall that I read out correspondence

A. Yes.

Q. in which

A. These guarantees tended to be letters of comfort rather than legal guarantees. So while they gave the supervisor some comfort, put to the put in practice they may not have held up.

Q. Can we just look at this more carefully then. The Governor wrote in his letter to Mr. Guinness in 1976, that he wanted to raise with Mr. Guinness a number of matters of serious concern. And then there was a correspondence that went on for some time. I can produce it here. And on the 6th of August 1976, Mr. John Guinness replied saying: "Dear Governor, I refer to your letter of the 9th of September and as requested in paragraph 5 thereof I now enclose the guarantee from Guinness & Mahon in respect of our liabilities."

A. Okay.

Q. So at this stage if you had serious concerns, as indeed you did have, about the bank, one of the concerns and obviously you wouldn't like a run on any bank

A. Yes.

Q. but you did have the satisfaction of knowing that the depositors would not be without their monies because you had the guarantee of the London bank.

A. We had that back-up support, but, you know, guarantees run into difficulties. The parent may not have been in a position to honour that guarantee. It may have caused

difficulties for the parent itself.

Q. Can there be any point in asking for the guarantee then without checking in advance that the guarantee is worth something?

A. It may be worth something at the time. The guarantees don't guarantee non-failure, that a bank won't fail.

Q. Guarantees between one bank and another are usually regarded as the best class of guarantee anyone could have for any class of operation, isn't that right?

A. That's right.

Q. As regards the quality of a guarantee, the guarantee may or may not be worth much depending on how the individual prospers after the guarantee was given, but a guarantee from a bank licensed by the Bank of England who would, I suppose, have had licencing requirements similar to your own, was surely one of the best qualities of guarantee you could have.

A. Yes, it was comfort. It didn't guarantee that the Dublin bank would not fail.

Q. But you had to take a commercial risk in any judgment call you made, Mr. Byrne, at any time.

A. Yes.

Q. You were making judgment calls every day and there were commercial risks involved. How did you know that Mr. Traynor's bank wasn't going to go out and lend 20 million to someone who was going to go wallop the next day and the bank might fall as a result? You had those

problems all the time, didn't you?

A. Yes.

Q. But the risk you had here was the lowest order of commercial risk you were faced with in making any judgment in relation to this bank, isn't that right?

A. That's right.

Q. I'm simply

A. Without that guarantee we may have had to close the bank down.

Q. I see. Now, just one other matter.

In relation to the consideration that might have been given based on the views I was canvassing with you concerning the imposition of a condition or even informally requesting Guinness & Mahon to remove some of its directors, you were asked by Mr. Feeney about the experience you had in the Irish Trust Bank case. Now, can I just make two points about this particular case and the Irish Trust Bank case.

You were asked by Mr. Feeney to offer, certainly your own view on what is, I suppose, a legal issue. Can I take it no legal advice was obtained in 1976 or 1978 concerning the approach the Bank might take to the misgivings it had with regard to Guinness & Mahon?

A. I don't know. I know that, for instance, following the '78 letter, I think it was, we did impose certain conditions on the licence of Guinness & Mahon relating to property and involvement with certain companies.

Q. What I'm driving at, Mr. Byrne, is this: Mr. Feeney is asking you to consider what is essentially a legal question, how would you have dealt with the imposition of a condition in this case bearing in mind the experience you had in the Irish Trust Bank case? What I'm simply trying to clarify is this: Am I right in thinking that you got no legal advice at the time, because I assume you would have made it available to the Tribunal if you had

A. On the Irish Trust Bank case?

Q. No, on the issue of whether

A. No.

Q. a condition should be imposed concerning the misgivings you had or arising from the misgivings you had in relation to the taxation avoidance or evasion issue.

A. The problem with what went wrong

Q. Let's just deal with that issue first.

A. But I want to say

Q. Am I right there's no legal advice obtained?

A. Not that I am aware of.

Q. Proceed with your answer.

A. But in the case of the Irish Trust Bank case, we lost that case purely on a legal technicality, not on the basis of it was just

Q. That's precisely the second point I want to come to.

You didn't lose that case because you took a certain view of the failure of the individual in question to measure up

to the standards set by the Central Bank.

A. That's correct.

Q. You didn't fail because an official of the Central Bank had formed an opinion that somebody didn't measure up to those standards. In fact, I think the judge made some complimentary points about your case.

A. He did.

Q. You failed purely on a technicality in relation to giving of notice and giving reason for decisions, isn't that right?

A. That's correct.

MR. HEALY: Thank you.

CHAIRMAN: Insofar as there may be a very loose analogy, Mr. Byrne, in your supervisory function with the relationship between the Revenue Commissioners and the taxpayer, after all you did essentially licence banking activity, you could deal with a vast amount of money matters and you could apply sanctions, it would be fair to say that your relationship with the various banks you supervised would have been much more trusting and less skeptical than the historical relationship between the Revenue Commissioners and the taxpayer?

A. Absolutely.

CHAIRMAN: And indeed the fact that Mr. Traynor would have been perceived to be a very senior businessman and accountant would inevitably have attributed to the

assessments you made at the time.

A. Absolutely. No question they did.

CHAIRMAN: Thank you very much for your professional and forthright evidence. I think we should make a slight start, as we lost some time this morning, on the next witness.

MR. COUGHLAN: Now? Yes. Ms. Kells, please.

SANDRA KELLS, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Ms. Kells, I think you furnished a further Memorandum and from that you have informed the Tribunal that it appears from the Guinness & Mahon records that the loan to Irish residents and to Irish companies backed by deposits of Guinness & Mahon offshore subsidiaries came to the attention of the Central Bank in the course of the Central Bank's first on-site inspection of Guinness & Mahon in 1976 and that the matter was subject to correspondence and to meetings between officials of the Central Bank and Guinness & Mahon, isn't that correct?

A. Yes, that's correct.

Q. I think you've also informed the Tribunal that Guinness & Mahon files do not include the examination reports prepared by the Central Bank or minutes of review meetings between Guinness & Mahon and the Central Bank, is that correct?

A. They do not.

Q. Guinness & Mahon consented to the Central Bank releasing copies of these documents to the Tribunal and the documents have in turn been provided by the Tribunal to Guinness & Mahon?

A. Yes.

Q. And you are able to inform the Tribunal that following the 1976 inspection, Mr. Murray, the Governor of the Central Bank, appears to have written to Mr. Guinness, the chairman of Guinness & Mahon, and raised a number of points of concern of the Central Bank; is that correct?

A. Yes, that is correct.

Q. And I think these included the following comments under the heading of 'Tax Havens':

A. Yes.

Q. "The examination reveals that Guinness & Mahon has banking subsidiaries closely connected with the Irish bank operating in offshore havens. The bank is somewhat concerned about the extent of this involvement and would welcome an opportunity to discuss the matter." Is that correct?

A. Yes.

Q. I think you informed the Tribunal that it appears that by a letter dated the 26th of November 1976, Mr. Guinness responded to the points raised by the Central Bank and under the heading 'Tax Havens' he stated: "I would not altogether be happy with your understanding of the situation in this regard and would certainly welcome the

opportunity of discussing the matter." Is that correct?

A. Yes.

Q. I think these two letters have already been put up in the course of Mr. Byrne's evidence yesterday.

A. Yes.

Q. I think you informed the Tribunal that on the 10th of January 1977, the Governor of the Central Bank wrote to Mr. Guinness referring to the letter of the 26th of November indicating that the Central Bank had considered Guinness & Mahon's observations and that the Governor had asked Mr. O'Grady Walsh of the Central Bank to contact Mr. Guinness with a view to arranging for a discussion concerning the outstanding issues, isn't that correct?

A. Yes, that's correct.

Q. And I think that letter is 26th of November, is that correct? Document number 3, dated the 10th of January, I beg your pardon.

And I think you've informed the Tribunal that Guinness & Mahon's records do not include any document relating to the meeting with the Central Bank which you understand from the documents provided by the Central Bank took place on the 8th of February 1977.

A. That's correct.

Q. What you have been working on is a minute of all of these meetings which has been provided by the Central Bank and it's the Central Bank's minute which were furnished to the

Tribunal and then furnished to you?

A. Yes, that's what we're working from.

Q. As far as you can ascertain, there is no minute or record of any of these meetings in the records of Guinness & Mahon; is that correct?

A. So far we haven't located any.

Q. I think you've informed the Tribunal that it appears from the Central Bank minutes that the meeting was attended by Mr. Traynor and Mr. O'Kelly on behalf of Guinness & Mahon and Mr. O'Grady Walsh and Mr. Daly on behalf of the Central Bank. Is that correct?

A. That's correct.

Q. And it appears that in relation to the matters of tax havens, Mr. Traynor outlined in some detail the operation of the bank's subsidiaries and stressed that there were basically trust companies with banking statutes.

A. Yes.

Q. And from a memo made by the Central Bank it appears that Mr. Traynor emphasised that the funds placed on deposit by the offshore subsidiaries with Guinness & Mahon were not placed for the purpose of tax avoidance or evasion.

A. Yes.

Q. And I think that document was opened yesterday by Mr. Byrne.

A. Yes.

Q. I think you've informed the Tribunal that the operation of the offshore subsidiaries and the use of backing deposits

was again raised by the Central Bank following an on-site inspection in 1978 and by letter dated the 1st of September 1978 from Mr. O'Grady Walsh to Mr. Guinness under the heading of 'Offshore Banking Facility' Mr. O'Grady Walsh states: "Our examination revealed that as of the 30th of April 1978 Guinness & Mahon had advanced loans in his excess of €5 million to customers which were secured wholly or in part by deposits placed with Guinness & Mahon Cayman Trust Limited, a wholly owned subsidiary of the bank, and with Guinness & Mahon Jersey Limited a subsidiary of Guinness & Mahon Company Limited. We are of the view that there can be no reason for these arrangements other than to reduce the tax liabilities of the customer in question. It appears to the Central Bank that the Bank's involvement in such arrangement is inappropriate and must be considered to be contrary to the national interest."

I think you've informed the Tribunal that it appears from Guinness & Mahon's records that the level of loans secured in this way, as of April 1978, was well in excess of €5 million; is that correct?

A. Yes, that's correct.

Q. So what was being divulged to the Central Bank as being the level of loans secured in this manner did not accord with the true facts as you can ascertain from the records in Guinness & Mahon, is that correct?

A. Yes, I agree with that.

Q. I think you've informed the Tribunal that Guinness & Mahon

has been provided with a copy extract from the Examination Report prepared by the Central Bank following its on-site inspection in 1978, and Appendix 10 to the Report listed the major loans from Guinness & Mahon backed by deposits in Cayman or Jersey, isn't that correct?

A. That's correct, yes.

Q. And you have been able to inform the Tribunal that the list excluded at least three very substantial loans made by Guinness & Mahon which were described in the Loan Decision Memoranda as "suitably secured".

A. Yes.

Q. Is that correct?

A. Yes.

Q. These loans included the loan to Central Tourist Holdings Limited; is that correct?

A. Yes.

Q. Which as of 1978 amounted to approximately œ70,000?

A. Yes.

Q. And that was not on the list provided to the Central Bank.

A. No, it was not.

Q. The list also excluded the bridging loan to Mr. Peter Sutherland; is that correct?

A. That's correct, yes.

Q. Which, as of 1978, was at least twice the level of the smallest loan included in the list, is that correct?

A. Yes.

Q. And I think we have a document which has been prepared by

Guinness & Mahon showing the list of loans as of the 30th of April 1978; is that correct?

A. Yes, it appears to be.

Q. Which was not included in Appendix 10 provided to the Central Bank; isn't that correct?

A. Those loans were not included

Q. Those loans were not included. You furnished this document to the Tribunal as being the list of loans which were not included in the list provided to the Central Bank?

A. Yes, I agree with you.

Q. The names have been deleted.

A. Yes, it's just a little

Q. But it's just showing the loans and the amounts and these were all backed loans which were not disclosed to the Central Bank.

A. Yes, that's correct.

Q. And as we can see, two of those loans, one is 360,000 and the other these are all hundreds of thousands.

A. Yes.

Q. Just to go back to Appendix 10 to show what was being provided to the Central Bank, and these were the major loans, the smallest one there is for œ9,269, isn't that correct?

A. That's correct, yes.

Q. If we go to the list which has been prepared by Guinness & Mahon then of a list of loans, every one of them is greater than the smallest loan disclosed on Appendix 10 furnished

to the Central Bank.

A. Yes, that's correct.

Q. I think you have informed the Tribunal that the board of directors of Guinness & Mahon considered the letter from the Central Bank at a meeting on the 12th of December 1978; is that correct?

A. That's correct. Yes.

Q. And in a letter of the 1st of February 1979 from Mr. Guinness to Mr. O'Grady Walsh, Mr. Guinness stated under the heading 'Offshore Banking Activities', "We do have a wholly-owned subsidiary, Guinness & Mahon Cayman Trust Limited and we do transact business of a banking nature with Guinness & Mahon Company Limited and with its wholly-owned banking subsidiaries. Such business, however, is a normal part of the activities of the bank which is part of an international banking group and to the best of my knowledge, the major Irish banks have similar structures.

My board feels strongly that we are not involved in what you have described as "offshore banking activities", but on the other hand they do recognise that confusion sometimes can occur in regard to the exact nature and purpose of banking business emanating from these international contracts.

Because of the complexity and proliferation of the various types of international banking arrangements of this nature,

I would like to suggest that both Mr. Traynor and Mr. O'Kelly might meet your representatives at the earliest possible date to discuss the whole matter in detail."

A. Yes.

Q. I think that letter resulted from a meeting of the board of Guinness & Mahon?

A. That's correct, yes.

Q. I think you've informed the Tribunal that there are no other documents in Guinness & Mahon's records relating to the proposed meeting, but it appears again there's no record of any minute of any meeting; is that correct?

A. No, there is not.

Q. In Guinness & Mahon?

A. Not that we can find.

Q. Yes. But that it appears from documents produced by the Central Bank that the meeting took place on the 7th of March 1979; isn't that correct?

A. That's correct.

Q. And from your analysis of that, it appears that the Central from the Central Bank's minute, that the meeting was attended by Mr. Traynor and Mr. O'Kelly on behalf of Guinness & Mahon and Mr. Daly and Mr. Byrne on behalf of the Central Bank, and it appears that the sole purpose of the meeting was to discuss Guinness & Mahon's offshore activities and the extent of the loans which were secured by backing deposits; is that correct?

A. That's correct.

Q. The minutes record that Mr. Daly outlined the Central Bank's concern, that because of the manner in which the loans were secured and the secrecy surrounding the existence of the security, that there seemed to be no logical reason for the arrangements other than to assist customers to avoid tax and that in the view of the Central Bank, this was not appropriate for a bank to be engaged in such a significant way in tax avoidance schemes; is that correct?

A. That's correct, yes.

Q. And I think you've informed the Tribunal that it appears that Mr. Traynor outlined to the Central Bank the usage of discretionary trusts; is that correct?

A. Yes, he did.

Q. And with regard to the loans, he appears to have indicated that the loans were entirely genuine?

A. Yes.

Q. With the possible exception of one loan, Guinness & Mahon would have been quite satisfied to make the advance without the existence of the cash deposit, that he was quite confident that all of the loans would be fully recovered without recourse to the cash deposit, and that in all cases the cash deposits were placed in the offshore bank before the loan was advanced to the borrower in Dublin.

A. Yes.

Q. I think you've informed the Tribunal that it appears that Mr. Traynor further indicated that since 1972, when the

Cayman Islands ceased to be part of the Sterling area, no new loans had been granted which were backed by Cayman deposits, and that the introduction of exchange control regulations which would end the granting of further loans secured by Channel Islands deposits; is that correct?

A. Yes.

Q. And that Mr. Traynor appears to have indicated that he was satisfied that the level of the loans would not increase and that he expected that there would be gradual reduction at the present level; is that correct?

A. That's correct.

Q. And that it appears from the Central Bank's minute that Mr. Daly stated that having regard to Mr. Traynor's assurances that the level of the loans was likely to be reduced, the Central Bank did not intend to pursue the matter further at that time?

A. Yes.

Q. I think you then, in your Memorandum, inform the Tribunal that the issue of Guinness & Mahon's offshore subsidiaries and the use of backing security, does not appear to have been raised by the Central Bank in any subsequent correspondence with Guinness & Mahon; is that correct?

A. Yes.

Q. And that it appears that the use of the term "suitably secured" to infer the existence of an offshore banking deposit ceased to be used in November 1978; is that correct?

A. Yes.

Q. And that from the mid 1980s onwards, the term "considered adequate" was introduced.

A. That's correct, yes.

Q. And I think you've informed the Tribunal that it now appears that the change in practice used to identify backed loans coincided with the concerns expressed by the Central Bank following the 1978 inspection.

A. Yes.

Q. So up to 1978 in credit committee memoranda, the term "suitably secured" was being used to describe backed loans. The Central Bank expressed their concern from the minute of the meeting you have just described Mr. Traynor indicated or gave certain assurances and the term "suitably secured" ceased to be used internally in Guinness & Mahon; is that correct?

A. That's correct, yes.

Q. But that from 1980 onwards, you concede that the term "considered adequate" or similar-type words, were used to describe backed loans?

A. Certainly from the mid eighties onwards, yes.

Q. I think you've informed the Tribunal that while it is very difficult to quantify in precise terms the value of the loans secured by backing deposits, it is nonetheless clear from Guinness & Mahon's records that the level of backed loans was in excess of €10 million throughout the 1980s; is that correct?

A. Yes, that's correct.

Q. So on the information available from the records of Guinness & Mahon, notwithstanding the assurances which Mr. Traynor had given to the Central Bank in relation to their understanding of the level of the loans, the loans seemed to increase.

A. Yes. Yes.

Q. That is backed loans?

A. Cash-backed loans.

Q. I think you've informed the Tribunal that the report of the Central Bank following an on-site inspection in 1982 also referred to the backed loans; is that correct?

A. That is correct, yes.

Q. And there it is on the screen. The bank engages in two types of loans under this heading: 1, normal back-to-back lending and 2, lending where the bank has the security of a deposit, although the depositor and the lender may not be the same person, the bank calls this offset loans."

And then on back to loan back loans - "these loans amount to approximately €2 million and then the major loans are indicated; isn't that correct?

A. Yes.

Q. The report listed or quantified the loans of amounting the back-to-back loans as amounting to €2 million as of then.

A. Yes.

Q. And the report also listed the three major cash-backed

loans advanced by Guinness & Mahon which together came to approximately €1.9 million?

A. Yes, total is 1.9 million.

Q. Yes. And you've informed the Tribunal that this information was presumably provided by Guinness & Mahon in response to inquiries made by the Central Bank in the course of its on-site inspection?

A. Presumably so.

Q. And it appears that the details of a number of very substantial back-to-back loans were not disclosed to the Central Bank in the course of the inspection, including the loan, for example, to Central Tourist Holdings.

A. Yes.

Q. Which by this time had increased.

A. Yes, that's correct.

Q. I think you informed the Tribunal that it further appears from documents which have been identified in the course of Guinness & Mahon's efforts to assist the Tribunal, that measures may have been taken by Guinness & Mahon to withhold from the Central Bank information which would have pointed to the existence of backed loans; is that correct?

A. That is correct, yes.

Q. Guinness & Mahon records include an internal memorandum dated the 23rd of August 1982 from Ms. Diedre Devane to Mr. Pat O'Dwyer, who was then loan officer, asking him to provide information which had been requested by the Central Bank, including details of the top 20 loans; is that

correct?

A. That's correct.

Q. And we have it that memorandum on the screen and it reads: "The Central Bank have requested that the following information would be available to them when they visit us for inspection on the 31st of August:

1. Top 20 loans.
2. Loans with specific bad debt provision.
3. All problem loans.
4. Size analysis of loans.
5. Maturity analysis of loans.

Perhaps you would let me have this information by Friday, the 27th please."

Obviously the Central Bank inspectors or examiners were coming in probably the following Monday?

A. Yes.

Q. And that in response to this memorandum, by memorandum of the 26th of August 1982 from Mr. O'Dwyer to Ms. Devane, Mr. O'Dwyer enclosed a schedule outlining the top 20 loans and further indicated that "As agreed, I have intentionally omitted back-to-back situations."

So if we just go through that particular memorandum dated the 26th of August from Mr. O'Dwyer to Ms. Devane.

"In reply to your memo of the 23rd of August 1982, I have pleasure in enclosing

(a) a schedule outlining the top 20 loans.

As agreed I intentionally omitted back-to-back situations.

(b) we have agreed that Dermot McCleane should provide us" that's dealing with the other matters under consideration?

A. Yes.

Q. Specifically in relation to the back-to-back, there seems to be an indication of intentionally omitting back-to-back situations for the information of the Central Bank.

A. Yes.

Q. I think you've informed the Tribunal that the 1982 Report of the Central Bank includes as Appendix 3 a list of top 20 loans, but it is not clear that the contents of that list are the same as the contents of the schedule furnished by Mr. O'Dwyer.

A. That's correct. Because we cannot locate the schedule produced by Mr. O'Dwyer.

Q. Furnished by Mr. O'Dwyer?

A. Yes.

Q. But that the listed Appendix 3 appears to be incomplete, as far as you can ascertain; is that correct?

A. Yes. Yes.

Q. If we go back to Mr. O'Dwyer's memorandum for a moment please. What is your understanding of back-to-back in that memorandum? Back-to-back situation?

A. It would be loans which would be secured on cash deposits in either Channel Islands or Cayman.

Q. Yes. I think you've informed the Tribunal that the

Tribunal has drawn to the attention of Guinness & Mahon the minutes of a meeting held on the 12th of January 1983 at which the Central Bank's 1982 Report was discussed; is that correct?

A. That's correct, yes.

Q. Document number 13. And it appears to you that the meeting was attended by Mr. Traynor, Mr. O'Kelly, and Mr. McCleane on behalf of Guinness & Mahon; is that correct?

A. Yes. Yes.

Q. What was Mr. McCleane?

A. I believe he was the finance director.

Q. Yes. That in the course of the meeting, Mr. Byrne of the Central Bank referred to the commitment given by Mr. Traynor at the meeting with the Central Bank in 1979 that the level of back-to-back loans by Guinness & Mahon would be reduced. And it appears that Mr. Traynor stated that there had been no increase in the level of that type of lending and that he would provide a list of such back-to-back loans.

A. Yes.

Q. And I think you confirm that Guinness & Mahon is undertaking a full review of all its files and has not yet located any list of loans prepared in January of 1983, or any correspondence relating to the provision of such a list to the Central Bank.

A. Yes, we cannot locate anything.

Q. So notwithstanding what you considered to be a commitment

by Mr. Traynor to provide the Central Bank with information, as far as you can ascertain, no such documentation or list appears to have been prepared in Guinness & Mahon and you can see no correspondence in Guinness & Mahon surrounding such an issue; is that correct?

A. No, we cannot locate anything relating to this assurance.

Q. I think the Tribunal has further drawn the attention of Guinness & Mahon to the Central Bank's report of the 31st of August 1985, that's Appendix 13 to the Report, consisted of a list of loans by Guinness & Mahon set off against deposit accounts. Is that correct?

A. Yes, that's correct.

Q. And you've informed the Tribunal that apart from US dollar loans, these loans included loans of sterling 4.4 million and 701 Irish pounds; is that correct?

A. Yes, you can actually see it.

Q. Yes. And you've informed the Tribunal that the recipient of these loans was included in the list comprised in Appendix 10 to the 1978 Report in which the total loans were quantified at 1.179486 million; is that correct?

A. Yes, you can actually see it in the 1978 listing there, the first one with the X beside it, and that was for 1978.

Q. Yes. And you've informed the Tribunal that this list also appears to have been deficient as it omitted a number of substantial loans which appear from the Bank's record to have been secured by offshore banking deposits; is that

correct?

A. Yes. Can I just correct my earlier statement, it was 1985.

Q. 1985?

A. Yes. But there does appear to be missing from this listing what we would call substantial back-to-back loans.

Q. Amounting to

A. I don't know.

Q. But millions of pounds?

A. Yes.

Q. Millions?

A. Yes.

Q. So that there are a number of instances where information has been brought to your attention by the Tribunal resulting from information obtained from the Central Bank and from your inquiries it would appear that the information being supplied to the Central Bank in respect of these cash-backed loans from Jersey or Cayman was, at the very least, incomplete?

A. Yes. I would agree with that.

Q. Well, I think you were here when Mr. Byrne gave his evidence just a few moments ago, from the Central Bank.

A. Yes.

Q. And he referred to the 1982 Report where he referred to it as being the cut-off point in relation to a determining as to whether Mr. Traynor, or the bank were, in fact, reducing these cash-backed facilities. And I think as of then

Mr. Byrne had three loans identified to him which amounted to 1.9 million approximately?

A. Yes.

Q. Perhaps that list which was referred to, which you say you can find no you can find no evidence of a list being prepared or correspondence in respect of this particular assurance or commitment given by Mr. Traynor, but it would appear that Mr. Byrne was at least provided with the information which enabled him, as of then, 1982, the end of the 1982 Report or review of it, to be able to determine that there were three loans and that these amounted to 1.9 million approximately; isn't that correct?

A. Yes, it appears we gave that evidence.

Q. The information was given?

A. Yes.

Q. But of course that was not

A. To the Central Bank.

Q. To the Central Bank. That was incomplete

A. Precisely.

Q. From your assessment?

A. Yes.

Q. The information was incomplete?

A. Given by Guinness & Mahon to the Central Bank, yes.

Q. Thank you.

CHAIRMAN: If there's anything of substance I'll defer it.

I'll inquire of Mr. Connolly? Mr. Feeney?

MR. CONNOLLY: No.

CHAIRMAN: Anything you want to raise, Mr. Feeney?

MR. FEENEY: Mr. Chairman, just to clarify that last point that Mr. Coughlan was dealing with.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FEENEY:

Q. MR. FEENEY: It appears from the 1982 Report of the Central Bank that three names amounting to approximately 1.9 million were given to the Central Bank by Guinness & Mahon; is that correct?

A. That appears to be the case, yes.

Q. And if one then goes, and you mightn't have this before you, but the Tribunal have, in the report of Guinness & Mahon of the meeting, the Central Bank's report of the Guinness & Mahon's meeting of 12th January 1983, they indicate in relation to this matter, that the referring back in relation this is to back-to-back loans on page 3: "Mr. Byrne referred to a commitment given of the meeting in 1979 where the bank undertook to reduce its involvement in back-to-back lending. Mr. Traynor said that there has been no increase in the level of this type of lending. He will provide a list of loans under this heading."

And then there is two stars and there's a note: "Total amount 1.9 million, mainly then those mentioned on page 13 of the 1982 report."

So it appears that Mr. Byrne was assured by Mr. Traynor that the list was the list which had been previously provided.

A. Okay. Oh, I see where you're talking now. Sorry, I was finding it in my notes. Okay, yeah, I see what you're talking about. I do agree with that.

Q. Mr. Traynor appears to have confirmed that the list being discussed which Mr. Coughlan says hadn't been forwarded, Mr. Traynor appears to have identified that as the list that was identified in the 1982 Report.

A. Yes, that was mentioned on page 13 of the 1982 Report.

Q. Thank you very much.

CHAIRMAN: Thank you very much, Ms. Kells. Quarter past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:15PM:

MR. HEALY: Mr. O'Dwyer, please.

PAT O'DWYER, ALREADY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HEALY:

Q. MR. HEALY: Mr. O'Dwyer, thank you for coming back to the Tribunal. You have already given evidence in relation to the system of backing loans and you have given evidence in relation to a number of specific matters. On this

occasion I want to ask you about information you provided in connection with a request from the Central Bank for information concerning loans in the bank in 1982, and you have made a statement to the Tribunal which I think I should read out first and ask you to confirm the statement and then if there is anything that needs to be gone over, we can come back to it. Have you got a copy of the statement?

A. Yes, I have.

Q. You say that: "On receiving the memorandum of the 23rd August 1982, it is very possible that I discussed the position with Deirdre Devane and either agreed with her or possibly the late Mr. Traynor to exclude back-to-back loans from the schedule."

Just so we are all on the same wavelength, the memorandum that you are referring to is the memorandum that's on the overhead projector to Deirdre Devane from you sorry, I beg your pardon. I am looking at a different one. From Dierdre Devane to you in which she stated: "The Central Bank have requested that the following information would be available to them when they visit us for inspection on the 31st August."

And they are five requests for information.

"Top 20 loans.

"Loans with specific bat debts provision.

"All problem loans.

"Size analysis of loans.

"Maturity analysis ever loans.

"Please let me have this information by Friday, 27th."

Then perhaps we should go to the memorandum of the 26th August 1982 in reply from you to Ms. Devane where you say:

"In reply to your memo of the 23rd August 1982, I have pleasure in enclosing, (A), a schedule outlining the top 20 loans" as agreed "a schedule outlining the top 20 loans. As agreed, I have intentionally omitted 'back-to-back situations.'"

Then you deal with the other requests for information at items B, C, D and E.

I'll just go back to your statement again.

You say that you agreed either with Ms. Devane, or possibly with the late Mr. Traynor, to exclude back-to-back loans. You go on: "I cannot, of course, be absolutely certain on this particular point, but I feel the aforementioned is the course of action I would have taken. I can only presume the agreement was made in the course of my work at Guinness & Mahon following a conversation with possibly the late Mr. Traynor. I cannot recall having had any specific meeting and dealings with the Central Bank inspectors or with any other members of the staff of Guinness & Mahon concerning any requests for information from or the provision of any information to the Central Bank.

"To the best of my knowledge, I never had, during all my time at Guinness & Mahon, an arranged meeting with Central Bank inspectors for the purpose of providing any information. I can only assume I referred the problem loans position back to Ms. Devane. This might be the result of a conversation I had with her asking her that she take up the matter with the directors. I am reasonably certain that it would be an agreement as a result of a discussion, and I feel sure no written agreement will exist. I am unable to provide any specific name of an individual who might have agreed that I need not provide the particular list."

So just go back to your position in Guinness & Mahon at that time, were you not the loans officer? Is that the correct description of the position you held?

A. Yes.

Q. And how long had you been in Guinness & Mahon, if you could just remind me, Mr. O'Dwyer, at that stage?

A. Approximately twelve years.

Q. Twelve years?

A. Yes.

Q. And when did you leave, approximately?

A. Approximately '88/'89.

Q. 1988 or 1989?

A. Yes.

Q. And I think you continued in the position of loan officer

up to the time you left?

A. That's correct.

Q. Were you aware in 1982 that the Central Bank had conducted on-site inspections at Guinness & Mahon in 1976 and in 1978?

A. It would be wrong of me to state that I was fully aware of it, but I would have been aware that the Central Bank would have been in to Guinness & Mahon at infrequent intervals.

I have to accept that you say it was 1972/76 and that I might have had discussions with an individual and answered some questions regarding particular regarding certain particulars on loans, but I would not have been fully aware that they were in for a specific purpose.

Q. Well, do I take it that you weren't aware that there were in the premises on foot of an obligation, they had to carry out a formal inspection, but that you knew there were Central Bank officials on the premises from time to time that were raising queries about one thing or another?

A. Yes, but, I mean, as far as I know, Central Bank carried out formal inspections on every bank, if you know what I mean, but beyond that I wouldn't know anything more.

Q. When you say you never had an arranged meeting with Central Bank inspectors, do you mean that you may have spoken to them and answered queries from them on a casual basis but that you weren't in attendance at any formal meeting with them?

A. That would possibly be correct. That would be fairly I

could assume that, yes. I might have spoken to an individual on a passing basis if he asked any questions, but I cannot recall having a specific meeting with them.

Q. The type of people who would ask questions of you in the course of your work in Guinness & Mahon who wouldn't be associated with the bank, would be auditors I suppose?

A. Correct.

Q. Or the Central Bank?

A. Correct.

Q. If I could just ask you for a moment to recall any queries that might have been raised with you by auditors concerning, for instance, back-to-back situations.

A. If any queries were raised with me by auditors regarding back-to-back situations, I wouldn't have been fully familiar with the back-to-back situation inasmuch as I wouldn't have any idea as to what funds were at the other side, if you know what I mean, and I would always refer them to Mr. Traynor.

Q. Any request by an auditor in relation to a back-to-back situation would be referred to Mr. Traynor?

A. Yes.

Q. Now, do I take it that before a request like that would come to you, an auditor looking at a loan file would wonder what, for instance, the expression "suitably secured" meant?

A. I would have thought that the auditors probably knew what it meant.

Q. But if we could manage if we could conceive for a moment if in a situation, or an auditor attached to a firm of accountants is examining a file and sees the words "suitably secured," that wouldn't be enough to tell him how a loan was secured?

A. No, it wouldn't.

Q. If he asked you about any such loan?

A. I'd refer him to Mr. Traynor.

Q. Was that an instruction from Mr. Traynor?

A. No, not a specific instruction, but you know, it wasn't I cannot recall if it was a specific instruction.

Q. But there are other individuals in the bank who would know about those loans, wasn't that right?

A. That is possible.

Q. Isn't it the case that Mr. Ru Leonard at one point and Mr. Padraig Collery at another time would have known about back-to-back loans?

A. That's correct.

Q. But you wouldn't refer queries to either of them?

A. No, I did not refer queries to either of them.

Q. Even though I think documentation has been produced at sittings of the Tribunal where queries arose in relation to backing situations and you referred those queries, or questions that arose in your own mind, you referred them in one case to Mr. Ru Leonard; isn't that right?

A. It would be very exceptional though. You know, I can't be dogmatic on it.

Q. He was the man you referred to?

A. I can recall the

Q. I think on other occasions if questions arose concerning Cayman matters in general, you would be able to refer, not just to Ru Leonard, but to Mr. Collery, isn't that right?

A. I would have thought that the majority of my referrals would be to the late Mr. Traynor or to Mr. Collery.

Q. Do you at this point have a full appreciation of what an inspection by the Central Bank is directed to achieving, either based on what you know now or what you knew or know from your years of experience in the bank?

A. Well, when I was in Guinness & Mahon, I would provide the inspectors from the Central Bank, as far as I was capable of doing so, of any information they might require. Now, the end outcome would be for the Central Bank to take up with the directors of Guinness & Mahon.

Q. But the Central Bank inspectors were clearly trying to form a picture of the bank's assets and liabilities, obviously, and the way in which it was managing its assets

A. I would correct that correct.

Q. So in seeking to form a picture of a way in which the bank was dealing with its loans, the Central Bank would request a list of the top 20 loans on the basis that they might give a picture of some of the bigger exposures a bank had?

A. Yeah.

Q. So when you got a request from Ms. Devane indicating that the Central Bank wanted to know about the top 20 loans,

then on the face of it what they wanted was every loan in terms of size in the top 20

A. Yeah.

Q. loans granted by the bank?

A. I would accept that.

Q. And if any loans were to be omitted from that, then you wouldn't have a clear picture of the top 20 loans?

A. I would accept that as well. But I wanted to provide the exact information. I take it that when this request came in, I don't know who it was addressed to. Presumably I wanted to provide the information that my directors wanted me to provide.

Q. The request would have come to the directors or to some senior official in the bank in any case?

A. I presume so.

Q. And you say that you would have wanted to provide the information that your directors wanted to be provided to the Central Bank?

A. Yeah.

Q. So can I take it from that that when you replied to Ms. Devane and say, "As agreed, I have intentionally omitted back-to-back situations," this was because of some conversation you had with her or with somebody else from which you understood that the directors wanted you to leave out the back-to-back loans?

A. That is correct.

Q. You would see no reason off your own bat, as it were, to

leave out those loans?

A. No. I mean, I was only carrying out instructions, you know, did they want me to include everything or did they want me to leave them out?

Q. I see. Do you remember was that the only occasion that you were asked to produce a list of the top 20 loans?

A. I cannot recall, truthfully, I cannot recall. I think it may well have been.

Q. The evidence that has been given to the Tribunal by other witnesses from Guinness & Mahon, including Ms. Sandra Kells, is that when information was given to the Central Bank concerning loans, and in particular concerning the top 10 or top 20 loans in the bank, the full extent of loans backed by Cayman deposits was not brought to the attention of the Central Bank.

A. Truthfully, I cannot say one way or another. As far as I can recall, I did not provide Central Bank with a schedule of loans, as far as I can recall. In any case, without permission from my directors, I probably wouldn't have done so.

Q. When you say you didn't provide them, you mean you provided it to Ms. Devane who provided it to the Central Bank or somebody else?

A. I don't think I ever provided a schedule directly to Central Bank. I cannot recall having done so either.

Q. Just one other matter, Mr. O'Dwyer. Do you know what an offset loan is? Maybe if I could remind you. In the

course of an inspection carried out by the Central Bank, the Central Bank were informed there were two types of back-to-back loans. Some back-to-back loans of the ordinary kind that we have discussed where you might have a deposit, a Cayman deposit or a Channel Islands deposit, and another class of back-to-back loan involving mainly American borrowing called an offset loan.

A. Truthfully, I don't know anything about it.

Q. You never heard of the expression "offset loan"?

A. No.

Q. If some member of the senior staff of the bank, like the directors, used that expression, it was not one as loans officer you were familiar with?

A. I cannot recall the term having been used, to be truthful with you.

Q. Thanks very much.

CHAIRMAN: Anything arising?

I think you agreed with me on the last day, Mr. O'Dwyer, when you gave evidence, that when you saw the phrase "suitably secured" indicating an offshore situation, you did tend to look on it as a separate category, one in which you didn't need to worry about whether the formalities of normal securities by way of mortgages or the like, had been supervised fully by you?

A. Well,, if there was a separate security, I would obviously do my utmost to make sure that it was in place as well, but

what you say is correct.

CHAIRMAN: But if it was suitably secured, the main aspect of the security was someone else's look-out?

A. Yes.

CHAIRMAN: Thank you very much.

THE WITNESS THEN WITHDREW.

MR. HEALY: Ms. Deirdre Devane.

DEIRDRE DEVANE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MR. HEALY:

CHAIRMAN: Thank you, Ms. Devane, please sit down.

Q. MR. HEALY: Thank you, Ms. Devane. I don't know if I am pronouncing your name correctly.

A. Yes.

Q. You have provided the Tribunal with a memorandum of information in response to queries which the Tribunal raised with you concerning two memoranda which have been on the overhead projector in the last few minutes. Do you have a copy of that with you?

A. I do, yes.

Q. And what you said in your what you say in your memorandum is you have no recollection of any agreement regarding the omission of the back-to-back situations from the schedule prepared for the Central Bank. You say you

did not have any meeting with Central Bank inspectors or, to your recollection, with any other member of the staff of Guinness & Mahon regarding requests for information from the Central Bank except for normal discussions with Derek McCleane who would have asked you to prepare the information. You do not recall any agreement to leave out a reference to problem loans?

The memorandum of the 23rd August 1982 was obviously, I am sure you will agree, prepared by you. You have no difficulty in accepting that?

A. No.

Q. And because you had no direct contact with the Central Bank, somebody else must have asked you to chase up these items?

A. Yes, that's right.

Q. Now, at the time what was your role in Guinness & Mahon?

A. I was financial controller.

Q. And would you have had access to the information which would have enabled you to compile a list of the top 20 loans?

A. Well,, I would have access to printouts, yes.

Q. What I am trying to get at is why would you ask somebody else to compile the list for you, if you understand me?

A. I don't know actually, because I wonder about that myself when I see it, but I can't remember.

Q. So you could have compiled the list yourself?

A. I could have, yes.

Q. Did you know about back-to-back loans?

A. I knew of them. But I didn't know the loans I didn't know the specific loans.

Q. Did you understand that if a loan was, for instance, described in a credit committee minute as being suitably secured, that it was probably a back-to-back loan?

A. Yes.

Q. If you had if you went through the loans list yourself, would you have the information to hand to enable you to decide from a list of loans which was a back-to-back and which was not?

A. No.

Q. Is it possible then that you may have decided, I need to make a list of these loans, if I am going to make a full list of loans, then I could do that from the information that would be readily available to you without going to any other member of the staff, but that because you sent a memorandum to Mr. O'Dwyer asking him to omit back-to-back situations, somebody must have asked you

A. I didn't send a memo asking him to omit.

Q. I appreciate that, but he wrote back to you saying that: "As agreed, I have omitted the back-to-back situations..."

A. I can't recall any agreement. I can't

Q. Well,, in any case, you got a list back from him then

A. I must have, but I don't recall.

Q. That list wouldn't have included wouldn't have included an accurate account of the top 20 loans because it would

have omitted some of them; isn't that right?

A. Well,, he said he omitted the back-to-back, yes, but they may not have been in the top 20 anyway, I don't know.

Q. Maybe we will just go over the sequence of events perhaps in slightly more detail.

Did you understand what the Central Bank request was about?

A. I understood they were coming in inspecting the bank, yes.

Q. And that they were conducting an inspection a formal inspection in the exercise of share statutory powers?

A. Yes.

Q. You didn't meet them, but some other officer of the bank must have met them and conveyed some request to you?

A. I didn't meet them, no.

Q. Well,, if you didn't meet them and you wrote a memorandum to Mr. O'Dwyer saying the Central Bank have requested that the following information be available to them, how do you think that you became aware of the request from the Central Bank?

A. As far as I remember, the Central Bank wrote to the bank suggesting that they were coming in on such a date and to have the following information ready, and the directors would have asked me to prepare some of this information.

Q. So it was as a result of the correspondence from the Central Bank being handed to you that you set about preparing this list?

A. Yes.

Q. So you knew that the request then came from the Central Bank to the directors and the purpose of it was to assist the Central Bank in carrying out their inspection?

A. That's right, yes.

Q. And it was obviously, therefore, a request to be taken seriously?

A. Yes.

Q. And a request to which there should have been a completely accurate response?

A. Yes.

Q. So for whatever reason, you didn't compile the list yourself, but you sent a memorandum to Mr. O'Dwyer to compile it and you don't know what reason prompted you to ask him to compile it?

A. No, I do not.

Q. And the response you got from him was that he enclosed a schedule outlining the top 20 loans. Then he says: "As agreed, I have intentionally omitted back-to-back situations..." Now, on the face of it, doesn't that seem to suggest that he had an agreement with somebody, if not with you?

A. Well,, he wouldn't have an agreement with me, because I wouldn't have the power to make an agreement like that.

Q. So that when you got that request, when you got that response to your request, it didn't contain what you originally envisaged would be on the schedule; isn't that right?

A. I don't know, because I don't know what I envisaged would be

Q. Well, you envisaged, surely, the top 20 loans being on the schedule.

A. Well, yes, but maybe they were still on it, I don't know.

Q. Sorry?

A. Maybe they were still on the schedule, I don't know.

Q. But the schedule the memorandum from Mr. O'Dwyer says quite clearly, "I have omitted".

A. He said, "I have omitted back-to-back," but that doesn't mean they were in the top 20.

Q. What does it mean then?

A. I don't know what it means.

Q. What's the point in telling you that the back-to-back loans have been omitted if they weren't in the top 20? If you asked for the top 20 loans and the response you got was, "I enclose a schedule of top 20 loans, but I have omitted loans that are not in the top 20," what sense would that make?

A. I don't know.

Q. Can you agree with me that when Mr. O'Dwyer as he confirmed in evidence sent you a schedule with the top 20 loans and told you that he had omitted back-to-back situations, that that can only have meant that he omitted loans from the top 20 loans, those loans where there was a back-to-back security involving a Cayman deposit?

A. Okay.

Q. They must have been omitted from the top 20. They would have been in it if he hadn't omitted them?

A. Fine, okay.

Q. So that when you got that and I am not suggesting anything sinister here when you got that, what you got was something that wasn't what you'd asked for. It was something else.

A. Yes.

Q. And that had to be, judging from the memorandum, as a result of something Mr. O'Dwyer had agreed with you, or if he hadn't agreed it with you, he must have agreed it with somebody else?

A. Well, he didn't as far as I recall, he didn't agree with me because I wouldn't have, as I said, the power to agree something like that.

Q. Of course. Of course. So that when you got the memorandum, surely you must have said to yourself, well, I didn't agree that the back-to-back situations could be kept out. I am responsible for providing an accurate account to the Central Bank. With whom did he agree that these would be kept out? Did that occur to you that you should

A. I don't know, because I don't recall the memo at all.

Q. But can I take it then that you wouldn't have accepted the list of 20 top loans leaving out the back-to-back loans, unless you were satisfied that someone in authority had allowed or had given his or her informata to that?

A. That's correct, yes.

Q. Can I take it you were aware of the responsibility that you had to provide an accurate response to the Central Bank request?

A. Yes.

Q. And that you wouldn't have wouldn't have accepted the schedule in its form unless you had the approval of someone in authority to whom you reported in the bank?

A. Yes. I was passing on all this information anyway to the directors. So I was just collating the information.

Q. Did you pass on the memorandum to the directors?

A. I don't recall.

Q. Well, wouldn't you agree if a director got a list of the top 20 loans and he didn't get this memorandum indicating that Cayman loans had been omitted from it by agreement, he mightn't necessarily know that the information going to the Central Bank was accurate?

A. Yes.

Q. So once again, can I take it that you would have been anxious to ensure that no responsibility would attach to you for giving inaccurate information and that you'd only have given a list of top 20 loans leaving out the back-to-back loans where you were satisfied the person in authority knew what you were doing?

A. Yes.

Q. Who was your immediate superior at the time?

A. Derek McClean. He was the financial director.

Q. And you were the financial controller or somebody who worked in the financial controller's office?

A. I was financial controller.

Q. Were you an accountant at that time?

A. No.

Q. Had you an accountancy training or background?

A. I have a B Comm degree.

Q. And you have been working in the bank for how long?

A. Since 1969.

Q. So you would have had considerable experience of accountancy and banking?

A. Well, I was only in the financial control, I think, since 1976.

Q. Well, six years, and you were a university graduate?

A. That's right.

Q. In summary then, I think I understood Mr. O'Dwyer to say that he wouldn't have furnished information purporting to be an accurate account of the top 20 loans and leaving out certain loans unless he had authority to do so from the directors. Can I take it you are the summary of your evidence is the same, effectively, that you wouldn't have done this unless you felt he had the authority of the directors to do so?

A. But I didn't leave out anything. I was only collating the information and I was passing it on, so...

Q. But the person to whom you were passing it on, surely you had to inform that person that what they were getting was

not an accurate list of the top 20 loans?

A. Probably, but I can't remember, as I say, I really can't remember.

Q. I accept that you can't remember, but can I take it that you would have informed that person?

A. I suppose you can take it, yes, that I would.

Q. It's hardly likely that you'd inform a colleague or tell a colleague these were the top 20 loans without telling the colleague, do you realise we have left out, as per some agreement reached with somebody, the Cayman loans or the back-to-back loans?

A. Mm-hmm.

Q. Isn't it inconceivable that you would have not told a colleague?

A. I didn't tell

Q. If the Central Bank wanted, of course, the top 20 loans and if they were only getting the top 20 loans less the back-to-back loans, then they weren't getting an accurate picture of the top 20 loans; isn't that right?

A. That's right, yes.

Q. Did you have any apprehension at the time that the Central Bank might have been getting inaccurate information?

A. I can't recall.

Q. It's not a situation that is a satisfactory one; isn't that right? It's not satisfactory that the Central Bank should get inaccurate information?

A. Oh no, it's not.

Q. Had you had any discussion with Mr. Traynor concerning the provision of information to the Central Bank?

A. No, not as far as I recall.

Q. Had you ever had any direct requests from the Central Bank to you, in any capacity in Guinness & Mahon, to provide them with information?

A. No.

Q. All your dealings were through other officers of the bank?

A. That's right, mm-hmm.

Q. Through either Mr. McCleane in this case or some other officer?

A. That's right.

Q. Do you remember the Central Bank inspections in 1976 or 1978?

A. I don't, no.

Q. Or later years

A. I remember Central Bank coming in, but I can't remember the dates of any specific inspection.

Q. Are you aware the Central Bank had imposed a condition on the bank's licence

A. No.

Q. as a result of one of the inspections?

A. No.

Q. The financial director of the bank was presumably the most senior person in the bank responsible for financial control?

A. That's right.

Q. And were you his first or you know, direct assistant?

A. Yes.

Q. Are you still working in banking at the moment?

A. No, I am not.

Q. Do you think you'd expect to be aware whether there was a condition on the bank's licence restricting its capacity to engage in certain types of business as financial controller or as a member of the financial director's staff?

A. No, I wouldn't think so. No.

Q. Thanks very much, Ms. Devane.

MR. CONNOLLY: No questions, Sir.

CHAIRMAN: You stated, Ms. Devane, that you would have been generally aware of there being back-to-back loans, although you didn't know any identities or particulars, and that you would have known that, effectively, "suitably secured" was a designation that indicated that was the probability?

A. That's right, yes.

CHAIRMAN: Having at this stage been in Guinness & Mahon for approximately six years, were you conscious of a particular sensitivity or confidentiality in relation to these particular accounts in the bank?

A. You mean the back-to-back loans, is it?

CHAIRMAN: Yes.

A. Well, I knew Mr. Traynor dealt with them. That was

CHAIRMAN: And were you aware of Mr. Collery, and before him Mr. Leonard, having also been involved in these?

A. Well, I knew Padraig Collery did the bureau, yes.

CHAIRMAN: Thank you very much.

A. Thank you.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. O'Grady-Walsh.

MR. FEENEY: Just before Mr. O'Grady-Walsh gives evidence, I might formally ask for representation in relation to Mr. O'Grady-Walsh. He retired from the Central Bank in 1990 and is, therefore, here as a private citizen.

CHAIRMAN: And by expedient and sensible arrangement, it's been proposed that effectively yourself and Mr. Hogan should also look after his interests?

MR. FEENEY: That's correct.

CHAIRMAN: Very good.

TIM O'GRADY-WALSH, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. O'Grady-Walsh, I think you furnished a memorandum of proposed evidence for the assistance of the Tribunal; isn't that correct?

A. Yes.

Q. And I take it you have that with you in the witness-box?

A. Yes.

Q. And what I propose doing is to go through to lead you through the memorandum in the first instance and perhaps to halt or to come back and to clarify matters which may arise.

A. Very good.

Q. I think in the memorandum you have informed the Tribunal that you were formerly an officer of the Central Bank of Ireland, having retired in August 1990, is that correct?

A. That's correct.

Q. That you were deputy general manager between 1975 or '76 and May of 1985; is that correct?

A. Yes.

Q. And you were the general manager between June of 1985 and August 1990 when you retired?

A. Yes.

Q. Now, I think you informed the Tribunal that you do not recall the precise organisational structure that was in place in the bank in the late 1970s, but the bank had a number of functional departments or divisions in 1975; is that correct?

A. Yes.

Q. And then I think you list those as being accounts, government loans, currency, i.e. mint and distribution, exchange control, foreign..., research, banking supervision, banking statistics, credit control,

international relations, i.e., international monetary fund, EEC, Bank of International Settlement etc., management services, and personnel. Those were the broad areas covered?

A. Yes.

Q. I think as deputy general manager until you became general manager in 1985, you had general responsibility for the departments or divisions dealing with economic affairs, research, banking, international relations, and banking supervision; is that correct?

A. Yes.

Q. And while you were available to consult often with the general manager in relation to work of other departments or divisions, those were your primary areas of responsibility; is that correct?

A. Yes.

Q. I think that most of your work related to economic and monetary policy issues including those relating to associated banks' interest rates and their profitable assets?

A. Yes.

Q. And that you were also responsible for oversight of the internal audit function?

A. Yes. I am not quite certain when that was instituted, but

Q. Yes. Now, I think you have informed the Tribunal that you think that it was in 1981 that the bank created the

position of assistant general manager interposed between the general manager and the deputy general manager and the departmental management structure; is that correct?

A. Yes.

Q. During 1975 to 1985, you were involved in discussions of many and varied policy issues with the Governor and the general manager and from about 1985 you attended 1975, you attended the monthly board meetings; is that correct?

A. Yes.

Q. That is the board of the bank?

A. The board of the bank.

Q. Now, I think you have informed the Tribunal that matters which come to mind as major concerns or developments with which the Central Bank was involved in the late 1970s were, a strike in the associated banks, a launch of the European monetary system and the break with sterling, a strike within the Central Bank and the transfer of the bank to its new premises in Dame Street.

A. Yes.

Q. And I think you say that you have been asked to comment on certain aspects of the supervision of Guinness & Mahon Limited by the Central Bank and that you would wish to set out, initially, some general observations on the system of banking supervision introduced in the 1970s and then to comment more specifically on the issues relating to Guinness & Mahon itself.

A. Yes.

Q. Now, I think you say that the purpose of banking supervision was to protect depositors and prevent bank failures?

A. Yes.

Q. That prior to the enactment of the Central Bank Act of 1971, anyone could operate a bank by purchasing a licence for œ1 for the Revenue Commissioners and depositing, without also of title thereto, securities in the High Court to the value of œ20,000, is that correct?

A. Yes.

Q. And that quite a number of new small banks had recently been established before 1971 and there was no supervision of these or of any banks; is that correct?

A. Yes.

Q. The clearing banks were known as the associated banks and were so referred to in the Central Bank Act of 1942 and a number of these were legally amalgamated in 1972 to form the Allied Irish Banks and the Bank of Ireland groups, the coming together of the two major groups.

A. Yes.

Q. The associated banks and Guinness & Mahon Limited were long established and held in high regard by the Central Bank.

I think just Guinness & Mahon had been around for nigh on a hundred years or thereabouts?

A. It just occurs to me that there was another bank called National City Bank which was a wholly-owned subsidiary of the Bank of Ireland. Perhaps I should have identified

that separately, but that would have been in the same category.

Q. Banks of longstanding is what you were

A. Indeed, yes.

Q. Concern about the emergence of the newer banks led to the establishment of an official working party on protection of depositors? .

A. Yes.

Q. That was within the Central Bank?

A. No, no. My recollection is, and it's rather vague, but I am pretty sure of the substance of it, that it was a working party involving at least an officer of the Central Bank and some people from the person or persons from the Department of Finance.

Q. I see. And I think you say that that is, as you recall it also, that in principle, the choices to be considered were to require banks to publish information, presumably a significant amount, about their business and then a caveat depositor.

A. Yes.

Q. Or to require the Central Bank to supervise banks in a fairly detailed manner.

A. Yes.

Q. The course chosen was the latter, and the act of 1971 so provided.

A. Yes. Once again, just looking at that, I seem to recall at the time that I felt that we had a little bit of both. In

other words, there was some attention to the public to publish the profit and loss and balance sheets, often unfortunately rather abridged, but there was some there was some attention paid to giving some information to the public which would put them on notice.

Q. So initially, could I take it that the working party or the view prior to the '71 Act or around the time of the coming into being of the '71 Act was whether as much information as could reasonably be published would be done so by banks and then the depositor could take his own make his own choice about it or that the Central Bank should get more involved in a vigorous way of carrying out examinations or inspections of banks to ensure depositors, depositors were safeguarded?

A. Yes. And.

Q. Whilst there was the requirement for some publication of information by commercial banks, the latter course was chosen, that is that the Central Bank would get involved in inspections

A. Overwhelmingly, that was the thing, yes.

Q. I think you say that in implementing the Act, the Central Bank identified a number of quantitative measures relating to the bank's own corporate accounts and balance sheets to assist you, that is the Central Bank, in making judgments about their safety as accepters of deposits from the public.

A. Yes.

Q. The licensing standards and requirements required a licensed bank to maintain adequate capital in relation to the size of its business, to have a spread of deposits, to avoid a concentration of loans in any particular business sector, or with related clients, and to observe other quantitative guidelines; is that right?

A. Yes.

Q. I think you say that in this approach, you, that is the Central Bank, were working from first principles and you think that you were breaking new ground in that regard; is that correct?

A. Yes.

Q. You had no blueprint or template for what you were embarking upon?

A. Exactly.

Q. And you say that by way of contrast, in the United Kingdom a variety of money markets, short-term paper markets, security markets, and other financial markets were highly developed and the Bank of England relied largely on its own frequent participation in these markets to keep itself informed indirectly about the standing of the different banks and about the quality of their assets.

A. Yes.

Q. The Bank of England was a player in those markets itself.

A. Yes. I think it used its participation to sample the paper the bank were giving and it gave an insight into the nature of their business and the quality of their business.

Q. Now, you say that they also held discussions at a senior level with banks and felt that they had a good informal knowledge of the bank's business; that is the Bank of England spoke to senior people in the various banks.

A. Yes, yes.

Q. And that way formed an impression?

A. Indeed.

Q. And you say that where corrective action was necessary, that in the Bank of England's case, an informal private indication to the institution or institutions concerned of the Bank of England's views or requirements was, you believe, considered adequate.

A. Yes. The joke was that the Governor raised his eyebrows.

Q. It was somewhat similar to an old boys network operating

A. Yes, indeed.

Q. You say that on the other hand, in Ireland, there were no domestic financial markets in which, through active participation, the Central Bank could get to know Ireland's commercial bankers well and gain insight into the quality of their management and of their assets, commercial paper, discounted bills, and that this was a contributory factor for the adoption of a system of quantitative assessment; is that correct?

A. Yes.

Q. And you say that at about the time of the so-called secondary banking prices related to falling property values in the United Kingdom in the early 1970s, the UK

authorities consulted the Central Bank about the system of quantitative supervision that had been developed by the Central Bank.

A. Yes.

Q. The Central Bank's system of quantitative assessment was also validated by the adoption many years later of similar measures by the banking advisory committee of the European Communities and the Balance Committee of Banking Supervisors; is that right?

A. Yes. Indeed, I was involved in that myself as a member of the banking advisory committee for some time and as Chairman of the committee for three years and we were doing work in that committee at that stage which we had in principle done in the Central Bank twelve years before.

Q. Now, you then go on to deal with the oath of secrecy. I think you say that the effect of the oath of secrecy, and by way of footnote in your memorandum you want to say something about that; isn't that correct?

A. Yes.

Q. And you say that: "May I say that I believe that Section 16 of the 1989 Act, which became operative less than a year prior to my retirement, did not or does not serve to relieve me of my moral obligation to secrecy. I can respond to the Tribunal's questions in private about the matter only on the basis that the facts in question are already known to the Tribunal and in open session, only on the basis of facts which, having forgotten about or being

unable to remember them and not now being an officer of the Central Bank, I have recently learned from perusing material made available.

A. Yes.

Q. I think that material has been the documents which came to the possession of the Tribunal relating to Central Bank on-site inspections at Guinness & Mahon in various years and the correspondence and memoranda surrounding those documents; isn't that correct?

A. Yes.

Q. Now, I don't want to engage in any great discussion with you at this stage about your view on this particular oath, Mr. O'Grady-Walsh. We will just see where it takes us

A. I am not raising it as a difficulty, or I don't intend to make it a difficulty. I just want to state my position.

Q. Absolutely.

A. Sorry, and also I think that, the view I take of the 1989 Act possibly doesn't concur with that taken by other people of the 1989 Act.

Q. That's your own personal view?

A. Yes, absolutely.

Q. You say the effect of the oath of secrecy prescribed to be taken by the Governor, directors and officers of the Central Bank in Section 31 of the 1942 Central Bank Act and you have furnished a copy of that and it has been opened in full before this Tribunal was that we were prohibited from telling anybody anything we might learn in

the course of our work about any licensed bank except to some other person also executing statutory provisions governing the Central Bank and then only if this were necessary for the purpose of the acts. Thus, for example, we were absolutely bound legally and morally, not to tell the Revenue authorities or the Department of Finance or the Department of Justice or the Gardai anything we might learn officially or suspect about wrongdoing by any bank or any of its directors or officials. The bank itself might be in a position, that is the Central Bank itself, might be in a position to take action within the scope of its supervisory powers on foot of information it obtained, but there was no lawful places on which such information could be communicated outside the ring fence imposed by Section 31 of the Act.

A. Yes. It's interesting, if I may interrupt, to say that the same oath was prescribed in Section 32 of the Currency Act 1927, it was the same except for the substitution of the Central Bank for currency commission, and I often suspect it was put there at the insistence of clearing banks who were perhaps a bit resentful of or suspicious of access by former civil servants or public officials, shall we say, to information which they had regarded as confidential to themselves heretofore.

Q. Yes. And it was in the same format it was carried into the '42 Act? .

A. Precisely.

Q. You have informed the Tribunal that in administering exchange control, the bank was acting as an agent of the Minister for Finance and not in execution of provisions of the Central Bank statutes and so information obtained in the course of banking supervision could not be conveyed to the officers administering exchange controls. I think exchange controls was the Central Bank Acted as an agent of the Minister for Finance.

A. Yes.

Q. And we know from evidence, I think, or perhaps not, perhaps you could confirm, it was by letter of 1965 1965, that the Minister delegated this particular function to the Central Bank?

A. I don't remember the letter. It was about then.

Q. Now, those controls, that is exchange controls, were administered through a process of detailed rules and instructions with detailed monitoring of approved transactions. Such was the volume of transactions requiring approval that it was necessary for the Minister for Finance to delegate the administration of many controls up to certain values, I think, to certain licensed banks, which for this purpose were constituted by the Minister as authorised dealers; is that correct?

A. Mm-hmm.

Q. Guinness & Mahon was named in the first schedule to the Exchange Control Act of 1954 and each of the associated banks at the time as an authorised dealer which would, of

course, reinforce a perception of Guinness & Mahon as sharing in some manner in the special standing of the associated banks. In other words, what you were, I think, are saying there, am I correct, that there was such a volume of work involved in exchange control, that in normal commercial transactions up to certain values, the ordinary associated banks conducted that business; isn't that correct?

A. It may have been also that that refers to current transactions. There was a distinction made between current and capital transactions. I don't remember, it may be that capital transactions were all reserved to the Central Bank.

Q. But nonetheless, the point you wished to make, I think, is that Guinness & Mahon, even in the view of the Department in bringing about the enactment of legislation, viewed Guinness & Mahon as having a standing which was similar to the associated banks?

A. Right, yes.

Q. Now, you say that the provisions of the Central Bank Act 1971, for supervisory powers of the Central Bank over licensed banks, included powers for enforcing compliance with or remedying breaches of supervisory requirements and standards. The three main provisions in this regard were in Section 10, under heading "Conditions," section 21, directions not to take deposits or to make payments for a certain period, and Section 11, "Revocation of licences".

Is that correct?

A. Yes.

Q. So those were the three main weapons the Central Bank had

A. Yes, as I recall it, yes.

Q. So they could impose conditions, they could take the drastic step, I suppose, of revoking a licence, or they could indicate a bank don't take deposits for, at the moment or for a period, or don't make payments for a period?

A. Or both.

Q. Or both. But you say that, however, in practice, there were severe limitations and constraints upon the exercise and effectiveness of those provisions. A breach of a condition could be penalized only by prosecution in open court. The effect of a direction could also be publicly perceived very quickly and revocation would also obviously entail publicity. In all cases the Central Bank's action could well precipitate a rush of depositors to get their money back and so incur a serious risk that the bank would fail, the very thing that the entire system of supervision was intended to avoid.

A. Yes.

Q. You say that in one instance when the Central Bank had in mind to give a direction to a licensed bank pursuant to Section 21 on the statutory grounds that the bank concerned was likely to become unable to meet its obligations, it

received legal advice to the effect that the bank, that's the Central Bank, would have to be able to show that it was virtually certain that the licensed bank would fail before a Section 21 direction could be given.

A. Yes.

Q. And then you inform the Tribunal that within a very short period of time after the system was established, the Central Bank took up with the Department of Finance the question of amending the 1971 Act inter alia, to remedy these defects and had constant discussions with the department on the matter over the better part of fifteen years thereafter; is that correct?

A. That's correct.

Q. You informed the Tribunal that there were, no doubt, many reasons why appropriate amendments were not enacted sooner and the changes that were made in the Central Bank Act 1989 and in related legislation, such as the Building Societies Act, dealt with a wide variety of subjects as well as banking supervision. And you say that in summary, in the supervision of licencing banks up to 1989, the Central Bank had to act not only with great discretion, but also in great secrecy and with very inadequate remedial powers; is that correct?

A. Yes.

Q. These deficiencies were recognised very early, both by the Central Bank and the Department of Finance, but it was not until 1989 that legislation was changed.

A. Yes.

Q. Now, I think you inform the Tribunal in your memorandum, that the purpose of the foregoing paragraphs is to assist the Tribunal in having an insight into the general context of banking supervision at the relevant time and an appreciation of the Central Bank's approach and perspective. The bank's overriding duty was to prevent bank failures, if possible, and thus to protect the principal consumers of bank's business, namely, their depositors.

You say that we, the Central Bank, were very successful in this and over the course of the 1970s and 1980s, there were only two quite small banking failures. You say you are not free to comment on the circumstances of those cases, but you are satisfied that in one of them at least, supervisory action by the bank served to limit the overall loss to depositors to a relatively modest amount; is that correct?

A. Yes.

Q. Now, you say that with respect to Guinness & Mahon, you understand that copies of inspection reports and other materials have been made available to the Tribunal by the Central Bank and that the Tribunal has had an opportunity to examine the process of supervision of a particular institution and to note the wide range of issues that would fall to be considered in that connection.

A. Yes.

Q. And you say that it seems clear from the records that the Central Bank considered that the conduct of the business of Guinness & Mahon was in the hands of a Board of directors who were persons of integrity and ability and that was a respectable institution.

The bank, that is the Central Bank, would have attributed significance to the fact that Guinness & Mahon was owned, Guinness Mahon & Company Limited, a reputable London merchant bank, which was a member of the accepting houses committee, and some of whose directors or other representatives sat on the Board of directors of Guinness & Mahon.

A. Yes.

Q. The Central Bank would also have been reassured by the fact that it had secured from the London parent a letter of guarantee, dated 27th September 1976, in relation to the Dublin bank's liabilities; is that correct?

A. Yes.

Q. I think you inform the Tribunal that with respect to Mr. Traynor, your recollection is that he was a very intelligent businessman, a chartered accountant, who had a keen sense of the limitation of law and regulation within which one should operate. You can assume that you also felt that he was knowledgeable about tax matters and tax law; is that correct?

A. Yes.

Q. And you say that "with the benefit of hindsight and of information more recently coming to hand, people may form an opinion of his actions which we," that is the Central Bank, "certainly were not in a position to form in the 1970s"; is that correct?

A. Yes.

Q. I think you say that in relation to Guinness & Mahon, and to Mr. Traynor, that there is a distinction to be made between, on the one hand, the case of a bank which is controlled or managed by its principal shareholder, and about which or whom the Central Bank might have cause for concern; and on the other hand, the case of a bank for which there is separation between its ownership and its management and where the Central Bank is not satisfied about a particular aspect of its business.

You say that in 1972, in the former case, that is where the bank has been run by the principal or the major shareholder

A. Yes.

Q. In 1972, in that case, the Central Bank had shown that it would not hesitate to take the most vigorous steps available to it.

You say that there is no reason to think that in the case of Guinness & Mahon, the bank would have withheld from taking even more serious steps than it did take, had it considered that to be necessary.

A. Yes.

Q. Now, I think you inform the Tribunal that it was the practice of the Central Bank to permit licensed banks to attribute a zero rating to loans which were backed by cash deposits when they were calculating their free resources ratio; in other words, to regard such loans as non-risk assets. A back-to-back, if there is cash-back in it, there isn't any risk?

A. Yes.

Q. You say that when Mr. Traynor requested in January of 1978, that the zero rating treatment would apply in the case of loans made by Guinness & Mahon which were backed by deposits held in an offshore subsidiary or affiliated bank, the Central Bank rejected this request; is that correct?

A. Yes.

Q. And you assume, and it appears from the records, that the fact that the back-to-back arrangements for these loans and deposits were not straightforward and appear to be connected with tax avoidance was a reason for not allowing that treatment; is that correct?

A. Yes.

Q. I think you inform the Tribunal that the back-to-back structures appeared to the Central Bank to have been set up as a tax avoidance scheme and Guinness & Mahon took extreme precautions to keep the existence of backing deposits secret from the Revenue Commissioners?

A. Yes.

Q. The bank noted that if tax implications arose from the deposits, the supposedly non-risk character of the loans in question would potentially change and a risk of loss to Guinness & Mahon might emerge; is that correct?

A. Yes.

Q. You say that: "One might anticipate that if the Revenue became aware of or challenged a tax avoidance scheme or alleged that the parties concerned were involved in tax evasion, then tax liabilities might arise, and that in the event of default under a loan, Guinness & Mahon would incur a loss"; is that correct?

A. Sorry, can I just read that again, if you don't mind.

"One might anticipate..." And that in the event of default under a loan, which then incurs a loss, I am not sure I have stated that correctly. I mean, I am not an expert in this area, but

Q. There is a risk, I suppose?

A. I don't think it should be put stronger than that. I shouldn't have said "would." I should have said "might."

Q. There was a risk and that would be what the Central Bank would be concerned about, would that be right? A risk of a loss?

A. Yes, yes. I shouldn't have said, used the word "would," I should have used the word "might."

Q. So just that is that should read then: "One might anticipate that if the Revenue became aware of or challenged a tax avoidance scheme or alleged that the

parties concerned were involved in tax evasion, then tax liabilities might arise, and that in the event of a default under a loan, Guinness & Mahon might incur a loss."

A. Yes.

Q. You say that: "It has been suggested if the deposit represented the proceeds of tax evasion, Guinness & Mahon might be at risk as a participant in such tax evasion, or have been unable to rely at all on the deposit as security."

You say that you cannot comment on that and you have no recollection of an analysis of that nature being made by the Central Bank.

A. Yes.

Q. "At all events, the arrangements for the loans to be backed by offshore deposits were not satisfactory to the Central Bank and the loans continued to be regarded at the time as risk assets."

A. Yes.

Q. And I think you say that you have been asked to comment on whether the nature of the back-to-back offshore deposits and the bank's sense that participation by a licensed bank in tax avoidance arrangements in the manner in which Guinness & Mahon appeared to have engaged in them, were taken in account by the Central Bank in its qualitative assessment of the management of Guinness & Mahon. And you say that the Central Bank's concern was made known to and discussed with the Chairman of Guinness & Mahon and

considered by its Board. That's the Board of Guinness &

Mahon, I take it?

A. Yes.

Q. And in due course, led to an acknowledgment by Guinness & Mahon that such arrangements would not be further developed and could be expected to diminish.

And since Guinness & Mahon, through its Board, appear to have accepted the point made by the Central Bank, the issue of the Board or management persisting in a course of action which raised supervisory concern, and if any change of view of the quality of the Board of management and any change of view of the quality of the Board of management, did not arise.

A. Yes.

Q. And you say that as a general point, the Central Bank would have made an assessment of the management of every licensed bank as to whether its quality was such as to pose a danger to the security of depositors' funds which was the focus of supervision. The Central Bank's assessment of the management of Guinness & Mahon, taken as a whole, was that it certainly met that minimum test and generally that the Board and management were at least adequate quality and probably of a higher level than that; is that correct?

A. Yes.

Q. Now

A. When I say I started that paragraph by saying the bank

would have made an assessment. And I note when I come to, in that sense, the bank's assessment was that I have to say that I am still in the subjunctive mood here. In other words, I am not asserting that I am assuming that that was our position. I am back to this oath business again and what I am yes, okay

Q. There is an issue which I may have to join with you in a moment, Mr. O'Grady-Walsh, when we come to the question of the oath and how you perceive it and what questions you believe you may be entitled to answer, but I will just continue with your memorandum for the moment if you wouldn't mind.

A. Very good. Perhaps I shouldn't have said this is the oath. I am simply saying that I moved from saying I would have assumed to the next, which is a flat statement, "the bank's assessment was that...", I don't feel I can say that. I certainly I mean, I don't remember that.

Q. Well, sorry, you don't remember it?

A. I don't remember that

Q. Maybe it's safer to keep it in that particular category. It's something you don't actually remember but this is what you believe would have happened?

A. Yes. Sorry for that

Q. Not at all. You say that the Tribunal has drawn your attention to the fact that Mr. Kenneth O'Reilly-Hyland who was, at the time, a director of the Central Bank, was disclosed in the course of the inspection of Guinness &

Mahon as at the 30th April 1978, top one of the borrowers from Guinness & Mahon whose loan was secured by a deposit with an offshore affiliate bank. And you say that you have no recollection of whether assuming you were aware of this, it was drawn by you to the attention of, or discussed informally with or otherwise noted by the general manager and/or the Governor. You have no knowledge of whether the matter was raised by the Governor with Mr. O'Reilly-Hyland.

A. That is correct.

Q. And you say that the unfavourable view which the banking supervision department of the bank that's of the Central Bank formed of the Guinness & Mahon offshore tax avoidance activities, related to the bank's business as a licensed bank and its participation in such activity in general. It did not constitute any form of comment or opinion about the activities or business affairs or taxation affairs of any individual customer of that bank about which the Central Bank would have had no function.

A. Yes.

Q. And perhaps even knowledge, the Central Bank would only have knowledge of what was happening in the licensed bank; isn't that correct?

A. Quite.

Q. And you say that other than information coming to its attention in the course of supervisory work, the Central Bank would have had no means of knowledge about the

business affairs of any customer of a licensed bank, and except as might be suggested by those business affairs, no knowledge of any customer's taxation position. The bank would have had no authority to inquire into the taxation affairs of any person, whether a customer of the bank or a director of the Central Bank or otherwise. The loan and the back-to-back deposit arrangement which Mr. O'Reilly-Hyland had made with Guinness & Mahon did not raise an issue affecting the solvency of Guinness & Mahon.

A. Yes.

Q. Now, if I could, first of all, go back to the first inspection carried out by the examiner to the Central Bank on-site at Guinness & Mahon was in 1976, isn't that correct, from the documentation which

A. I think so.

Q. And we have been told by Mr. Byrne that the procedure for such an inspection was that the supervised bank would be informed on such and such a date the examiners will be arriving, would you get together and a list would be given of the type of information the examiners would require access to. That was your understanding as well I take it?

A. I think so, yes.

Q. And that in that case, I think, two examiners attended and that their work was supervised or reviewed by somebody else; is that correct?

A. Reviewed, I think.

Q. Reviewed. And in the case of Guinness & Mahon in 1976, both examiners and the reviewer were chartered accountants?

A. Yes.

Q. And Mr. Byrne has informed the Tribunal then that there would be a file or working papers created during the course of the examination, a report would then be prepared, and then the report would move further on from the examiners and the person carrying out the review to enable the Central Bank take up any issues with the licensed bank which the report might indicate should be taken up. Is that your understanding?

A. Yes.

Q. In 1976, do you know if you had sight of the report?

A. I seem to have had, yes.

Q. And I think, can we take it, that in this context, you were working from the documentation which has been provided by the Tribunal to you.

A. Yes.

Q. You don't have an actual memory; is that correct?

A. No, I don't have a memory of it.

Q. Now, that particular report gave rise to a number of issues including the question of tax havens or offshore subsidiaries of Guinness & Mahon; isn't that correct?

A. Yes.

Q. And Mr. Byrne has informed us this morning that arising from the report, that a letter was sent to the Chairman of Guinness & Mahon; again, nothing unusual with the letter

being sent to the Chairman of a bank following on a report.

A. That would be the appropriate thing, yes.

Q. And would you agree with Mr. Byrne that the purpose of that is to ensure that the Board of the licensed bank is being informed of the concerns or the view one way or the other of the Central Bank; isn't that correct?

A. I think so, yes.

Q. Now, the particular letter which arose following on this first on-site inspection in Guinness & Mahon went out under the name of the Governor. I can give you a book of documents here so that I don't want to put them all of them. I will give you the hard copy at the moment.

It went out under the name of the Governor. And you will find that at tab 1.3.

(Book of documents handed to witness.)

It's a letter dated 9th September 1976 and it's addressed to Mr. Guinness at Guinness & Mahon.

A. Yes.

Q. Now, it deals with a number of issues, broadly speaking, capital adequacy, profitability, involvement or exposure to property, investment in subsidiary and associated companies, a letter of guarantee is sought from the parent bank in London, other matters, and under the heading:

"Other matters," the question of tax haven is raised.

That's 6(B).

And the Governor is informing Mr. Guinness that the examination revealed that Guinness & Mahon Limited has banking subsidiaries closely connected with the Irish bank operating in offshore tax havens. The bank is somewhat concerned at the extent of this involvement and would welcome an opportunity to discuss the matter."

A. Yes.

Q. Now, Mr. Byrne has informed the Tribunal this morning that for a letter to be sent out under the name of the Governor following on an inspection, was and is an unusual step.

Well, you can only speak up to 1990 obviously?

A. Pardon?

Q. You can only speak up to 1990.

A. Yes, but I can't remember either. I mean, you see, this would have been early days, as far as inspections were concerned, and it may be that we were being very proper in feeling that this was the appropriate and that a Governor should write to a Chairman and so on. I seem to recall that I myself wrote letters arising out of inspections, that I signed letters arising out of inspections to a Chairman or possibly the chief executive.

Q. They would have been prepared, I presume, by somebody?

A. Yes.

Q. But for a letter to go to the Chairman of a bank from the Governor, according to Mr. Byrne, who was one of the inspectors or the examiners in this particular case, was indicating to the bank that the Central Bank, not only in

relation to tax havens, but had concerns about many aspects of this bank's conduct of business.

A. Yes.

Q. And I think you have had an opportunity in recent times to read this letter, have you?

A. I don't remember whether I read this one in detail or not, to be honest with you.

Q. I see. It raises many issues about

A. It wouldn't be unusual arising out of an inspection to raise many issues.

Q. I appreciate that. But the nature of the issues being raised here, are, would you agree, quite significant to the extent that the Governor is requesting

A. Yes, I wouldn't dispute what you are suggesting

Q. that the Governor, in fact, is it's more than a request. He wishes that the parent bank would provide a letter of guarantee in this particular case.

A. Yes, that was one of them, yes.

Q. And it was the view of Mr. Byrne that, from a quantitative point of view, from a quantitative point of view, this bank was not being well run at that time without having a letter of guarantee in position?

A. Well, now, I don't like to comment on what Mr. Byrne talked about, but I would say in relation to the guarantee question, that it would have been standard practice for us to look for a letter of guarantee from the parent. And as I say, in those days I mean, it doesn't surprise me at

all that arising in the context of the Governor writing following a first inspection, that he would ask this. And I would suspect that if one were to read the inspector's report, one wouldn't find any reference to a request for the desirability of a guarantee. It was I mean, I believe that it was our desire, wherever possible, to get guarantees. It wasn't always easy because

Q. I can understand that, it would be wonderful if one could have guarantees in position in all areas of life. But here was a bank which the inspector himself was indicating had difficulties in terms of capital adequacy, profitability, leave aside perhaps exposure on the property side, because many financial institutions may have found themselves in a similar-type position around that time, but apart altogether from the question of the tax havens or the use of subsidiaries or associated companies, the Central Bank, would you agree, must have had some concerns on the quantitative side in respect of this matter?

A. Yes, but I think it's important for me to make the point that in generally, in inspections, we found matters that weren't to our satisfaction.

I'd like to make the additional point, if I may, that in the period after '71, we had to deal with a number of small banks which had recently secured licences, and we had gone through a process of trying to get them to withdraw from the business or one way or another to get them to give up

their licences, and then gradually we began to approach this question of inspections. And it is not at all surprising that in this case or in any other case I mean, I suspect that if one looked at other inspections, of course at that time, that it was generally the case that there were deficiencies, quantitative restrictions quantitative deficiencies rather. We had posited these things and they were new for the banks and one would expect that it would take a little time for them to conform.

Q. I can understand that, of course, and once banks became used to what the Central Bank desired, they would put their house in order to meet those particular requirements.

A. Yes.

Q. But here was a case which, I suppose, it is the way it was put by Mr. Byrne, was this wasn't a well-run bank?

A. Well, Mr. Byrne

Q. From the report?

A. Pardon?

Q. From the report?

A. Well, I am not that familiar with the report. That's a view of his. I can't comment on that.

Q. Yes, very good.

But it was also a view, and maybe you would or wouldn't agree with the view, that if the guarantee hadn't been put in place, the Central Bank might have had to take serious action.

A. Well, I don't know what you mean by that

Q. Close the bank down.

A. Oh no, not at all.

Q. That would never have been your view?

A. Pardon?

Q. That would never have been your view.

A. If that were the case, I feel pretty sure I would remember

it. I mean, I am surprised at that suggestion; frankly, I

don't think it would stand up.

Q. You wouldn't agree with it.

A. No.

Q. Fair enough.

In any event, we do know that Mr. Guinness did obtain and

furnish to the Governor the guarantee. I think you will

find that it is a letter dated 6th October 1976, and it's

addressed to the Governor, and it's from Mr. Guinness and

he refers to the Governor's letter of the 9th September and

is requested in paragraph 5 there: "I now enclose the

guarantee from Guinness & Mahon & Company Limited in

respect of our liabilities." So a liability or a

guarantee was obtained from London and Mr. Guinness

furnished that to the Governor?

A. I put the wording in inverted commas because I was

conscious that many banks many parents wouldn't want to

give a guarantee because they would have to reflect it on

their own accounts or balance sheets and, so, they

would I noted in this case that Mr. I think it was Mr. John Guinness writing to the Governor said, "I now enclose the letter of guarantee..." But the letter from the Chairman Mr. Moorsome, was it, of Guinness Mahon in London? he didn't use the term "guarantee." He said, "Standing over the liability" or "we will agree to" but I presume that at the time that's the best we could do, best we could get. I mean, I think we were used to settling for the best we could get in that context from banks.

Q. In any event, I think we know from the correspondence in this period that Mr. Guinness responded to the Government's letter which was sent after the report by letter dated 26th November 1976

A. Which letter is that now?

Q. That is in tab 1.3.

A. Oh yes, same one, yes.

Q. It's a letter to the Governor of the Central Bank and he deals with the various issues which had been raised by the Governor, including capital adequacy, profitability, involvement in property, investment in subsidiary and associated companies, letter of guarantee and other matters. And under the heading "Tax Havens" he says: "I would not altogether be happy with your understanding of our situation in this regard and would certainly welcome the opportunity of discussing the matter."

A. Yes.

Q. I think the Governor then responded indicating that he had asked you to get in touch with Mr. Guinness with a view to arranging for a discussion about outstanding matters.

A. Yes.

Q. I think there then, at tab 1.4, is a minute, and this is a Central Bank minute, of a meeting

A. Sorry, I don't appear to have tab 1.4.

Q. I beg your pardon, I'll get you a copy of that.

(Document handed to witness.)

The second page of that minute, at the bottom. I think there is present sorry just Mr. Traynor and Mr.

O' Kelly for Guinness & Mahon, and you and Mr. Daly for the Central Bank.

A. Yes.

Q. And I think under the heading "Tax Havens," Mr. Traynor outlined in some detail the operation of the bank's subsidiary companies in the Cayman Islands, Guernsey and Jersey. He stressed that they were basically trust companies, but that a proportion of the assets being managed were deposited with the trust companies themselves. The three companies in question have banking status. He also emphasised that the funds were not placed on deposit for the purpose of tax avoidance or evasion.

"Mr. O'Grady-Walsh and I discussed" obviously this is

Mr. Daly's memorandum "discussed this matter

subsequently and agreed that we should talk with Guinness &

Mahon again concerning this matter at a later statement."

So, can I take it that there must have been a discussion as to whether there was tax evasion and/or tax avoidance involved in these particular advance actions?

A. I don't think so. I mean, I did mean, I would infer from this, that we had a discussion about the issue, but I don't think there is any evidence that said was it evasion or avoidance? I don't see it anyway.

Q. Mr. Traynor seems to have emphasised that the funds were not placed on deposit for the purpose of tax avoidance or evasion.

A. Sorry

Q. It's obviously something that must have risen.

A. Sorry, I didn't see that.

Q. It must have risen, would you agree?

A. Yes, sorry, I didn't see that

Q. Now, that discussion must have centred around what was contained in the inspection report under the heading "Offshore subsidiaries." And at page 15 of that, the examiners' report setting out the name of the three companies in question, Guinness Mahon Cayman Trust, Guinness Mahon Jersey, and Guinness Mahon Channel Islands, and reads: "The directors of the bank were initially reluctant to give information about the activities of these companies to the Central Bank because of fears that the information might be conveyed to the Revenue authorities.

With regard to cases where loans by Guinness & Mahon Dublin

were secured by complex back-to-back arrangements of deposits in these companies, we were given sight of a copy security document but were requested not to know the names in which deposits were held. This we agreed to do. No files or records relating to customer transactions with these companies are retained in Dublin. The bank fears that the retention of such files would give grounds to the Revenue to claim that the companies are managed by Dublin and also individual files might come into the hands of the Revenue authorities."

A. Mm-hmm.

Q. Then it goes on: "The largest of the three companies, Guinness Mahon Cayman Trust Limited, this company is registered and sets out what type of banking licence it had and then held as of 1973. The directors of the bank are John Collins and J. Furze, both British and a French man. Mr. Traynor and Mr. Guinness resigned as directors following the decision in the Clinch case in England where a director of a company registered in the Cayman Islands who was resident in the UK was held to be an accountable person to the Revenue authorities on the activities of the Cayman company."

Then the function of the Cayman company is summarised as follows:

"Prior to the 22nd June 1972, when the Cayman Islands ceased to be part of the scheduled territories, Guinness &

Mahon Dublin arranged for the transfer of funds to a Cayman registered discretionary trust of which Guinness Mahon Cayman was the trustee. The use of the trust fund was totally at the discretion of the trustees (GMCT). A Cayman company was formed which was controlled by the trust and a deposit placed in the Cayman bank in the name of the Cayman company. The customer in Dublin whose funds had been transferred would then apply to the Dublin bank for a loan equal to the funds deposited by the Cayman company. Before the loan was advanced the Cayman company signed an agreement with GMCT whereby it agreed to transfer an amount equal to any loss incurred on the loan to a specified Dublin customer to the benefit of GMCT. For exchange control and tax reasons, Guinness & Mahon Dublin were expressly excluded from having claim on the forfeited deposit, but as GMCT is a wholly-owned subsidiary of Dublin, the forfeited could, if required, be transferred by way of a dividend. We have been assured by Mr. Traynor that no funds from Ireland have been transferred to the Cayman Islands since the 22nd June 1972. Deposits held by the Cayman company have, however, increased by 4.7 million to 14.3 million during the twelve-month period to March 1976. We have been assured that this increase has been obtained through deposits from the United States and Jamaica. We have no evidence to support this information."

Now, that particular report caused the Central Bank to have concern about this particular operation, isn't that correct, as evidenced by the letter

A. It's in the Governor's letter, yes.

Q. And it was a matter whereby there was a meeting held and Mr. Traynor assured you and Mr. Daly that there was no question of tax evasion or tax avoidance; isn't that correct?

A. Yes.

Q. Now, to the best of your recollection sorry, you are relying probably on the documents at this stage to form a view of things, but do you know if any further steps were taken to carry out a more detailed examination of the transactions identified in the inspection report?

A. I don't know.

Q. May I ask you this: If somebody in an important position in a bank, such as senior management or a Board of directors, was using the bank for the purpose of facilitating tax evasion, from a qualitative point of view, should that person be permitted to remain in his position?

A. The focus of our concern was, from start to finish, the protection of depositors' funds. Our concern, our sole concern, was to see that banks did not fail and that the depositors did not lose their money. Everything else was subordinate to that. So when you ask me if a certain person was fit to continue to be I think we would be making a judgement about whether such person's continuance

in office posed a threat to the stability of the bank.

Now, in this case, it seems to me, the Governor had written to Mr. Guinness, who was the Chairman, I presume the matter was discussed with the entire Board. And so, therefore, one was confronted with a situation in which, on the face of it, the Chairman and the other directors knew what was going on.

Q. Yes. Very good. Well then, maybe

A. And sorry, either they agreed that it was acceptable behaviour or else they were all conspiring to do something wrong.

Q. Yes. But they were not the supervisor.

A. Pardon?

Q. They were not the supervisor.

A. Yes.

Q. The Central Bank had that function under statute imposed upon it?

A. That's right.

Q. And apart altogether, and there can be little doubt that the Central Bank should be very proud of the fact that there hadn't been banking failures in Ireland on the quantitative side of things, but from the qualitative point of view

A. Mm-hmm.

Q. could there be any doubt in the mind of a Central Banker that a senior person in a bank who was using the bank to facilitate tax evasion was a wholly unsuitable person to

have a position in the bank?

A. Sorry, Mr. Coughlan, you used the word tax evasion in that question and in the previous one, and I haven't accepted and I don't think it is an accepted fact the Central Bank viewed it as tax evasion.

Q. That's no, I am asking you perhaps I am asking you the question generally in the first instance,

Mr. O'Grady-Walsh. Tax evasion is not a term of art.

Many things can amount to tax evasion.

But in the minds of some people in the Central Bank, this was viewed as tax evasion, in the minds of some people.

I'll come to it in a moment with you. But if I could ask you the general question in the first instance.

If a chief executive of a bank was allowing the bank to be used for the purpose of tax evasion, can there be any doubt in the mind of a Central Banker that such a person was inappropriate to have a position in a supervised bank?

A. If?

Q. If.

A. I suppose we'd certainly have had misgivings about that person.

Q. Well,

A. You know, you are putting that at me. If it emerged, if we were of the view that this person uniquely was carrying on this, then I think we would certainly go to the rest of the Board and say, look, this guy is doing this, you better

get rid of him.

Q. Yes, I take that as one example, that you would go to the Chairman or other Board members and say, we want this man removed or...

A. Yes. We'd want to be very sure of our grounds because it would be extremely damaging to him. You know, we wouldn't go on a suspicion. We'd have to be certain, because it's a very serious step to ask him to remove

Q. You'd have to have reasonable grounds for having such a view; isn't that right?

A. Well, yes, I'd feel we'd have to be you know, it's a very serious thing to dismiss that man and his reputation

Q. I appreciate that, but

A. Well, reasonable to me has a ring of that it could accept something less than sureness. I think we'd have to be very confident of our ground. I mean, he could sue us, for instance.

Q. Also it would be wrong to do it to somebody capriciously?

A. Unless we were sure.

Q. So you had no doubt, I think, from the fact that you had a meeting with Mr. Traynor and Mr. O' Kelly and there was communication or correspondence between the Governor and the Chairman of Guinness & Mahon, that other Board members of Guinness & Mahon must have had some knowledge of what the examiners' inspection report disclosed; isn't that right?

A. So it seems.

Q. Now, can I ask you again, and this perhaps I'll ask you this generally in the first instance. If the Central Bank was faced with a situation where many members of senior management of a bank and many members of the Board of a bank were engaging in, and I use the term tax evasion again, not as a term of art, but as perhaps perhaps an illegality, what view might a Central Bank, or should a Central Bank take in such a situation?

A. A very serious view indeed, yes. You would be confronted then with a situation in which we would, given what you have postulated, that these people, generally, were unfit to be running a bank.

Q. Yes.

A. And then our problem would be, how do we deal with this? We don't want to create a run on the bank. You know, it's a complex issue.

Q. There is little doubt about that.

A. You won't send in the cavalry.

Q. You have a duty to try and protect the position of the depositors and this was a very important

A. You see, that was our duty.

Q. But you also had an obligation, perhaps to the depositors or perhaps in the national interest, as the Central Bank.

A. Mm-hmm.

Q. To ensure that people whom the Central Bank viewed as being inappropriate to hold such position should be removed from

those positions; isn't that correct?

A. No, not we had no such duty, not the Central Bank had no responsibility to act as an invigilator in relation to tax evasion matters and people's conformity to tax law, nor did we have a duty, if we identified such people, to see that they were expelled from office. Our duty was to protect the depositors in the bank, simply that. We couldn't take it upon

Q. May I approach it this way because of the concerns the Central Bank had, whatever the concerns the Central Bank might have had about these particular deposits being used to back loans here in Dublin, the bank, the Central Bank was not prepared to allow them to be taken into account, isn't that correct, in calculating the free resources ratio?

A. Yes, that's a different issue, isn't it?

Q. Well, I am asking you, is it? The Central Bank were taking a very serious view whether it was tax evasion or tax avoidance or whether the Central Bank could prove it or not. If it was just an ordinary enough matter, why would the Central Bank have refused to allow Guinness & Mahon to take it into account in relation to the calculation of the calculation of free resources risk?

A. My recollection from that, and, I mean, you can infer something from here, but my general recollection about that, it has to do with Mr. Traynor's personality. I suspect that Mr. Traynor was coming under some pressure

from us, or sensed he was coming under pressure from the bank, and it would have been in his character to counterattack, so to speak. In other words, so far am I from accepting what you are suggesting, I am suggesting to you that this thing, asset, is so good that you should disregard it for the purposes of our free resources ratio. I personally had no hesitation in it's there in the notes somewhere in telling the people we shouldn't go along with this.

Q. Could I suggest to you yes, indeed, and the Central Bank said no. That's it. No, you cannot take it into account.

A. Yeah.

Q. And the Central Bank did that when they were being denied access to documentation which, if Mr. Traynor's assertion was correct that it should be taken into account, would have proved his case beyond yea or nay that these deposits are rock solid. It's a completely rock solid back-to-back situation.

A. Sorry, I am not sure of the question.

Q. Guinness & Mahon were refusing access to information, documentary information.

A. Sorry, I am not dissembling here. Has the report shown that they refused to give in?

Q. Yes.

A. Fine

Q. Perhaps I should go back to the report.

A. Fine if it does.

Q. In fairness, I think I should, because I could be paraphrasing it unfairly. You can see that the directors of the bank

A. Sorry, where are we?

Q. I beg your pardon, page 15 of the report. It's at tab 1.2.

A. Page?

Q. Page 15. I beg your pardon. Under the heading "Offshore Subsidiaries. " Do you see that? If you go down over the three institutions are mentioned and: "The directors of the bank were initially reluctant to give information about the activities of these companies to the Central Bank because of fears that the information might be conveyed to the Revenue authorities.

"With regard to cases where loans by Guinness & Mahon Dublin were secured by complex back-to-back arrangements of deposits in these companies, we were given sight of copy security documents but were requested not to note the names in which the deposits were held. This we agreed to do. No files or records relating to customers' transactions with these companies are retained in Dublin. Bank fears that the retention of such files would give grounds to the Revenue to claim that the companies are managed by Dublin and also individual files might come into the hands of the Revenue authorities."

So, you have a meeting then. The Governor

A. Sorry, I think you were suggesting that they hadn't given us the information. It says here that they were initially reluctant to give the information.

Q. They gave information. They never gave documents to the Central Bank. They gave sights of something. Refused to give the documents to the Central Bank. So the Central Bank are on notice here that there is something going on in this bank where there is a reluctance to give information for fear it would get to the Revenue Commissioners. Now, any banker would have known that disclosure to the Central Bank could not have involved onward disclosure to the Revenue Commissioners other than that an official of the Central Bank was in breach of his oath of office.

A. Well, I am not sure how sensitive, how aware, people outside the Central Bank we were certainly acutely aware. I am not sure how people outside, how aware they would be of it, quite frankly. I don't think I could you know

Q. But in any event, the Central Bank was being told by this bank that there was something going on here and it was being conducted in the utmost secrecy to ensure that there wasn't a risk of it getting to the Revenue Commissioners. Surely that set off alarm bells all over the place in the Central Bank?

A. Well, I think I don't think I'd express it like that.

Q. Well, perhaps you'd express it more elegantly so.

A. No, no. I mean, there is no doubt that the matter was noted by our inspectors and undoubtedly up the way, we would have observed it too. We would have been dissatisfied with it. My general impression, if I can help in this, my general impression was that I was conscious that there was something going on that we couldn't quite put a finger on and that we maintain continual pressure on the bank to be forthcoming about this. I was very surprised, looking at these documents, frankly, at the frequency with which review meetings took place, they seemed to take place every six months. I don't know, frankly, whether that was the practice I'd be very surprised, given the number of banks that had to be and so the impression I took from the file, frankly, was that we were very assiduous and we must have been a bit of a monkey on their shoulder about this and that this was possibly a way in which we were trying to, you know, maintain pressure on them, to get them to discontinue it. I also felt that my recollection is that I didn't know what it was about. I mean, I am not an expert in tax, but there was something going on. I formed a view, and I have thought of this since I spoke to you last I formed the view, which was imbedded in my mind, about Mr. Traynor and I think I can only recall meeting him twice officially. I think I, somewhere along the line, absorbed an impression about Mr. Traynor, that he was very clever, very skillful at arranging things like this, and that he would have

exploited the limits of the law to the utmost to arrange things to his advantage or the advantage of his clients in the bank. I had a feeling that he would not go outside the law. That was I can only tell you that that's the impression I have always carried in my mind about Mr. Traynor. He was a very tough man, a very clever man, but that he would utilise things to the limits, the very limits of the law. I suspect that if he were here today, and to unravel all the at that time, I am not talking about later on, I don't know anything about that that he would make a good job of proving that what he was doing was within the law. That's my general impression about Mr. Traynor.

Q. Well, I can understand that you formed such an impression and that you were dealing with somebody whom you believed to be tough and clever.

A. Mm-hmm.

Q. But apart altogether even from the worries or, sorry, the concern of the Central Bank about this whole structure, would there not have been certain in the Central Bank that there was a reluctance even to inform or allow inspectors from the Central Bank access to information about this?

A. I think so, yes.

Q. And of course, whilst it doesn't have the effect of neutering the Central Bank, it diminishes the supervisory power of the Central Bank to some extent if it can not come in, impose its will and get access to whatever documents

the Central Bank wants to see; isn't that correct?

A. Yes. But I think we would view that in the context of the impression that our inspectors were forming of the bank overall. And as you have said, there were evidently a number of deficiencies, and I have said that I think that wasn't uncommon in banks. So, I mean, whatever view we took of that, and it certainly wasn't a favourable view, it would have been subsumed in the overall view we formed of Guinness & Mahon and the safety of depositors' money in that bank, which was the focus of our concern.

Q. Could I just perhaps, and I am

CHAIRMAN: Well, I am conscious that there shouldn't be an inordinately long hearing for the witness and you have some further matters to deal with and it may well be that Mr. Feeney and Mr. Connolly may have matters to raise. I think it will be inordinately long in the morning.

Mr. O'Grady-Walsh, it occurs to me that now might be an appropriate time to defer the balance of your time tonight to 10:30 in the morning. Is that all right with you?

A. Yes.

CHAIRMAN: We will conclude then.

THE HEARING THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 9TH MARCH 20000, AT 10:30AM.