

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 6TH JULY, 1999

AT 10:30AM:

MR. COUGHLAN: May it please you, Sir.

MR. MEENAN: Mr. Chairman, I appear for Mr. John Bruton TD, leader of Fine Gael, instructed by Kevin O'Higgins, solicitor. Prior to commencing business this morning, I would like to seek your leave to make a statement to the Tribunal on an issue that has risen in the last few days.

CHAIRMAN: By all means, Mr. Meenan.

MR. MEENAN: I am obliged. The statement is an issue has been raised yesterday with Fine Gael concerning a disclosure by the Chairman of his shareholding in CRH prior to his appointment as Sole Member of this Tribunal. Since this issue had first risen, the leader of Fine Gael, Mr. John Bruton TD, has had the opportunity to have inquiries and consultations undertaken concerning the factual position.

These inquiries have established that the fact that the Chairman had a sizable shareholding in CRH was communicated by the Attorney General to senior counsel acting for Fine Gael. Counsel has informed Mr. Bruton that this information was subsequently communicated by counsel to Mr. Bruton during the course of discussions.

Mr. Bruton accepts, therefore, that the Chairman took steps

to ensure that the relevant information was disclosed to political parties prior to his appointment by the Government. Mr. Bruton has already said in the Dail last week that he accepted the Attorney General's word that the Attorney General had taken steps to inform Fine Gael of the Chairman's shares. Mr. Bruton is happy to reaffirm his continued confidence in the Chairman and his belief that the Chairman has acted with propriety and integrity.

Now that concludes the statement, Mr. Chairman, and I understand that counsel for the public interest will confirm that the contents of Mr. Bruton's statement accords with the recollections of the Attorney General in this matter.

CHAIRMAN: Thank you very much.

MR. MEENAN: I am obliged to you, Chairman.

MR. CLARKE: Yes, Mr. Chairman, I am happy on behalf of the Attorney General to confirm that the statement given to the Tribunal on behalf of Mr. Bruton conforms with the Attorney's recollection of events. I'd just like to add a couple of points to that.

Firstly, there is a clear and pressing public interest in the Tribunal being permitted to continue its important work with efficiency and to bring its business to a speedy conclusion, subject to the requirements of fairness. And

I believe that the confidence which rests in you, Sir, requires that that proceed in accordance with ordinary procedures to that conclusion.

It is, of course, necessary that there be public confidence in the public interest in a Tribunal in that its whole purpose is to allay such public fears as may have risen and may have given rise to the inquiry in the first place and I do not believe that there has been any diminution whatsoever in the confidence which the public rightly have in this Tribunal.

The final point I would like to add, Sir, is perhaps to identify a point that has not attracted public attention in relation to this matter that has risen as one of some controversy in the last number of days. The nature of this Tribunal, Sir, is one in which the Tribunal is required initially to identify a money trail and then to investigate whether the donors of that money trail may or may not have gained some benefit in public dealings.

It's in the nature of such a Tribunal that the end of the trail is not identified at the beginning. The trail goes wherever the Tribunal finds it to go. And therefore, it is an inevitable possibility, we do not know where the trail will lead, that it may lead into places that whoever may be conducting the Tribunal may find themselves in a difficulty, in an unforeseen difficulty. So the possibility of such a difficulty is an inevitable part of a

Tribunal such as this but I think it is important to allay any public concern there might be to identify that there are mechanisms which can be put in place and I think some initial discussion has already taken place with your team, Sir, to attempt to identify the sort of mechanisms that could be put in place should it arise that issues within the Terms of Reference might not be able to be inquired into in a proper fashion by the Sole Member because of any conflict.

So there is no difficulty in ultimately dealing with those issues if, on the facts, a situation arises where the Sole Member is unable to deal with a particular aspect of the Tribunal and I trust that those discussions will continue and appropriate mechanisms be identified. Thank you, Sir.

CHAIRMAN: Well Mr. Meenan and Mr. Clarke, I am very appreciative and happy that eminent national figures of high standing have acted most honourable and promptly to resolve any doubtless bona fide misunderstandings that may have arisen in regard to this aspect, particularly as the Tribunal moves on to further and potentially important parts of its public duty to conduct hearings. Thank you very much indeed, gentlemen.

MR. HEALY: Mr. Patrick Whelan.

PATRICK WHELAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

MR. McDONAGH: Chairman, before Mr. Whelan takes the stand, may I on behalf of Whelan Frozen Foods ask the Tribunal to note I am asking for limited representation, instructed by Frank Ward and Co, solicitors, on behalf of Whelan Frozen Foods.

CHAIRMAN: Mr. McDonagh, I will accede to that application for limited representation on the basis that I think I have indicated to previous potential interested persons.

Q. MR. HEALY: Thank you, Mr. Whelan. I think as a result of some of the evidence given in proceedings of the Tribunal last week or perhaps the week prior to that, I am not sure, the solicitor to the Tribunal contacted you to seek your comments on certain matters, in particular lodgments or relationships that Mr. Michael Lowry had with your company and in response, you, through your solicitors, have provided assistance to the Tribunal and indeed a draft memorandum of evidence, isn't that right?

A. That's correct.

Q. Do you have a copy of that memorandum?

A. I do, yes.

Q. Well what I propose to do, Mr. Whelan, is to go through the memorandum with you and we can talk about any details in it at a later point if that's agreeable to you. Now, you say that in or about 1991, Whelan Frozen Foods Limited proposed

constructing a new cold store in their main premises at Jamestown Industrial Estate. The cost of this development was approximately €1 million. You sought quotations for the supply and installation of the required refrigeration plant and Streamline Enterprises tendered the most competitive price. The price was €109,640 plus VAT at €23,024. In addition to the above, Mr. Michael Lowry indicated at the time that he would be charging a separate fee in respect of his consultancy services which would be somewhere between 7 and a half and 12 and a half thousand pounds. Subsequently, Mr. Lowry's fee was agreed at €10,000 and he requested that he be fixed up in cash. You gave Mr. Lowry a cheque for €10,000 made payable to cash and that was dated the 14th May of 1992 and that cheque was, in fact, cashed on the 19th May of 1992.

Now, if I could just stop there for a minute. You operate, I take it, a frozen food company. Does that mean that you store or that you process frozen foods?

A. We don't process, we collect and distribute.

Q. So you are a sort of a warehousing arrangement, or with a wholesale arrangement if I can put it that way?

A. Correct.

Q. For that purpose, you have to have premises around the country where you can safely store these products, is that correct?

A. That is correct.

Q. You say that Streamline Enterprises and Mr. Lowry designed

and specified the nature of the refrigeration facilities to be installed in the cold store. The installation which took approximately four weeks was supervised by Mr. Lowry and his people. You did not retain the services of any other professional consultant in this regard. Is that correct, isn't that correct?

A. That is correct.

Q. In 1993, services were again provided by Streamline Enterprises and by Mr. Lowry to Whelan Frozen Foods in respect of the installation of refrigeration at a plant at Gallyglass, Ballysimon, County Limerick. These works commenced in February of 1993 and the total cost was in the region of €500,000. The costs of Streamline Enterprises were agreed at €75,000 plus VAT at €15,750. Mr. Lowry indicated that he would be charging a consultancy fee of somewhere between 7 and a half percent and 12 and a half percent. It is Mr. Lowry's recollection that it is Mr. Whelan's recollection, that is your recollection, that at this time Mr. Lowry displayed dissatisfaction at the level of his fee for the work carried out by him at Jamestown Industrial Estate and that Mr. Lowry was of the view that he had not been sufficiently rewarded for his services. Your recollection was that you agreed to pay and did pay Mr. Lowry a total of €15,000.

Now, I just want to stop there for a minute because I think you have, to some extent, corrected some of the statements in this draft memorandum at a later point, isn't that

right?

A. That is correct, yes.

Q. What I just read out was that you had a recollection that you paid Mr. Lowry a total of €15,000?

A. That is right.

Q. Is that still your recollection?

A. No, it's not.

Q. It's not your recollection?

A. No.

Q. I beg your pardon, I am sorry?

A. Sorry, when we reconciled the business with Mr. Lowry, we made a mistake and Mr. Lowry did not get a second €10,000.

Q. Right. I'll come back to it in a moment. I think what you said here is that you had a recollection that you'd agree to pay a total of €15,000 by way of two cheques, 5,000 and 10,000, and that recollection you say is incorrect.

A. That is correct.

Q. Now, first of all, do you believe do you know what you paid him for the Ballysimon project?

A. I do indeed, which was €5,000.

Q. €5,000?

A. Correct.

Q. Only?

A. Only.

Q. You stated that it was your recollection that Mr. Lowry displayed dissatisfaction at the level of his fee for work

carried out by him at the Jamestown Industrial Estate. Is that still your recollection?

A. Yes.

Q. So he was not happy with what had been paid to him for Jamestown, according to your memory?

A. That is correct.

Q. And is it the case that that dissatisfaction was not expressed until you came to discuss the Ballysimon project, is that right?

A. No, that dissatisfaction. We trade ongoing on service

Q. I see.

A. And that whenever I would meet him, which would not be very often, he would always bring up the point that he didn't receive enough money for that job.

Q. So between 1992 and 1993, between the middle of '92 and 1993, he had, on a number of occasions, he had said to you he wasn't happy with the money you had paid him for the previous job?

A. Correct.

Q. Did he ever indicate how much more he should receive?

A. No.

Q. Did you ever ask him or did you

A. I didn't consider it. I just said you got paid for what you did and that's it.

Q. I see. And when you came to do the Ballysimon deal with Mr. Lowry, in advance of that deal, you say that he had agreed to you a consultancy fee of between 7 and a half and

12 and a half percent?

A. That is correct.

Q. If it were 12 and a half percent, that would be an eight, isn't that right?

A. That's right.

Q. Which would be somewhere in the region of €9,000-odd?

A. That is correct.

Q. If it's 7 and a half, I am sure you are better than I am at arithmetic, I am sure it would have been somewhat less than that?

A. It would have been around €5,000.

Q. Yes. And is there any reason why €5,000 was ultimately paid and not €9,000?

A. No, that was what was agreed.

Q. And was there any dissatisfaction expressed at that fee?

A. No.

Q. You say that you have traced a cheque for €5,000 made payable to cash and dated 17th May, 1994 which appears to have been lodged to an account at AIB, Liberty Square, Thurles. Now I'll come back to that document in a moment. I think your impression is that that is the cheque used to pay Mr. Lowry for the work he did at Ballysimon?

A. Correct.

Q. In fact it's on the overhead projector. We can come back to it later on. You say that any dealings you had with Mr. Lowry were entirely of a commercial nature and no

political considerations arose at any stage.

A. That is correct.

Q. Now, could I just ask you I should go on to say you made, through your solicitors, a further statement in which you say that your solicitor stated that neither they nor their client, meaning you, had any difficulty with the memorandum prepared of the meeting of the 29th June, save in and in so as far as to state that notwithstanding your earlier belief, you must now accept that in the absence of any documentary evidence, that total of €15,000 only was paid over to Mr. Lowry in the relevant periods. That is €10,000 for the Jamestown project and €5,000 for the Ballysimon project?

A. That's correct.

Q. When you say in the absence of any documentary evidence, do you mean that if do you mean that it's only because you don't have documentary evidence that you are driven to the conclusion that you must have only paid €15,000 in all or agreed to pay €15,000 in all?

A. No, we reconciled you must remember we only had three days to put a thing together and we couldn't get all our information back from the bank at that particular time. And when we got back the information that was required, it just showed that Mr. Lowry got two cheques.

Q. I will just go over the cheques and come back to ask you about one or two other matters. The first cheque that we had on the overload projector a moment ago if he could

have a cheque first of all for €10,000, the first cheque you paid to Mr. Lowry or maybe you don't have that that's a cheque for €10,000 drawn on the account of Frost Impex current account pay cash €10,000, 14th May of 1992.

Do you see that on the overhead projector?

A. That's correct, yes.

Q. Now, that cheque I think was, cashed that cheque I think was lodged to an account of Mr. Lowry in County Tipperary, isn't that right?

A. That's correct.

Q. On the 15th May, as part of a lodgment of €11,900. You wouldn't know that obviously but in any case, it was lodged to Mr. Lowry's AIB account on the 5th May, 15th May of 1992. Now, I think in ease of you and your company, you did at one point think that a further cheque for €10,000 drawn on Frost Impex had gone to Mr. Lowry and that was the cheque that was on the screen a moment ago, dated 16th March, 1993 but am I right in thinking that you subsequently discovered that that cheque had been lodged in or cashed at Allied Irish Bank, Templeogue

A. That's irrelevant.

Q. That's your account is it?

A. That's right.

Q. It's not Mr. Lowry's account?

A. Yes.

Q. That's what convinced you that that money couldn't have gone to Mr. Lowry?

A. Correct.

Q. Now, when you described the process leading to the giving of the Jamestown Industrial Estate project to Streamline Enterprises, you mentioned that Streamline Enterprises tendered the most competitive price?

A. That's correct.

Q. Of €109,640 plus VAT. Now, in identifying the most competitive price, were you comparing other frozen food installation tenders from companies that were tendering for the entire cost of the project or were you comparing it to other frozen food installers' tenders where part of the money or part of the tender related to the installation and part related to the additional money, the type of additional money you gave Mr. Lowry. Do you understand me?

A. Prior to '91 we had another refrigeration company and they quoted us for that job, but Mr. Lowry came in cheaper in their quotation.

Q. If you took their quotation and you take Mr. Lowry's quotation at €109,640 plus VAT, in addition there was the additional money you were going to have to pay Mr. Lowry.

A. That is correct.

Q. How did you know that the tender from Mr. Lowry's company was more competitive if you knew you were going to have to pay him more money?

A. Well I am long enough in business to know that if Mr. Lowry is going to charge for a consultancy fee, there is a

certain realm that he has to stay within, and I weighed that situation up against the price that I had received from the other company.

Q. I see. So that even taking into account the likely consultancy fee you were going to have to pay Mr. Lowry, his tender was still a more competitive tender?

A. Correct.

Q. So you felt you'd have to pay him somewhere between 7 and a half and 12 and a half thousand that you might have made a judgement it was going to be halfway between those two figures, when you add that to the €106,000, he was still the most competitive tender?

A. He was indeed.

Q. Why do you think that Mr. Lowry asked to be fixed up in cash?

A. I think that phraseology might be, you know, we were having a conversation with the solicitor for the Tribunal here on the evening and if Mr. if the solicitor says I said fixed up in cash

Q. You can use any other expression if you prefer to use it.

A. Payment in cash was what would be the norm.

Q. Right, payment in cash.

A. Yes.

Q. And by that, you understood Mr. Lowry to mean what?

A. Cheque made out to cash, because we do not have cash and I never paid anybody in cash in my life.

Q. But there was no VAT on that payment?

A. There was no VAT. I mean, there was no gain to us on that cheque.

Q. I accept that. But it was nevertheless to be a cash cheque?

A. That is correct.

Q. Made out to cash?

A. Made out to cash.

Q. And was that also the situation with regard to the œ5,000 that you had to pay in 1993?

A. That is correct.

Q. And again because that was made out to cash, I take it that there was no VAT

A. That is correct.

Q. charged. And as you said, there was no gain for you. That had to be put through your books. It was money you had to spend?

A. That is correct.

Q. One way or another.

A. That is correct.

Q. Thanks very much, Mr. Whelan.

MR. CONNOLLY: No questions, Chairman.

CHAIRMAN: Mr. Barniville?

MR. BARNIVILLE: Just one or two questions.

THE WITNESS WAS CROSS-EXAMINED AS FOLLOWS BY MR.

BARNIVILLE:

Q. Mr. Whelan, on behalf of Mr. Lowry, I just have one or two questions for you. I think you accept, Mr. Whelan, you paid Mr. Lowry a total sum of €15,000?

A. That is correct.

Q. The first €10,000, Mr. Whelan, related to the project at Jamestown Industrial Estate, isn't that right?

A. Correct.

Q. And that was the payment that you made by cheque payable to cash?

A. That's right.

Q. I think you now know, do you, Mr. Whelan, that that cheque was lodged almost immediately, I think the following day, by Mr. Lowry to his bank account in Bank of Ireland, Thurles, I think you now know that?

A. I do, yes.

CHAIRMAN: I think, Mr. Healy, you might have inadvertently referred to AIB Thurles.

MR. HEALY: I am sure I may have done. That was inaccurate, of course.

Q. MR. BARNIVILLE: Thank you. In relation to you say Mr. Lowry expressed dissatisfaction with what he had been paid in respect of that project. Do I take it, Mr. Whelan, that you did not in fact agree to pay Mr. Lowry any further sum in relation to the first project?

A. There would have been an ongoing discussion on it. I

would certainly I certainly didn't agree to pay him

because I didn't pay him.

Q. You did not in fact pay him any more?

A. No.

Q. And I think in relation to the second project, the Ballysimon project, I think you have indicated that you paid Mr. Lowry and I should say Mr. Lowry accepts that, you paid a further sum of €5,000?

A. That is correct.

Q. And I think that was also by way of a cheque, isn't that correct?

A. That is correct.

Q. Thank you.

CHAIRMAN: Mr. McDonagh?

MR. McDONAGH: No questions.

CHAIRMAN: Just in conclusion then, Mr. Whelan, perhaps the main matter that you have sought to clarify is in fact the issue that there definitely wasn't a €5,000 extra payment made for the Jamestown

A. There was the €10,000 cheque paid

CHAIRMAN: Yes, but there wasn't a €5,000 bonus on that, the only other €5,000 was for the Ballysimon job?

A. That is correct.

CHAIRMAN: And you fairly put it that you had to try and reconcile your bank records with your solicitor in very

short notice and it's quite properly on foot of that you have done some further homework that you can set out the full position?

A. That is the full position, Your Honour.

CHAIRMAN: I think it has been common to earlier evidence that, apart from Mr. Lowry having perhaps tendered economically for your particular work, he is in fact very capable and competent in his refrigeration contracting and did you so find him?

A. Excellent.

CHAIRMAN: Thank you very much for your attendance and cooperation.

A. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: Ms. Mairead Lynham.

MAIREAD LYNHAM, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. HEALY:

CHAIRMAN: Thank you, Ms. Lynham. Please sit down.

Q. MR. HEALY: Thank you, Ms. Lynham. You have prepared a statement for the assistance of the Tribunal. Do you have a copy of it in front of you?

A. Yes, I do.

Q. I will just take you through it quickly. You say you are

a bank official with AIB, 9 Terenure Road East, Rathgar, in the city of Dublin. In 1991, you were assistant manager at the bank's 37-38 O'Connell Street, Dublin 1, branch.

You say that you were an authorised signing official at O'Connell Street in July of 1991 and you say that it would appear from a photocopy, facsimile transmission sheet dated 17th July, 1991 that you were requested to sign these instructions to AIB Jersey. I will just put them on the overhead projector so that your statement will make more sense. If I could go to the bottom of that document. I think it shows your name in a number of places, isn't that right?

A. Correct.

Q. That's the document you are talking about in your statement.

A. Yes.

Q. We will come back to the document later on. "It appears that the facsimile sheet was brought to me for signature by an official from the bank's foreign exchange department who would have completed the instructions on the form. I confirm that the signature appearing on the photocopy facsimile is my signature and the number below is my authorised signatory number." That's your statement, isn't that right?

A. Correct.

Q. You say that you have no recollection of the transaction at this stage.

A. Correct.

Q. You say that it also appears that the facsimile instructed was countersigned by Mr. Philip Murphy, a senior assistant manager at the bank's O'Connell Street branch at that time. If we could have it again on the overhead projector. Can you just point out to me where the counter signature of Mr. Philip Murphy is?

A. Where can I just below, opposite where M-L-Y-N-H-A-M. To the left of that. It's not very legible on the copy.

Q. I see. But in any case that was a counter signature, presumably one person was dealing with the transaction and processing it, that was presumably you, and somebody else was simply verifying it or countersigning it for the sake of authority, is that correct?

A. Correct.

Q. You say that you have no recollection of the transaction and you never met Mr. Lowry and that you have no knowledge of opening another account in Allied Irish Banks, Channel Islands in September of 1991. You say that you were on annual leave from the 2nd September, 1991 to the 23rd September. You say that you are not aware of any further dealings by the bank with Mr. Lowry in relation to a deposit account held in AIB Channel Islands Limited or the opening or operation of any other account whether offshore, domestic or otherwise. I take it that is for Mr. Lowry, is that right?

A. Correct.

Q. Now, if I could just go back to the document that's on the screen. And I quite understand that you don't of course recall every transaction that you do. This is in the form of a communication from AIB bank to this is on the first line of the document AIB Jersey. And it's for the attention of Darren. Do you know who that would be?

A. No.

Q. Is it likely that that is a name that you were given as a result of some telephone conversation or some other communication?

A. I should point out at this stage that the main body of the document is not in my handwriting. The only handwriting is M. Lynham with the signature verification 2359.

Q. I see. So does that mean that we'll again go through the document and we'll ask you how you came to put your signature to it.

The first line of the manuscript text is to AIB Jersey for the attention of Darren. Above that is a number of 212116, do you know what that is?

A. No.

Q. The third line indicates that it's from AIB. The next line it gives the date, the 17th August of 1991. The next line the time, the subject is described as the account of Michael Lowry. And the comment is "We should be obliged if you could forward all funds in the above account i.e. clear account" is that right "Send cheque to branch."

A. On my copy it's not very clear actually where it says there is a brand on top of the third line so the wording isn't clear to me.

Q. Well in any case, there is some word which is not absolutely clear. I have construed it as clear, I may be wrong. The next word seems to be "account" and then there is an ampersand and then "Send cheque to branch."

A. Right.

Q. Then there is a brand as you have indicated. Underneath the brand, there is thank you, I think just signing off, and then your name appears. "Instructions confirmed with Mairead Lynham." Is that a signature or is it intended to simply block capital your name or which is it?

A. I'd say it's to block capital my name.

Q. What's on the right of that, it looks like a signature, M. Lynham?

A. That's my signature.

Q. A number 2359?

A. That's my authorised signing number for internal transactions.

Q. I see. And underneath that, payment authorisation, ID?

A. It's my understanding that that stamp was affixed to the document in AIB Jersey.

Q. I see. I follow. You would have signed the document, that in other words, the condition of the document in which it was sent to Jersey was that after thank you, it had M. Lynham 2359.

A. Correct.

Q. That it went to Jersey like that and that then the faxed brand was stamped on it and the words "Confirmed with Mairead Lynham" written in in Jersey?

A. Correct.

Q. And the signature underneath, that is presumably something that was put on it in Jersey?

A. I don't know the other signature.

Q. Now, can you just let me know how much of the manuscript writing in the comments section was inserted by you, if any?

A. None of it.

Q. So while you don't remember this transaction, can you indicate whether you would have carried out similar transactions and can you tell me what your role would have been in relation to this type of transaction?

A. My role was assistant manager, would have been based on the ground floor in AIB, 37-38 Upper O'Connell Street as a signing authority for transactions that would occur on a daily basis on that ground floor, that members of staff would bring to me that which required a authorised signatory.

Q. And how would you approach the authorising of a transaction or the signing of an instruction like this? In what way would you satisfy yourself that it was appropriate for you to sign it?

A. Okay. In relation to this particular document, it would

be my understanding that or any similar type document where a member or a senior member of staff would come to me with a draft or a letter that required signing, it would usually be someone who had quite an amount of service and who we would have placed quite an amount of trust in on the ground floor. It was a very busy branch. So we would have had a lot of these transactions on a daily basis. My approach would be that I would say to the individual concerned, "Are you happy with the bona fide of this signature? Are you happy with the individual in front of you is they say who they are?"

Q. In this case, you weren't presumably dealing with an individual. You were giving an instruction that all the funds in another account in another branch in another bank, effectively, in another country, would be remitted back to Ireland?

A. Correct.

Q. Does that mean that the person who came to you with this document would have been in touch with the client, the customer in this case Mr. Lowry?

A. It could possibly have been either in touch with Mr. Lowry or an agent of Mr. Lowry's.

Q. Well it wouldn't be appropriate in any case, would it be, to give instructions in relation to the balance on a person's account without having some instructions from that person?

A. Correct.

Q. Or from an authorised agent of that person?

A. Correct.

Q. So there had to have been some contact either by or on behalf of Mr. Lowry with the branch before any bank official would take a step like this, is that correct?

A. Correct.

Q. Now, I'll just put up on the overhead projector for a minute a copy of the AIB Channel Islands bank statement of Mr. Lowry, showing the state of his account on the 17th July, 1991. If I inadvertently referred to it as August earlier on, I think I should have said July. You see the state of the account at that point, when you add the interest or when the interest is credited it's œ58,337.28 in credit?

A. That's correct.

Q. On the same date that amount is debited by way of a cheque which is described as having been issued on the 17th July 1991 for that amount of money?

A. Correct.

Q. So I take it that if your memorandum was sent to the Channel Islands, that sum of money must have been remitted back to your branch in Dublin?

A. Correct.

Q. By a sterling cheque, because that is the currency in which the account was kept?

A. I didn't see any cheque coming back. I can't confirm or deny

Q. I accept that you weren't involved in that but I am simply asking you as an experienced bank official to confirm that I presume those steps were taken?

A. Well based on those instructions, I would have I would feel that AIB Jersey would have forwarded a cheque to Mr. Michael Lowry, care of the branch.

Q. If there were to be any further dealings with that sum of money, with that cheque, then there would have had to have been some contact between your branch and Mr. Lowry or somebody authorised to act on his behalf, isn't that right?

A. Correct.

Q. Mr. Lowry I think you are aware that Mr. Lowry did not have an account at your branch, isn't that right?

A. Yes.

Q. Is it unusual for a branch to give instructions to the Channel Island, or any bank anywhere else for that matter, to the effect that a customer's money in that other branch or in that other bank was to be sent to the branch in which he didn't have an account?

A. Usually an instruction would be given to the account holding branch

Q. Yes.

A. But if Mr. Lowry had previous dealings within a branch or was known in a branch, he might give instructions.

Q. But you'd agree with me it would be an extremely unusual thing to occur, wouldn't it?

A. Yes, it would.

Q. Especially if the customer of the bank already had an account in another branch of the bank?

A. Correct.

Q. And indeed, did all his banking in another well most of his banking or certainly a lot of it in another branch of the bank.

A. It wouldn't be unusual for someone to call in to another branch for convenience.

Q. I fully accept that, of course. You might be in another town other than the town in which you do your own banking. You might want a cheque cashed or you might want money drawn down whatever?

A. Correct.

Q. This involves rather more than that, doesn't it? That you are aware that this account was opened as a result of communications from O'Connell Street to the Channel Islands and the account is here again being handled by O'Connell Street although Mr. Lowry did not have an account at that branch. That, I would suggest, is somewhat unusual. It might even be unique, would it?

A. I wasn't aware of the opening of the account.

Q. No, but the opening of an account in your branch or your then branch and the further management of that account up to this point at that branch could possibly even be something unique, would it?

A. It certainly wouldn't be a normal day to day occurrence.

Q. If that cheque came into your branch then at that point,

you'd have presumably been under an obligation to either send it to the client or the customer, Mr. Lowry, or otherwise to deal with it in accordance with his instructions, isn't that right?

A. Correct.

Q. Now, as far as the Tribunal have been able to establish, there are no there is no other documentation on this date dealing with the reception of that cheque.

A. I am not aware of any documentation.

Q. Yes. Somebody had to inform Mr. Lowry or make some contact with him before they could decide what to do with that cheque, isn't that right, once it came in?

A. Unless instructions were given on the 17th July as to the fate of the cheque but I am not aware of any instructions given.

Q. I am sure that you are not aware of any instructions given but once again, would you regard it as somewhat surprising that there is no record of what happened to that cheque when, assuming that this is the case, it was sent back to the branch?

A. Unless the cheque was handed to an agent or to the account holder and that nothing was processed within the branch.

Q. But wouldn't you expect some receipt or some note on a file saying, you know, attached maybe to that memorandum, saying, handed cheque to Mr. Michael Lowry or his agent on a particular date?

A. Yes, possibly, we would have got maybe an agent or the

account holder to sign a copy of perhaps an accompanying letter from Jersey saying received on such and such a date, whatever the date might have been.

Q. Bank officials are generally careful people when it comes to money, it's their job to be careful?

A. Yes, you have to be.

Q. And if a bank official has a customer's money in his hand in the form of a cheque, and again I'd suggest to you that's not a very usual situation for bank official to have in his possession a cheque belonging to a customer of the bank but not of his branch, and for him to hand that over without there being any record, wouldn't that be something that would not come across?

A. Personally I can't account for other members of staff.

Q. I am asking you about bank practice in general, what you would expect. If you were looking at these facts as the Tribunal is looking at them, wouldn't you, as a banker, say, sure there must be a document somewhere, there must be a note, something scribbled on the side of a page, handed cheque to Mr. Lowry, handed it to his agent.

A. Correct, I would expect that there would be a letter on file accompanying the cheque.

Q. Of course. That you are surprised that there isn't documentation?

A. Yes.

Q. As a manager responsible for supervising other members of staff, I take it that you would expect your staff to keep a

record of a dealing like that?

A. Yes, I would.

Q. And if you learned that the funds of a non account holder of the branch were being handled in a manner like this, you'd want to know why, wouldn't you?

A. If I was aware of it.

Q. Of course, if you were aware of it, you'd want to know why, wouldn't you?

A. Yes.

Q. Because you'd regard it as unusual?

A. Yes.

Q. There is of course a feature of this transaction which makes the whole transaction somewhat unusual in that here you had an account of an Irish resident, a deposit account of an Irish resident in a foreign bank, in a foreign currency, something which was effectively in breach of exchange control regulations. You wouldn't countenance a breach of exchange control regulations in your branch, at least during the era when they operated?

A. No.

Q. If an official of the bank wished to carry out transactions that did involve a breach of exchange control regulations, is it possible that it might be done in such a way as to leave as little or as few records as possible?

A. I wouldn't be aware of such a transaction.

Q. You have never heard it?

A. No.

Q. Heard of such a transaction?

A. No.

Q. It would be an irregular transaction?

A. Yes.

Q. Can you assist the Tribunal at all with any memory you have of countersigning or validating other instructions of this kind to offshore accounts?

A. I have no recollection of signing any instructions for offshore accounts.

Q. So would this then be the only time you ever did it?

A. That I am aware of.

Q. I appreciate you can't remember every piece of paper you have ever signed or every document you have ever validated. But if, and let me just be clear that we are not at cross purposes here, if you are saying that you never gave instructions in relation to an offshore account

A. I did in relation to this one. I obviously did.

Q. That's what I mean, does it follow that that is the only time you ever did it?

A. Yes.

Q. As an assistant manager in the branch at the time, are you aware, or as a person who was assistant manager in the branch at the time, are you aware whether transactions of this kind were carried out in the branch other than this one?

A. I am not aware of any.

Q. Would you expect to have been aware of it?

A. Well, yes, I would, because I would have signed quite a lot of documentation being on the ground floor and I certainly am not aware of any similar type transactions.

Q. And if similar type transactions were carried through in the branch, you'd have heard about it at coffee, somebody might have mentioned it, this is an unusual transaction I had to deal with?

A. Or perhaps you would read it in correspondence the following day. We would read through all branch correspondence.

Q. You see the difficulty that the Tribunal finds itself in, Ms. Lynham, is that although this transaction appears to have been a fairly unique one, according to the evidence we have heard, nobody seems to remember anything about it or to be able to provide any documents to assist the Tribunal in relation to it. Although it's unique, there is very little documentation about it, and at the same time, although it's unique, no one can remember it.

A. Well, I can only answer in relation to the document in front of me which I was not aware of until such time as the Tribunal made it available to the bank's solicitor for me to investigate.

Q. Are you aware and this is, I am not sure what involvement your bank or your branch had in it, but are you aware that subsequently Mr. Lowry's account in Allied Irish Banks, Channel Islands, was reactivated by a lodgment of €100,000

in September of 1991?

A. No, I am not aware. I did state in my memorandum of information that I was on leave. I wasn't quite sure what date you were referring to in 1991.

Q. Well in fairness to you, I think you stated you went on leave on the 2nd. The sum of money was credited on the 3rd December of 1991. Of course it could have been posted a day or two before, but of September of 1991, but you are saying that you had no further involvement?

A. No.

Q. Thanks very much, Ms. Lynham.

CHAIRMAN: Mr. Connolly? Mr. Barniville?

Mr. Sheridan?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHERIDAN:.

Q. MR. SHERIDAN: Ms. Lynham, just so I understand. If the cheque was there, in accordance with the instructions, sent back the branch, how would it have come in?

A. From thinking back to that time, I would have expected it would have come in addressed to Mr. Michael Lowry, care of AIB, 37-38 Upper O'Connell Street.

Q. And would that have been opened at the branch?

A. I wouldn't have thought so, no.

Q. So that there would be, in effect, a letter

A. Yes.

Q. For Mr. Lowry, care of the branch and presumably contact would be made with Mr. Lowry?

A. Contact would have been made or on instructions given on the 17th July, an agent or the account holder would have been aware that they may have had to collect an item in the branch within a few days.

Q. So that the question and notation on copy of the cheque as to what happened, it wouldn't actually arise in practice?

A. Wouldn't arise in practice.

Q. That the envelope would just simply be handed over?

A. Correct.

Q. Okay. This form and this manner of giving instructions, just for clarification, is it used in relation to other subsidiaries of AIB?

A. Yes, we would use our facsimile document with a number of subsidiaries, with finance and leasing, or our deposit centre based in Dublin and again we would have to have had a signing authority attached to the document.

Q. So as a manner of giving instructions, it's not peculiar to a transaction of AIB Jersey?

A. No.

Q. And does the bank afford its customers a facility to give instructions other than in the normal way by signature?

A. Yes, they can sign an indemnity to the bank indemnifying against any loss or they can send by fax or telephone instructions.

Q. So that they have the facility of allowing telephone instructions be given as long as if that is their wish and they have given an indemnity in respect of that?

A. Yes, they can.

Q. There seems to be on the brand, on the brand I think on the instruction to the Channel Islands, there is in fact reference to an indemnity

A. An indemnity.

Q. Thank you.

CHAIRMAN: Would you, Ms. Lynham, have been able to deal with it if you had been the only person handling it and you had received it from Jersey as being directed to Michael Lowry, care of AIB O'Connell Street?

A. At that time, I wasn't aware up until very recently that Mr. Lowry had any connection with AIB, 37 O'Connell Street. I only learned about this last week.

CHAIRMAN: So you wouldn't have known he was a TD and it would have been easy enough to send it

A. I did sign the document. I mean, I would have checked with the official who prepared the document, are you happy with everything, the instruction here, and being a senior official, I would have been happy to sign the document

CHAIRMAN: But limited to the transaction itself?

A. Yes.

CHAIRMAN: Thank you very much.

MR. HEALY: Just one small matter.

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

Q. You mentioned an indemnity, Ms. Lynham. Perhaps you would just clarify what that means?

A. Yes. Mr. Sheridan mentioned, on the faxed instruction, you will see there is a box and then below the box it says, there is a little yes, where the no has been ticked out.

"Indemnity held yes." Now, that would indicate to me that Jersey may hold an indemnity from the customer that it is in order for, to give a telephone or a faxed instruction in relation to any of the funds.

Q. I see.

A. But I don't have a copy of the indemnity or I haven't seen it so I can't comment

Q. Obviously the Jersey branch would have that?

A. Correct.

Q. You wouldn't have to have such an indemnity?

A. No.

Q. You wouldn't have required indemnity to receive money on behalf of an individual?

A. No.

Q. Who wasn't a customer?

A. Correct.

Q. Thanks very much.

CHAIRMAN: Thanks.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Sheridan, Sir, has just furnished us

with some information and documents and we'd like to consider them as I presume so would Mr. Lowry's advisers at this stage and I wonder if you could consider rising perhaps for ten or fifteen minutes so that we can just sort this aspect of matters out.

CHAIRMAN: Certainly, Mr. Coughlan.

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

MR. COUGHLAN: Mr. O'Brien please. Mr. O'Brien is already sworn, Sir.

CHAIRMAN: Thanks again, Mr. O'Brien. You are sworn from last week.

MR. LIAM O'BRIEN, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. O'Brien, I just want to bring to your attention, which the bank kindly brought to our attention, obviously the document was available, and it's document number 8. I wonder could that be and this, Mr. O'Brien, is a foreign draft application form and it's for sterling, €34,100 in favour of Mr. Michael Lowry, I think, isn't that correct?

A. Correct.

Q. And then below that is the exchange rate, is that correct?

A. Correct.

Q. And that indicates then in Irish pounds how much that cost?

A. Correct.

Q. And do you see on the left-hand side then, underneath the

Irish sum, is that IM or JM 325 or can you

A. Yes, it could be JM or SM 325.

Q. Do you know what that is?

A. Normally it would refer to a dealer reference.

Q. I see, the person carrying out the foreign exchange transaction?

A. Or having got a rate in the international

Q. Yes. Then to the right of that is calculated and there is

a squiggle of some sort. That's an initial. There is a stamp that indicates that it's a Dame Street document.

A. Correct.

Q. Then ticked off that, funds from an external account and that's ticked off?

A. Correct.

Q. What does that indicate?

A. That on that transaction, as I understand it, that that was the proceeds of the funds coming back from the Ulster Bank in Newry at that time and that they would have come from outside the State.

Q. So, it came in sterling

A. Correct.

Q. in the first instance. And was there a double transaction taking place of, you understand what I mean, that this sterling was converted into Irish which was then

again converted into sterling for the purchase of a draft

in favour of Mr. Michael Lowry?

A. Correct, you would generally get a cross rate to convert

that

Q. Yes. And then on top of the draft number, what I really

wanted to ask you then, it's "Refer PT" that Mr. Tierney

again, would you think?

A. Yes, I think so, yes, mostly would be him.

Q. Who was the man who was dealing with Mr. Lowry?

A. Who was the final contact for Mr. Lowry in the branch.

Q. Thank you, Mr. O'Brien. Thank you very much.

CHAIRMAN: Nothing arising out of that? Thank you very

much, Mr. O'Brien.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Those are the witnesses, Sir, for today,

and the Tribunal, I understand, will sit again on Thursday

morning, Sir.

CHAIRMAN: Very good. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THURSDAY, 8TH JULY, 1999

AT 10:30AM.