

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 27TH JANUARY

2000 AT 11:15AM:

CHAIRMAN: Good morning. Ladies and gentlemen, may I first of all state my sincere apologies for the significantly late start this morning which I do not intend to be a feature of further new year sittings but some exceptional matters of a preparatory nature arise this morning which simply had to be finalised before the sitting was taken up.

Before inviting counsel for the Tribunal to make what I think will necessarily be a quite detailed and extended opening statement in relation to the phase of the Tribunal sittings that is now being taken up, I wish to make a number of preliminary remarks.

The first and most important matter that I want to mention relates to the Tribunal's Terms of Reference. It will be recalled that at a sitting of the Tribunal on the 24th September 1998, certain remarks were made by me for the purpose of indicating the Tribunal's interpretation of its Terms of Reference.

That interpretation was given pursuant to the then recent judgment of the Supreme Court affecting the Tribunal's procedures. I made it clear that this was the Tribunal's then current interpretation and that that interpretation might not be final. That interpretation was based on the

information which had by that time become available to the Tribunal. It was also, to a significant degree, focused on the involvement on the part of the Tribunal with the two individuals named in its Terms of Reference, namely Mr. Charles Haughey and Mr. Michael Lowry.

Since that time, an enormous amount of additional information has been made available to the Tribunal in the course of its investigative activities and in the light of that additional information and the Tribunal's obligation, as I see it, to keep its interpretation of its Terms of Reference under review, I take the view that a further amplification of those Terms of Reference has become necessary. I had hoped to deal with these matters sometime ago but due to time taken up with the Tribunal sittings with other matters, this matter has had to be deferred.

In addition, before finalising views on the Terms of Reference, it was necessary to correspond with a number of individuals likely to be affected and also to bring the matter to the attention of counsel for the public interest.

In my interpretation of September 1998, I stated as follows:

"Term of Reference (b) applies to monies held in the accounts known as the Ansbacher accounts. The Ansbacher accounts are the accounts described as those consisting of

money held on deposit in certain Irish banks by offshore banks in memorandum accounts for the benefit of Irish residents including Mr. Charles Haughey, the history of which is set out at Chapter 6 of the Tribunal report, colloquially referred to as the McCracken Report."

I went on to say that this Term of Reference applied to any money ever held in the accounts for the benefit of or in the name of Mr. Charles Haughey and that it also applied to any money ever held in the accounts for the benefit of or in the name of a person who now holds or ever held ministerial office.

Passing on to Terms of Reference (c), I stated that this Term of Reference embraced payments from accounts held in the name of or for the benefit of Mr. Charles Haughey under Term of Reference (b) to any person who holds or has held public office. Although in those two Terms of Reference, the main focus of the interpretation so far as the Ansbacher accounts themselves were concerned, was on Mr. Charles Haughey, the ambit of the inquiry so far as the Ansbacher accounts is concerned, is wider than Mr. Haughey's involvement with those accounts. The wider ambit is clear from a close reading of Terms of Reference (b) and (c) and also from a reading of the Terms of Reference as a whole including the introductory paragraphs and the paragraphs dealing with the range of recommendations the Tribunal has been asked to make.

In the light of the further information which has become available to the Tribunal concerning individuals other than Mr. Haughey, I now want to mention specifically Term of Reference (c). This Term of Reference requires the Tribunal to inquire whether any payment was made from money held in any of the accounts referred to at (b), to any person who holds or has held public office.

The Tribunal takes the view that the expression 'public office' in the context of this Term of Reference is wider than the expression 'ministerial office' used elsewhere in the Terms of Reference. I have already alluded to the Tribunal's view of the meaning of this term in the context of evidence already given at the Tribunal's public sittings in connection with Mr. John Ellis, TD.

Term of Reference (c) applies to payments made from 'any of the accounts referred to at (b)'. The expression 'any of the accounts referred to at (b)' refers to two classes of accounts. Firstly, the Ansbacher accounts as a whole and secondly, any bank accounts discovered by the Tribunal to be for the benefit of or in the name of Mr. Haughey or for the benefit of or in the name of a connected person or for the benefit of or in the name of any company owned or controlled by Mr. Haughey.

The Ansbacher accounts are referred to generically and that expression comprehends a range of accounts kept in two

offshore locations, on the one hand, in the Channel Islands, all of which appeared to have been closely related and under the control of the late Mr. Desmond Traynor and on the other hand, in the Cayman Islands under the control of the late Mr. Desmond Traynor and his associates from in or about 1969 onwards.

The reference in Term of Reference (i) to 'the accounts referred to at (b)' should be understood in the same way to refer to the two classes of accounts mentioned at (b), that is the Ansbacher accounts as a whole and any other bank accounts discovered by the Tribunal to be for the benefit or in the name of Mr. Charles Haughey and as otherwise set forth in that particular Term of Reference.

Under Term of Reference (i) the ambit of the Tribunal's inquiry embraces the source of money in, inter alia, the Ansbacher accounts for the purpose of ascertaining whether any public office holder for whose benefit money was so held in those accounts did anything in the course of his or her public office to confer any benefit on any person who was the source of that money or directed any person to do such an act.

Under Term of Reference (b), an inquiry into the source of money in the Ansbacher accounts may be warranted in the case of a ministerial office holder regardless of any connection between the activities of that ministerial office holder and the person who was the source of the

money.

On the other hand, where Term of Reference (i) is concerned, it would not be appropriate to conduct an inquiry in public into the source of money into the Ansbacher accounts for the benefit of a non ministerial holder of public office regardless of any such connection. Under Term of Reference (i), the Tribunal envisages that evidence could not be led in public concerning the source of money held in the Ansbacher accounts for the benefit of a public office holder unless it was appropriate also to lead evidence in public as to whether that public office holder had done anything in the course of his or her public office to confer any benefit on that source of that money.

That is not to say, however, that a public office holder who becomes involved with the workings of the Tribunal may not wish, in giving a good account of himself or herself, to give evidence as to the source of any such monies.

Now, before concluding my remarks and it may be that I will have occasion to return to these aspects of amplification of the Terms of Reference, I note that it was stated that the Tribunal conferred in considerable depth with a number of potentially interested persons, including counsel for the public interest. I see Mr. Frank Clarke, Senior Counsel for the public interest present and as I am conscious there are particular demands on your time today,

Mr. Clarke, I wonder is there any aspect you might wish to address at this juncture in regard to the Terms of Reference or otherwise?

MR. CLARKE: Just very briefly, Sir, as you are aware, the remit of the public interest brief before this Tribunal includes questions concerning the Terms of Reference. As on the previous occasion when you took the opportunity to clarify your current understanding of the Terms of Reference, as you have indicated, your legal team have informed me of the substance of the clarification which you have just given in advance and also the substance of certain evidence which has come to the attention of the Tribunal and which I understand will be the subject of this phase both in the opening Mr. Coughlan is due to give and the witnesses which are intended to call. It was of course necessary to bring those second matters to my attention because as you yourself have pointed out, Sir, it is necessary for the Tribunal to consider from time to time its interpretation of the Terms of Reference in the light of the evidence then available to it. And so that I could consider the same material that you are considering, Sir, that material was brought to my attention by your legal team.

I therefore had the opportunity to consider in advance the interpretation which you have just given in the light of such of the evidence as it is intended to be led in this

phase as is relevant to the construction of the Terms of Reference. I also had the opportunity to consult with the Attorney General in relation to those matters.

Following that consideration and consultation, Sir, I address you simply to place formally on the record my full agreement with the interpretation which you have just announced and there are no other matters I think which require any intervention from the public interest at this stage.

CHAIRMAN: Thank you very much, Mr. Clarke, for that. The only other matter before inviting Mr. Coughlan to make his opening remarks that arises simply relates to the mechanics of tomorrow's hearing, although I am extremely anxious that we expedite this phase of the inquiry as far as possible, a somewhat exceptional circumstance has arisen tomorrow in that the ordinary sittings of the High and Supreme Court are being suspended to allow for a particular ceremony at 12 o'clock in the Supreme Court to mark the retirement of the Chief Justice of Ireland, Mr. Justice Liam Hamilton, after over twenty-five years service in the Supreme and High Courts. All Supreme and High Court judges have been asked to attend and to accommodate this, whilst seeking to make the best progress we can, what I would propose for testimony tomorrow is that we make a somewhat early start at ten o'clock, adjourn at or very shortly after half eleven, resume at 2:15 and seek perhaps to make up such

lost time as may have arisen today or through tomorrow's somewhat truncated morning sitting as best we can.

I hope neither this nor the late start this morning has caused anybody attending undue inconvenience. Before inviting Mr. Coughlan to take up his opening remarks, are there any other matters that arise that require to be raised at this stage? Very good. Mr. Coughlan?

MR. COUGHLAN: May it please you, Sir.

The Ansbacher accounts play a significant role in a number of aspects of the Terms of Reference. The Terms of Reference are not devoted exclusively to the Ansbacher accounts in as much as they appear to have no connection with the Terms of Reference relating to Mr. Michael Lowry.

From time to time the Tribunal, in outline statements, has indicated that, in due course, a comprehensive account of the operation of those accounts would be dealt with at one of the sittings of the Tribunal. This, the Tribunal intends to do in the course of this sitting.

There are a number of other matters which will also be mentioned in the course of the sitting. Overall, the sittings will deal mainly with Terms of Reference (a), (b) and (c). In the course of both the investigatory work it has been carrying out and in the course of its public sittings, the Tribunal has formed a picture of the main features of the operation of what have come to be known as

the Ansbacher accounts and also of the style or manner of operation of these accounts. In referring to the Ansbacher accounts, I mean to include all of the offshore operations carried on by the late Mr. Desmond Traynor and his associates. These were conducted not only in the Cayman Islands but to some degree also in the Channel Islands and both of these operations were closely connected.

These sittings, so far as Term of Reference (a) are concerned, will deal with the operation of the Ansbacher accounts to the extent to which they throw light on or raise queries warranting further investigation concerning the circumstances in which payments were made directly or indirectly to Mr. Charles Haughey and in particular, whether those circumstances gave rise to a reasonable inference that the motive for making the payments was connected with any public office held by Mr. Haughey or had the potential to influence the discharge of such office.

It is not envisaged that in the course of these sittings, evidence will be given concerning specific payments in the context of Term of Reference (a), nor will evidence be given concerning the circumstances surrounding any specific payments as such. There may be reference to evidence already given concerning such specific payments or what would appear, subject to the conclusions of the Tribunal, to be substantial payments within Term of Reference (a).

What is contemplated is that evidence will be given

concerning the overall operation of the Ansbacher accounts.

Where Term of Reference (b) and (c) are concerned, the Tribunal will be dealing with individuals other than Mr. Haughey who have had dealings with the Ansbacher accounts.

The dealings of these individuals with the Ansbacher accounts may be of some relevance in enabling the Tribunal to form an overall picture of the accounts. It is important to bear in mind, however, that so far as the information available to the Tribunal is concerned, there would appear to be no suggestion of any substantial payment to any of these individuals in the context of Term of Reference (a) and, as will appear later on, the Tribunal has obtained considerable assistance from them in endeavouring to establish a full picture of their involvement with or dealing with the Ansbacher accounts.

Turning now to the development of the Ansbacher operation.

A large amount of information has come into the public domain concerning the development of the Ansbacher accounts in the course of the evidence given to McCracken Tribunal and also from the report and findings of that Tribunal. It is inevitable that in the course of outlining the operation of the Ansbacher accounts in this Inquiry, there is going to be a degree of repetition. However, as the report of the McCracken Tribunal clearly acknowledges, the information available to that Tribunal in carrying out its

inquiry was relatively limited. At the same time, even with further information made available to the Tribunal, it is unlikely that it will ever prove possible to obtain a wholly comprehensive account of the Ansbacher operation. This is because obtaining information from the Cayman Islands has proved very difficult. The McCracken Tribunal was unsuccessful in litigation on the island in endeavouring to obtain information.

This Tribunal has been in correspondence with the entities which formed part at one time or another of the Ansbacher operation. The response of those entities to the requests from the Tribunal for assistance has proved to be unhelpful and, in some cases, more than unhelpful. The manner in which some of the entities forming part of the Ansbacher operation and in particular the entity known as Hamilton Ross, have responded to requests for assistance and cooperation, forms part of the picture of these accounts. It is a feature of the Ansbacher operation as it evolved over the years from the early 1970s up to the late 1990s that it became characteristically more secretive until a point has now been reached where people who dealt with the agents of the operation find that, notwithstanding their express direction to those agents, in this case Hamilton Ross, and notwithstanding an express authority to Hamilton Ross to provide information to the Tribunal, the response has been wholly obstructive.

Whether this is a feature of banking operations in the Cayman Islands is not clear and is something which may require further elucidation, in other words, it is a question whether this is a characteristic of the Hamilton Ross operation or a characteristic of Cayman banking operations in general.

In seeking to build up a picture of these accounts, the Tribunal has been provided with considerable assistance by Guinness & Mahon and by Irish Intercontinental Bank. These were in the main the two banking entities in this jurisdiction through which the late Mr. Desmond Traynor operated the Ansbacher operation. The Tribunal has also sought and has obtained assistance from a number of former employees of Guinness & Mahon. They include Mr. Pdraig Collery from whom evidence has already been given concerning a number of specific transactions on these accounts. The Tribunal, in the course of its work, has identified a number of individuals who became clients of Mr. Desmond Traynor or of the Ansbacher operation and from these individuals has also obtained a considerable amount of assistance.

From information made available to the Tribunal by Guinness & Mahon and by a number of former employees of that bank, it would appear that from in or about 1969, Guinness & Mahon became involved in offshore finance and/or offshore banking initially in the Cayman Islands and at a slightly

later date in the Channel Islands. The history of the establishment of Guinness Mahon Cayman Trust as a bank with initially a B licence in 1971, and subsequently a full banking licence in 1974, has been outlined in the report of the McCracken Tribunal. Guinness Mahon Cayman Trust, whether as initially established with a B licence, or as a full bank with an A licence, was a wholly owned subsidiary of Guinness & Mahon in Dublin. Guinness Mahon Cayman Trust placed funds in Dublin and, it would appear, in London.

In or around 1972, Guinness & Mahon in Dublin developed a Channel Islands business, initially in the form of Guinness Mahon Jersey Trust. This too was a wholly owned subsidiary of Dublin. In 1973, another Guinness Mahon business was established in the Channel Islands, in this case in Guernsey. This was Guinness Mahon Channel Islands.

Guinness Mahon Jersey Trust Limited was not set up as a bank but as a trust company. It was envisaged that Guinness Mahon Channel Islands would be set up as a bank and it appears that a banking licence was obtained.

However, due to changes in the economic climate, it would seem that Guinness Mahon allowed the licence to be surrendered or to lapse or gave it up. In or around 1975, a trust company was set up in Guernsey. This was College Trustees Limited. It was formed as a wholly owned subsidiary of Guinness Mahon Channel Islands. As in the case of the Cayman business, the Channel Islands businesses

placed monies on deposit with Guinness & Mahon in Dublin.

It would appear that the initial impetus to establish both the Cayman and the Channel Island businesses was the potential to attract funds from Ireland or from Irish residents. Mr. Desmond Traynor was the Dublin Guinness & Mahon executive most actively involved in the establishment and in the operation of these offshore businesses. Both the Channel Islands and the Cayman operations involved also Mr. John Collins and Mr. John Furze, both of whom have already been mentioned in the McCracken Report. While it seemed initially that College Trustees was the main entity by which the Channel Islands funds were placed, either directly or through Guinness Mahon Channel Islands or Guinness & Mahon in Dublin, it would appear that at some stage, though the precise circumstances are not clear, a portion, perhaps a considerable portion, of the Channel Islands funds under the control of Guinness & Mahon subsidiaries was transferred to or came under the control of the Cayman subsidiary.

Although the offshore operations of Guinness & Mahon were set up so that they could be marketed to Irish residents, it seems clear that to some degree at least the services were availed of by non Irish residents and indeed after Cayman had become well established, its customer base expanded to the point where at one time it appears to have had a significant US customer base. Some of the initial funds used to set up the offshore operations and, in

particular, the Channel Islands offshore operation came from trust with which Guinness & Mahon in Dublin had been dealing. Some of these trusts were Irish based and some were English based. However, the dominant feature of the operation was that Irish funds or Irish related funds were placed offshore through Guinness & Mahon, and as far as the Tribunal has been able to ascertain, through Mr. Desmond Traynor and associates of his in Guinness & Mahon, and at a later stage outside of Guinness & Mahon. In the main, trust vehicles were used in the placing of these funds offshore. Trust vehicles were not used in every case and with the evolution of the offshore activities under the control of Mr. Desmond Traynor, a significant amount of activity appears to have occurred otherwise than through trust vehicles.

In the start-up phase of the offshore operation and, in particular, where the Cayman Islands were concerned, it seems that tax advice was obtained and from this tax advice, a discretionary trust strategy was devised as a way of avoiding capital taxes in this country. Whether the trust devices set up were acceptable to the Revenue Commissioners is unclear in that it seems that their existence was not known in the main to the Revenue Commissioners at the time. What is more, it appears that whether or not the devices were or would have been acceptable to the Revenue Commissioners, the actual

operation of some, but not all, of these trust accounts shared a number of characteristics which would tend to suggest that the devices were operated in an irregular fashion or served purposes which were either not originally envisaged at the time advice was taken or which were intended to avoid scrutiny by regulatory or other agencies of the accumulation of funds offshore or the passing of funds from Ireland to offshore location. The features of the accounts which stand out are the following:

Firstly, that notwithstanding that the funds purported to be under the control of discretionary trustees, certain individuals appear to have had ready access to the funds on application to Guinness & Mahon in Dublin.

Secondly, transactions involving the transfer of funds to the trusts appear in some cases to have been carried out in such a way as to avoid exchange control.

Thirdly, the trusts were at all times operated with a degree of secrecy and that as the operation evolved, the degree of secrecy also evolved to the point where eventually a significant part of the business was conducted under the cloak of what would appear to be a highly irregular operation carried on in part from Guinness & Mahon and in part from other locations in Dublin.

Whether the secrecy with which these operations were cloaked was designed to avoid scrutiny of the trust device

or of the manner in which the funds initially settled on the trusts were accumulated is not clear. It will become clear, however, from the documents to which I will refer to later on, that the directors of the Cayman operation were particularly conscious that they were depending on a market for funds, a significant portion of which they hoped to attract from individuals seeking to evade tax, apart altogether from the fact that they were also undoubtedly seeking to attract funds from individuals seeking or if not seeking, at least aspiring to, avoid tax on a legitimate basis.

These accounts were operated to the initial stages on the books of Guinness & Mahon, at least so far as the Channel Island funds were concerned. The accounts in question were recorded as lodgments from Guinness Mahon Jersey Trust or Guinness Mahon Channel Islands and each account was identified by reference to the name of a company or the trust with which it was associated. In time, and because, it would appear, of Mr. Traynor's desire for greater secrecy, letter codes or number codes were applied to the accounts. Some of these letter codes were relatively less opaque than others. In some cases, they referred merely to the initials of an individual by whom funds had been provided for deposit offshore. In other cases, they referred to letters which appeared to have had no connection with the identity of the person by whom funds were placed on trust offshore.

Where Cayman Islands accounts are concerned, the position is less clear, as it seems that, from a very early date, most of the funds placed on deposit by or through the Cayman offshore entities were placed in pooled accounts. In that way, any addition to a particular fund or a particular fund holder's balance would not be reflected in an individual Cayman account but rather as a credit or debit to the entire account. Anyone examining the books of Guinness & Mahon in Dublin therefore would become aware of the individual balances on specific Channel Island accounts so that a Guinness Mahon Channel Island designated GMCI "A" account, for example, pertaining to a specific trust or a specific individual placing his funds on deposit through an offshore entity would be visible on an inspection of the accounts. An inspection of the main Cayman accounts would give no clue nor could it give a clue as to the identity or coded reference of any person entitled to any part or entitled to a claim on any part of any such account. It seems that, with the passage of time, most of the Channel Island monies referable to Mr. Traynor were transferred to Cayman.

Lodgments to these accounts and withdrawals from these accounts could be made in Dublin in a number of different ways. In every case the identity of the person by whom lodgments were made would generally be obscured and likewise, the identity of the persons to whom withdrawals

were paid would also be obscured. This would be done to the case of cash withdrawals by arranging for the payment in Dublin to couriers from the Channel Islands of large sums of money. As many of these withdrawals were in Irish funds, it would appear reasonable to conclude that they were intended for onward transmission to persons within this jurisdiction. The Tribunal can conceive of no reason why these withdrawals could not have been made by way of payments to the form of cheque payments out of the offshore accounts or by way of transfer to other accounts but for the fact that they would be likely to draw attention to the identities of the individuals involved.

A feature of the accounts which has been mentioned from time to time is the provision of lending facilities on a back-to-back basis. In the course of evidence given to McCracken Tribunal, reference was made to a Celtic Helicopters loan which was apparently secured by personal guarantees from Mr. Ciaran Haughey and Mr. John Barnicle. These personal guarantees were however in turn secured or backed by a deposit taken from the Ansbacher Cayman Limited main or general account with Guinness & Mahon. A similar backing arrangement was used to secure a loan of €150,000 from Irish Intercontinental Bank to Celtic Helicopters in 1991. This Tribunal took the view that it was likely that this method of providing security using Ansbacher accounts would lead the Tribunal to information concerning the

operation of these accounts and, further, it would lead the Tribunal to identify individuals involved in the operation of accounts who would be able to be of assistance in providing evidence concerning their operation.

The provision of security in this way using Ansbacher or Channel Island deposits to secure borrowings by Irish residents involved a considerable degree of secrecy over and above that appertaining to the Ansbacher accounts themselves. As the McCracken Report shows, this type of security was provided both during the period in which these deposits remained at Guinness & Mahon and during which they were placed with Irish Intercontinental Bank. The degree of secrecy was however much greater in Guinness & Mahon and this appears to be due to the extent Mr. Traynor was able to control all aspects of the activities of that bank and all aspects of any dealings with the bank which involved Channel Island for Cayman Island accounts. This secrecy was characterised by the way in which back-to-back secured borrowings was recorded in the bank's Credit Committee minutes or in the internal memoranda concerning the borrowings and, in addition, in the facility letters issued to clients recording the condition or the basis of any borrowings secured by these deposits. In Guinness & Mahon, it appears that in the 1970, whenever borrowing by an Irish resident was secured by an offshore deposit, this type of security was not referred to in the facility letter sent to the borrower. The bank's credit memoranda described this

security by a coded expression, usually "suitably secured" or some similar expression. Sometimes the word "secured" was used and even the word "unsecured" was used.

We will go back to the first document, how it was recorded. There's example in parenthesis, "suitably secured" and then the next document, yes, another example is "considered adequate on unsecured basis"; another example is "secured" in parenthesis and as that example on the screen indicates also in parenthesis, "unsecured" was used on occasion.

The Tribunal has been informed that the use of this expression in the bank's internal credit documentation indicated that borrowing was secured by a blocked Ansbacher deposit. In other words, either a particular deposit or more usually, part of a large pooled Ansbacher deposit would be blocked or hypothecated as security by borrowing for the Irish resident. It would appear that the acknowledgment that any borrowing might be secured in this way could only be given by the late Mr. Desmond Traynor. An acknowledgment or undertaking by Mr. Traynor that borrowing was secured in this way would be given informally. This was undoubtedly on irregular manner in which to conduct the business at the bank. It has certainly left open to question whether in describing the security in this coded way, Mr. Traynor was seeking to conceal a relationship between a borrower and an

offshore deposit. It is almost certainly the case that where the depositor and the borrower were both Irish residents, (and this was more often than not, though not invariably the case), the borrower would be entitled, depending on the provisions of the Finance Acts from time to time, to write off either against income, or particular income, or against any profits or particular profits, the cost of the borrowing.

Assuming that the borrower was also the person either with control over or the person beneficially entitled to the deposit offshore, then as long as the existence of the deposit was not disclosed, he had an opportunity to enjoy the accrual of interest on any such deposit without accounting for it to the Revenue Commissioners. In this way, a person might enjoy the benefit of tax relief on the borrowing and in addition, untaxed income from the deposit.

These arrangements, which appear at best to be unorthodox and at worst irregular, appear to have come to the attention and have been the cause of some concern to the bank's auditors. I should say when I refer to the bank there, it's the Guinness & Mahon auditors. The Tribunal has however been informed that whenever the auditors queried either the absence of security or the nature of such security, they were always referred to the late Mr. Desmond Traynor and that the true nature of the security

was then explained by Mr. Traynor but in terms that it could not be disclosed in the bank's records. The Tribunal envisages that, in due course, the response of the auditors may be examined but it is clear that by 1986, and subsequently, the auditors had expressed concern to the point where the bank's parent, Guinness Mahon & Company of London, sought explanations and effectively began to insist on the unwinding of the entire Desmond Traynor/Ansbacher operation.

In addition to attracting the attention of the auditors, it would seem that aspects of the Ansbacher operation also attracted the attention of the Central Bank of Ireland.

From information made available by the Central Bank, it would appear that there was an exchange of correspondence between the Central Bank and Guinness & Mahon in 1976 and 1978 in connection with issues which arose in the course of on site inspections by Central Bank officials. That correspondence no longer appears to be on the records of Guinness & Mahon. However, with the consent and the cooperation of Guinness & Mahon and of the Central Bank, the Central Bank was released from its statutory obligation of confidentiality concerning such documentation and the letters involved have now been furnished to the Tribunal.

It would appear that in 1976, the then Governor of the Central Bank writing to the Chairman of Guinness & Mahon following an on site inspection by Central Bank staff,

indicated that the inspection had revealed that Guinness & Mahon had banking subsidiaries operating in offshore tax havens and that the Central Bank was concerned at the extent of Guinness & Mahon's involvement in this activity.

If I just read the portion of the letter under the heading 'Tax Havens', the letter obviously deals with other issues which are not relevant to the Tribunal. Under the heading 'Tax Havens', "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."

As that text indicates, the Central Bank indicated it would welcome an opportunity to discuss the matter with Guinness & Mahon and while the Tribunal has not yet been able to ascertain what yet transpired in the course of any such discussions, it has been furnished with a letter of the 26th November 1976 from Mr. John Guinness, the then chairman of Guinness & Mahon, to the Governor of the Central Bank in response to his concerns. Mr. Guinness stated that he was not happy with the bank's understanding of his situation and that he too would welcome an opportunity of discussing the matter.

The next item on the overhead projector is Mr. Guinness's response to the particular concern raised by the Central

Bank. Whatever transpired in any such discussions, assuming that they took place, after a further inspection in 1978, the Central Bank once again drew attention to the matter stating as follows, the portion of the text relevant reads: "Our examination revealed that at the 30th April 1978, Guinness & Mahon Limited had advanced loans in 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 Guernsey Limited, a subsidiary of Guinness Mahon & Company Limited. We are of the view there can be no reason for these arrangements other than to reduce the tax liabilities of the customers in question. It appears to the Central Bank that your bank's involvement in such arrangements is inappropriate and could be considered to be contrary to the national interest."

The Central Bank indicated that it would appreciate any comment Guinness & Mahon might wish to make in response to that concern.

By letter of the 1st February 1979, Guinness & Mahon responded as follows, under the sub-heading 'Off Shore 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 subsidiary.

Such business however is a normal part of the activities of a 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 feel strongly that we are not involved in what you have described as "offshore banking activities" but on the other hand, they recognise that confusion sometimes can occur in regard to the exact nature and purpose of banking business emanating from these international contacts.

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 O'Kelly might meet with your representatives at the earliest possible date to discuss this whole matter in detail."

At that stage, Mr. Traynor and Mr. O'Kelly were the joint managing directors of the bank. As of yet, the Tribunal has not been able to ascertain whether any such meeting took place and, if so, what transpired at any such meeting. However, the Tribunal has been informed by a former official of Guinness & Mahon that as in the case of any queries raised by the bank's own auditors concerning these arrangement, queries from the Central Bank inspectors were referred to Mr. Desmond Traynor, that Mr. Traynor informed the Central Bank of the nature of the deposit but

that in so informing the Central Bank inspectors of the nature of the deposits, he made it clear that he was relying on their statutory obligations of confidentiality and secrecy, so as to ensure that any suspicions they might have concerning the true nature of the deposits were not brought to the attention of any other state agency.

Whether or not there was any formal outcome of the correspondence or of any meeting which may have taken place following the correspondence already mentioned, it would appear that the use of the coded expression "suitably secured" ceased sometime in or around 1979 at least for a short period of time. However by 1983 the expression was again being used, this time in a slightly different form most usually in the form of the words "adequately secured" or "security considered adequate" .

The Tribunal has also been informed by Guinness & Mahon that it would appear that the provision of the borrowing facilities on the back-to-back basis which I have just mentioned continued during the period between 1979 and 1983 when the expression "suitably secured" was dispensed with but that during that period, other steps were taken to avoid scrutiny by outside agencies of any such arrangements.

The Bureau System used to record and administer the Ansbacher accounts has already been mentioned in the McCracken Report. The existence of the bureau system

appears to have been known to many members of the Guinness & Mahon bank staff and as far as the Tribunal has been able to ascertain, was also known to many senior executives.

Access to the system was, however, limited to a small number of members of the bank staff. It would seem that in the early days of the Ansbacher operation, the keeping of accounts on a manual bureau system was deputed to the late Mr. Ru Leonard, an official of the bank and officials of the bank who reported to him. At one point, one of those officials was Mr. Padraig Collery. In time, Mr. Padraig Collery graduated to a more senior position in the bank and took over the operation of the bureau system, initially the manual recording of entries on the system and subsequently the computerisation of the system.

After Mr. Collery took over responsibility for the system, he supervised the inputting of information on the computer programme on which the system was operated. There were a number of members of the staff at Guinness & Mahon involved in carrying out this computer work under Mr. Collery's supervision. This work, which annually would take up in the aggregate approximately a fortnight of the staff members' time, was done on Guinness & Mahon time and the staff members involved were given no extra remuneration by Guinness & Mahon or anyone else for such work. Nor would it appear at that time that Mr. Collery was given any additional remuneration for such work during his time with

Guinness & Mahon.

As long as Mr. Desmond Traynor was a Director of and Joint Managing Director of Guinness & Mahon, he was in a position to give instructions to Mr. Collery concerning the operation of the bureau system, and effectively the activities of the Ansbacher operation, by way of internal memoranda in Guinness & Mahon. In 1986, however, Mr. Traynor resigned from the bank but following his resignation worked initially from offices nearby in Trinity Street and subsequently in 1987, upon his appointment to the chairmanship of Cement Roadstone Holdings from offices at Lower Pembroke Street. After he left the bank, the administering of the bureau system was no longer as convenient for Mr. Traynor as it had been while he could direct affairs by the use of internal memoranda within the bank. It now became necessary for him to give instructions to Mr. Collery from an outside location. This was still done by way of memoranda, this time from Lower Pembroke Street as opposed to within Guinness & Mahon premises itself. It would appear that many officials of the bank, including many of the senior executives, were aware of the continued existence and operation of the Ansbacher business within the Guinness & Mahon premises by way of outside instructions from Mr. Traynor.

The Tribunal has been informed by Guinness & Mahon that it would also appear that many of the directors of the Dublin

bank were aware of the existence of these activities both during Mr. Traynor's association with the bank and even after he left. After the late Mr. Desmond Traynor took up his position as chairman of Cement Roadstone Holdings, he was provided with office premises and office facilities at the Head Office of the company initially at Lower Pembroke Street and subsequently at 42 Fitzwilliam Square. After the departure of Mr. Pdraig Collery from Guinness & Mahon in 1989 and until the death of Mr. Traynor in 1994, the entire day-to-day administration of the Ansbacher operation in this country was conducted at the premises of Cement Roadstone Holdings Limited. The bureau system of computer information was kept on the premises and the keeping of records and input of information was carried out by Mr. Pdraig Collery to that premises on a weekly basis, usually on a Saturday. This would involve the assembly of various memoranda and other documentary material generated in the course of the week by Mr. Traynor or by his secretary, Ms. Joan Williams, in connection with the activities of the Ansbacher operation and the entry of various transactions, debits and credits across the numerous coded accounts kept on the computer system.

The records kept on the Cement Roadstone premises were not purely in computerised form. There was also a significant amount of documentary information on files kept by Mr. Traynor and his secretary, Ms. Joan Williams. This information accumulated over a period of time and by 1994,

filled several filing cabinets. However, notwithstanding that a significant amount of paper records were kept by the late Mr. Desmond Traynor, it would appear that bank statements in the ordinary way were not issued on a regular basis to persons entitled to or who had lodged funds to the Ansbacher operation. Information concerning balances would apparently be provided on request to Mr. Traynor, whether it was by telephone or in written form. There was no long-term record of the state of any individual's balance and in general it would appear that the state of a balance was not kept in paper form for more than a short period of time. This was with a view to minimizing the paper record and in general, minimizing the potential for scrutiny of the state of balances on the Ansbacher operation.

Where statements were issued, they were usually in the form of an ordinary bank statement containing the dates or the proximate dates of credits or debits and any other relevant particulars. What distinguished these statements from ordinary bank statements was the fact that in general the identity of the bank, in this case Ansbacher Cayman, did not appear on the face of the statement. The Tribunal has been informed that in fact ordinary Ansbacher account statements would be used but the name of the bank, together with the account information, account number and so forth, would be removed by cutting the upper portion of every relevant page.

For the most part, the Irish end of the Ansbacher Cayman operation was conducted as if the bank had a Dublin branch. At all times, not only were the records of transactions generated in Dublin, but the primary record was kept in Dublin and it was only after the creation of a record in Dublin that a copy was sent to Cayman. Although correspondence purporting to contain instructions from Cayman concerning its accounts either at Guinness & Mahon, Irish Intercontinental Bank or Bank of Ireland Private Banking, actually issued on notepaper containing the Ansbacher or, prior to that, Guinness Mahon Cayman Trust name and the address in the Cayman Islands, most such correspondence contained a stamped or printed direction having equal if not greater prominence than the name of Ansbacher, indicating that all correspondence with reference to any such instructions should be directed to 42 Fitzwilliam Square. From the documentation made available to the Tribunal and by information given to Tribunal by Mr. Padraig Collery and from officials of the various banks mentioned above, it would seem that they regularly corresponded with Mr. Traynor at 42 Fitzwilliam Square and what is more, that they took instructions either from him or from his secretary by telephone from 42 Fitzwilliam Square.

The question, of course, will arise whether the banks dealing with Mr. Traynor were aware of this and, in

particular, whether those banks dealing with the Ansbacher accounts were aware that the activities of the bank at least within this jurisdiction, were operated from 42 Fitzwilliam Square. It is a further question the extent to which those banks may have been aware of the true nature of the deposits and of the irregular manner in which they were being operated by Mr. Desmond Traynor.

That the maintenance of secrecy and in particular with respect to potential scrutiny by taxation authorities was a high priority, if not the highest priority with Mr. Desmond Traynor and his associates in the Ansbacher operation appears from a document referred to in recent media reports as "a note to John Furze".

This document came to the notice of the Tribunal some considerable time ago well in advance of the media reports to which I have just referred. The contents of this document betray a commitment to secrecy which appears to be consistent with other documents made available to the Tribunal concerning the Ansbacher operation.

The document was brought to the attention of the Tribunal as forming part of the personal papers of Mr. Kyran McLaughlin, a member of the firm of Davy Stockbrokers. The document was not brought to the attention of the Tribunal by any state agency, any state body, any authorised officer or any inspector. Mr. Kyran McLaughlin informed the Tribunal that he was not the author of the document and

gave the Tribunal access to his other personal papers.

From those papers, the Tribunal formed the impression that Mr. Raymond McLoughlin, Managing Director of Creans, may have been the author of the document. Mr. Raymond McLoughlin, when approached by the Tribunal, confirmed to the Tribunal that he was the author and has issued a public statement to that effect. The Tribunal is awaiting further information from Mr. Raymond McLaughlin concerning the circumstances in which the document came into existence.

From the information available to the Tribunal to date, it would appear that the document consists of a note made by Mr. Raymond McLaughlin of a meeting he had in Guinness & Mahon with the late Mr. John Furze and the late Mr. Desmond Traynor. The note was created subsequent to the meeting and, while it raises a number of queries, it also contains information which was conveyed to Mr. McLoughlin by Mr. Furze at the meeting. It would appear from the information made available to the Tribunal that there is no connection between the Ansbacher operation and the offshore activities referred to in another document also mentioned in media reports concerning the Principality of Liechtenstein.

The documentation made available to the Guinness & Mahon concerning the relationship between Guinness Mahon Cayman Trust and its Dublin parent included two documents from 1984 indicating a particular sensitivity on the part of the directors of the bank to scrutiny by investigatory agencies

in the first instance in the context of drugs investigations, but in addition in the context of the potential for revenue scrutiny.

Two documents of 1984 illustrate these sensitivities. On the 3rd August 1984, Mr. John A Collins, one of Mr. Traynor's co-directors in Guinness Mahon Cayman Trust, wrote to Mr. Traynor at Guinness & Mahon in Dublin referring to proposed legislation to be introduced in Cayman to give effect to an agreement between the United States and United Kingdom governments, including the government of Cayman Islands, concerning an international narcotics convention. From the letter, it is clear that Mr. Collins apprehended that although the convention was designed to obtain evidence to be used in narcotic cases, there was a risk that the revenue authorities might seek to rely on evidence given in narcotic cases for the purposes of revenue collection. The final paragraph of the letter evidences a particular concern on the part of Mr. Collins that the reach of the agreement should not extend to tax evasion, from which it seems reasonable to conclude that Mr. Collins envisaged attracting funds from that particular market. While Mr. Collins expressed satisfaction that the conclusion of the agreement might militate against press comments depicting the island as a drug island, his apprehension that customers seeking to evade tax might be deterred from using the island was shared by Mr. Traynor.

In a report to the board of Guinness & Mahon in Dublin on the 31st October 1984, Mr. Traynor noted the impact of potential scrutiny under the narcotics convention mentioned earlier by Mr. Collins. He said, "The decline in new business activity over the last six months coupled with the almost certain adverse effects of the extra territoriality agreement entered into by the US, UK and Cayman governments, have given us no option to adopt a cautious approach in our revised revenue forecasts for the current financial year. It may become necessary to adjust further downwards should there be any material loss of business due to a loss of confidence in the secrecy which hitherto existed here."

Now, this is the letter from Mr. Collins to Mr. Traynor and he is making reference in the letter to the agreement being reached and the narcotics convention:

"I enclose a copy of the above agreement which was concluded on the 26th plus a copy of the proposed legislation to effectuate such agreement.

At a meeting with certain bankers last week the governor explained some of the background.

The United States maintained previous gentlemen's agreement was not working in practice and they were not content with it. If this agreement had not been concluded, they proposed to utilise to the fullest extent the subpoena

weapon including the detention in the United States of the party served until he or she had given evidence. Obviously they intended as much harassment as possible.

The UK was also presumably in favour of a narcotics agreement.

Certain leading commercial banks had threatened to close their Cayman operations if the agreement was not concluded.

They could not negotiate with the Attorney General of the United States except in good faith and obviously they did not wish to be seen as supporting the drug trade.

It is intended that the party to be served for information, (the Assistor) in most cases will be the Chief Executive Officer of the firm. The US was adamant that the client was not told of the proceedings, hence the confidentiality imposed upon the Assistor for 90 days liable to extension.

There was comment at the meeting surrounding worries of not even being able to tell head offices and of the notice being served on an individual rather than the company. The stand taken was this cannot be changed at the moment and head offices should be made aware of the procedures. Maybe as experience dictates how the agreement works in practice, the procedures could be modified in consultation with the United States.

In practice, how it is really kept confidential within the

office is a matter of doubt. Many would automatically know what is happening.

The concession the Cayman Government obtained is that the evidence may be given locally and your lawyer may attend the "Star Chamber" with you. In practice all I think will delay any request to appear in the States.

Procedures have evidently been established for monitoring by the Cayman Government of cases to satisfy themselves that the evidence obtained is used only for narcotics cases. However there obviously is a question mark about what happens if a narcotic case fails and the evidence has been adduced in open court. Is the I.R.S. precluded from using it? In theory, I suppose the answer is 'yes', but in practice if they know about it, maybe not directly but...

Obviously this was the main concern of this being used as the thin end of the wedge but evidently the UK was firm no agreement for taxation matters and as I said in the beginning, the negotiations had to be in good faith.

I gather there has already been some American press headlines in the order of 'Cayman Secrecy Smashed' and I expect business to be adversely affected.

However the adverse press etc. depicting us as a drug island should now stop and the fact that we are the first haven to conclude an agreement may enhance our reputation as a clean island for reputable business.

If it works, I would anticipate the agreement being extended to other criminal activities but not tax evasion.

However the I.R.S. are not going to sit back and they presumably are considering what to do now that their latest ploy, the obtaining of consensus under duress has not been declared not valid under our law by our Chief Justice.

Yours sincerely,

John Collins."

I have already, on the overhead monitor, indicated the report being given at the board meeting of Guinness & Mahon by Mr. Traynor in respect of the receipt of that letter.

In addition to the back-to-back loans to Irish residents, there were also a series of substantial loans to US residents, secured by Cayman deposits in Guinness & Mahon in Dublin. These included loans made to Fernando Pruna and his wife Edulia Pruna of Miami, Florida. Between 1985 and 1988, loans were made to the Prunas which ultimately exceeded the sum of US \$1 million. These customers were introduced to Guinness & Mahon Dublin by Guinness Mahon Cayman Trust and the facilities were secured by Guinness Mahon Cayman Trust deposits in Guinness & Mahon. Loans were also made to a company controlled by Mr. Pruna. It appears that Guinness & Mahon encountered considerable difficulties in securing interest payments during the currency of the loans.

Ultimately, Guinness & Mahon took further security over property in Dade County, Florida. To perfect this security, the title to the property appears to have been transferred into the name of Mars Nominees Limited, the Guinness & Mahon nominee holding company. It appears that the balance due on this borrowing which amounted to US \$700,000 was ultimately discharged in June of 1988 when it appears that the backing deposit of Guinness Mahon Cayman Trust was released to Guinness & Mahon.

Following the discharge it appears that the property remained registered in the name of Mars Nominees Limited.

In September 1988, a grand jury subpoena was issued in relation to documents held by Guinness Mahon Cayman Trust, Guinness & Mahon (Ireland) Limited and Mars Nominees Limited in relation to loans made to Fernando Pruna.

Subsequently in March 1990, Letters Rogatory were issued by the United States District Judge of the Southern District of Florida for transmission to the judicial authorities in this country in relation to an investigation of alleged organised crime drug smuggling operation headed by Fernando Pruna.

An indictment had been issued by the United States attorney charging Fernando Pruna and members of his organisation with crimes including operating and conspiring to operate continuing criminal enterprises dedicated to the importation of cocaine and marijuana into the United States

from 1981 to 1988. On foot of the Letters Rogatory, an order was made by the High Court in Dublin on November 1990 that an official of Guinness & Mahon attend to be examined on oath. It is not yet clear as to what official of the bank attended for examination but from inquiries made by Tribunal with the United States Department of Justice, it would appear that Mr. Pruna was ultimately convicted of certain of the crimes with which he was charged and served a prison sentence in a United States Federal Penitentiary in Florida.

CHAIRMAN: I think in a sense you are moving on to a somewhat separate topic and you have effectively passed the halfway point of your remarks and it may be an appropriate time as any to adjourn

MR. COUGHLAN: Perhaps we do, I should say the Tribunal is not suggesting Mr. Traynor, Mr. Furze, Mr. Collins were involved themselves in the drug trade or assisting the drug trade. The Tribunal is interested in the irregular and unorthodox banking methods used by them which facilitated this particular type of activities to allow money be effectively laundered. I should say that.

CHAIRMAN: That distinction is important, yes. Very good, five to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1.55PM:

MR. COUGHLAN: Sir, before I continue with the outline statement, if I could just very briefly interpose a short witness for purely technical purposes. Ms Dominique Cleary please.

DOMINIQUE CLEARY, ALREADY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

MR. COUGHLAN: Miss Cleary has already been sworn. You are a solicitor in the law agent office of the Bank of Ireland?

A. That's correct.

Q. I think pursuant to an order, you are here today to produce to the Tribunal original documents, the subject matter of an order for production, isn't that correct?

A. That's correct.

Q. And can you confirm that the documents you have are the originals and you are submitting them now to the Tribunal pursuant to the order?

A. Yes, they are the originals.

Q. Thank you very much indeed.

CHAIRMAN: Thanks very much for your attendance, Miss Cleary.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: I might continue, Sir. Obtaining

information concerning the Cayman operation after 1984 has become extremely difficult. This is due in part to the fact that, from that date onward, the Cayman operation ceased to be a subsidiary of Guinness Mahon. In that year Guinness Mahon Cayman Trust became a wholly-owned subsidiary of Guinness Mahon & Company, the London parent of the Dublin bank. Subsequently as a result of the involvement of Ansbacher and the involvement of certain directors that participated and acquired that entity, Guinness Mahon Cayman Trust which ultimately became Ansbacher from the London parent company.

In addition, ultimately the ownership of Guinness Mahon Cayman Trust passed into the hands of Ansbacher Cayman, a company associated with Henry Ansbacher & Company, London. Eventually, the ownership of the bank passed to First National Bank of South Africa. The Tribunal has nevertheless encountered considerable difficulty in obtaining information concerning the activities of Ansbacher notwithstanding the changes in ownership. In forming a picture of the Ansbacher activities under the control of Desmond Traynor, it should be borne in mind that from about 1992 onwards, part of the funds under the control of the late Mr. Desmond Traynor and associates came under the umbrella of an entity known as Hamilton Ross Limited. For some time from 1992 until in or about 1995, some of the funds held under the Ansbacher umbrella were held in the name of Hamilton Ross. From in or about 1995

onwards, the Hamilton Ross funds were removed from under the Ansbacher Cayman umbrella. From that time onwards, they were separately controlled by Mr. John Furze who, by that time, appears to have terminated his association with Ansbacher Cayman. The operation from that time onwards was mainly concentrated on the Hamilton Ross funds.

Mr. Charles Haughey continued to deal with this much reduced Ansbacher/Hamilton Ross operation now confined in the main, as far as the Tribunal can see, to the funds under the control of Mr. Furze in Hamilton Ross.

Apart from the difficulties the Tribunal has encountered in obtaining information from Ansbacher, it would appear that as a result of an exercise carried out in this jurisdiction following the death of Mr. Desmond Traynor, a considerable number of paper records relating to the Ansbacher operation were destroyed by Mr. John Furze. Mr. Furze, with the assistance of Mr. Collery, had removed all of the paper documentation concerning the Ansbacher operation to the offices of Management Investment Services under the control of Mr. Sam Field-Corbett at Inns Court, Winetavern Street, Dublin. In the course of a three-day period in those offices, Mr. Furze, with the assistance of Mr. Collery, destroyed more than half the paper documents.

During all of this time, the Ansbacher operation continued to provide services to its Irish clients or Irish customers including, as evidence given at earlier sittings of the

Tribunal suggests, Mr. Charles Haughey.

There is one further feature of the overall conduct of the Ansbacher operation which is more readily exemplified by information made available to the Tribunal concerning Mr. Denis Foley, TD. Although Mr. Foley himself has provided the Tribunal with considerable assistance concerning these matters, the manner in which the Tribunal's attention was first drawn to Mr. Foley's affairs would itself appear to be something warranting inquiry into connection with the conduct of the Ansbacher operation.

Mr. Foley has been a TD since 1981 with one break between 1989 and 1992 when he held office as a senator. He has also held offices as both chairman and vice-chairman of the Public Accounts Committee.

Mr. Foley has informed the Tribunal that his association with Mr. Desmond Traynor goes back to the mid-1960s and an association he had with the Mount Brandon Hotel in Tralee. At the time, he was a rate collector. In addition, he was also involved in arranging for bands to play in the new Mount Brandon Hotel and also provided assistance in arranging publicity for the hotel's ballroom. As part of this arrangement, he was in receipt of payments both from the Mount Brandon and from the bands and, in addition, from similar work he did for the Central Hotel ballroom in Ballybunion.

Around this time he met Mr. Desmond Traynor who was involved with the Mount Brandon Hotel in his capacity as an accountant with the firm of the Haughey Boland. In a Memorandum of Evidence provided to the Tribunal, Mr. Foley has stated that in or about 1975 or 1976, Mr. Traynor informed him that, through the Guinness & Mahon bank, he would be able to get Mr. Foley a good return on any funds he might have to invest; that some years later, in or about 1979, Mr. Foley decided to invest some €50,000 which he had accumulated from his own resources with Guinness & Mahon; that he gave the sum to Mr. Traynor; and that in return he received two Guinness & Mahon lodgment docket, one for €30,000 and one for €20,000.

Mr. Foley has stated that he was informed by Mr. Traynor that his monies would be invested in a fund entitled "Klic Investments" and that Mr. Traynor informed him that he would be furnished with statements on a periodic basis.

Notwithstanding requests, he was not in fact furnished with statements until in or about 1982.

The lodgment docket have been made available to the Tribunal and while they mention Mr. Foley's name and the amounts, they do not mention any account number and the Tribunal has been informed by Guinness & Mahon that Mr. Foley had no account with the bank as of the date of those lodgment docket in any of those amounts or in the aggregate of those amounts. Nor has Guinness & Mahon been

able to trace the lodgments to any account in the bank such as a bank suspense account into which these sums might have been lodged pending their ultimate allocation to some other nominal account in the bank. Mr. Foley received two further intimations of the state of his investments and has informed the Tribunal that at one point he received a simple slip of paper from Mr. Traynor with the word "Klic" on it and the amount STG œ72,893 and later on, in 1988, he was informed by Mr. Martin Keane, an official of Guinness & Mahon, that his investment stood at STG œ82,688 and that he, Mr. Foley, noted this in his own handwriting on the same slip of paper given to him at an earlier date by Mr. Traynor.

Mr. Foley has stated that he made two withdrawals from his investment and that this was done by arrangement with Mr. Traynor; a withdrawal in the amount of œ20,000 on the 13th April 1989 and a withdrawal in the amount of œ10,000 on the 16th June 1993. He has informed the Tribunal that the first withdrawal was furnished to him in the form of a draft drawn on Guinness & Mahon at its branch in South Mall in Cork and that the second withdrawal was paid in cash.

Guinness & Mahon has informed the Tribunal that they have no record of any draft issued by Guinness & Mahon at either its Dublin or Cork branches between the beginning of March and the end of April 1989, save for one draft payment to a semi-state body.

In relation to the €10,000 cash withdrawal, the Tribunal has been informed by Irish Intercontinental Bank, the bank with whom most of Ansbacher/Hamilton Ross business was transacted from January 1991, that it appears from a statement of account number 02/013584/81, that on the 16th June 1993, a sum of STG €9,890 was withdrawn and converted from sterling to Irish pounds to fund a cheque for €10,000 payable to the Bank of Ireland. The account from which the sterling amount was withdrawn was an account in the name of Hamilton Ross and is the same account from which debits were made to fund cheques payable to the bill-paying service operated for Mr. Charles Haughey by Mr. Jack Stakelum of BEL Secretarial. It would appear that the €10,000 cheque payable to the Bank of Ireland is represented by a credit to an account in the Bank of Ireland in the name of Kentford Securities, an account which, as evidence already given to the Tribunal has shown, was frequently used by Mr. Desmond Traynor to process transactions of the Ansbacher operation in this country.

The lodgment is shown on the overhead projector. On the 17th June, there was a lodgment of €10,000.

It would appear that the same amount was withdrawn from the account some few days later. The account is on the overhead projector - the statement of account shows a debit on the 24th June for €10,000 cash.

Mr. Foley has informed the Tribunal that notwithstanding

the dealings I have just referred to, namely the payments to him by Mr. Traynor by way of withdrawals by Mr. Foley in respect of investments, his contacts with Mr. Traynor following his election to Dail Eireann in 1981 were very rare. He has, however, stated that he telephoned Mr. Traynor on a number of occasions and that he called to see him on two occasions at his office in Fitzwilliam Square to discuss how his investment was progressing.

In his Memorandum of Evidence, Mr. Foley has stated that following Mr. Traynor's death in 1994, he became concerned about his investment. He eventually succeeded in making contact with Mr. Padraig Collery in August 1995, informing him that he was anxious to make a withdrawal of €50,000 from his investment and that he also wished to obtain statements. Mr. Collery informed him that his investment was being dealt with by Mr. John Furze but Mr. Foley had not heard of that name before and has stated that he has never met or dealt with Mr. Furze. It would appear that in early September 1995, Mr. Foley had an arrangement to meet with Mr. Padraig Collery at Jurys Hotel in Dublin.

Mr. Collery met him and provided him with a sum of €50,000 in cash. This Mr. Foley converted into two bank drafts which he obtained from the Bank of Ireland in Tralee and he has informed the Tribunal that he has kept these since that date with a view to paying the Revenue Commissioners and that he has indicated that these funds have been applied by

him towards discharging outstanding tax liabilities.

On the overhead projector, you will now see the debiting of STG œ51,425 which converted into IR œ50,000 and it is debited from the same Hamilton Ross account that I mentioned a moment ago. From information made available by Mr. Tony Barnes of Irish Intercontinental Bank, it appears that, from the bank records, on the 18th August 1995, the bank received instructions from Hamilton Ross to provide a draft for IR œ50,000 and to debit the cost to Hamilton Ross sterling account 02/01354/81. It appears from the face of the letter that a query was raised by the bank as to the payee of the cheque and the bank was instructed to make the cheque payable to Bank of Ireland. It appears from the account statement that on the 21st August 1995, a sum of STG œ51,425 was debited to the account in respect of foreign exchange contract note 691639. It appears from the records of the bank that the sterling funds debited to the account were converted to Irish pounds to fund a cheque dated 22nd August 1995 payable to Bank of Ireland in the sum of IR œ50,000.

That cheque in the sum of œ50,000 was lodged to an account in the Bank of Ireland to the name of a company called Darsley Nominees Limited. That account was mentioned by Mr. Samuel Field-Corbett at an earlier sitting of the Tribunal and was an account used in the same manner as the Kentford Securities account had been used for the

processing of transactions relating to Hamilton Ross & Company's dealings with clients in this jurisdiction. The statement of the Darsley Nominees Limited current account shows that on the 25th August of 1995, there is a credit to that account in the sum of €50,000 representing the proceeds of the cheque drawn in favour of Bank of Ireland from IIB.

On the 8th September of 1995, there is a debit to that account in the sum of €50,000. Mr. Padraig Collery has informed the Tribunal that it would appear that this represented the funds used by him to provide the sum of €50,000 in cash to Mr. Denis Foley at his meeting with him in Jurys Hotel. According to Mr. Foley, his only other contact with Mr. Collery was to press him for statements and that he received no statements until May of last year. Copies of those statements have been provided to the Tribunal and although they contain the name Ansbacher and Hamilton Ross, Mr. Foley has informed the Tribunal that that was the first time that he had ever seen any document concerning his investment which contained those names.

The earlier statements provided to him were of the kind which I have already described in the earlier part of this opening statement, i.e. bank statements containing particulars of credits and debits but from which the letterhead, account name and account number had been cut off. Incidentally, the statement on the overhead

projector shows a debit in sterling from that particular bureau account equivalent to IR €10,000. If the statement is pulled to the right for the moment please this is clear from the remarks contained in the statement. And that appears to be the €10,000 because of the date, the 16th June 1993, which I have already referred to.

Apart from the monies I have just mentioned, Mr. Foley has also informed the Tribunal that he opened an account with Guinness & Mahon in December of 1986. This was a resident call deposit account number 10583009. It was opened in 1986 with a lodgment in the order of €3,000-odd and with a number of further lodgments by November of 1990 stood at €24,005.95. This was an ordinary resident call account.

Mr. Foley has informed the Tribunal that Mr. Traynor indicated to him that he, Mr. Traynor, proposed to close the account and transfer the balance to what Mr. Foley calls his investment account. The documentation made available to the Tribunal by Mr. Foley and which, according to Mr. Foley, was provided to him by Mr. Collery in May 1999, includes reference to a number of coded accounts kept by Ansbacher Limited in the names variously of Ansbacher Limited and Hamilton Ross. One set of these account statements has the account code A/A40 and the other set has the account code A/A49.

The first reference to Hamilton Ross on these documents in respect of the coded account A/A49 is on the 4th January

1993. The account for that date shows a credit of
€27,262. It's on the overhead projector at the moment
- the statement of account reads Ansbacher Limited,
Hamilton Ross and the code is on the right hand corner
A/A49.

The Tribunal has not been able to obtain the orders of
these coded accounts for any period prior to the 30th
September 1992. However, in examining other material
concerning transactions involving companies associated with
the operation of the Ansbacher accounts, the Tribunal's
attention was drawn to a lodgment in the sum of €24,005.95
(which it will be remembered was the closing balance on
Mr. Foley's resident deposit account with Guinness & Mahon)
to Kentford Securities Limited at Guinness & Mahon on the
6th December 1990. From other documentation made available
to the Tribunal, it would appear that this represents the
proceeds of a cheque drawn on a Bank of Ireland account at
48 Talbot Street, Dublin, in the name of Management
Investments Services Limited, a company associated with
Mr. Sam Field-Corbett. The cheque was in the amount of
€24,005.95. It would appear from that account that there
had been an identical lodgment by way of giro credit to
that account of the sum of €24,005.95 on the 3rd December
1990. Sorry Sir, because this is fairly detailed. I
will go back over the documentation if that meets with your
approval.

I will start again. The first thing that was drawn to the Tribunal's attention was a lodgment to the Kentford Securities account in Guinness & Mahon in the sum of €24,005.95. That being the equivalent to the balance on Mr. Foley's resident call account at Guinness & Mahon the closing balance. Those funds represent the proceeds of a cheque in the same amount and it's not very clear on the overhead projector, it's in the same amount made payable to Kentford Securities drawn on the account of Management Investment Services Limited No. 2 account with the Bank of Ireland at Talbot Street, Dublin. This was signed by Mr. Field-Corbett.

Now if we could then put up the account of Management Investment Services Limited at the Bank of Ireland in Talbot Street. This shows a giro credit to the account of Management Investment Services Limited of the same sum €24,005.95 and below that, a debit equal to that exact sum represented by a cheque. And that, the Tribunal has been informed, is the cheque made payable to Kentford Securities Limited in exactly the same sum of money.

The cheque in question, that is the Management Investment Services cheque in question in the sum of €24,005.95, has been made available to the Tribunal, and from other documentation made available to the Tribunal, it would appear that the giro transaction was carried out by Mr. Patrick McCann, an associate of Mr. Sam Field-Corbett,

who has also provided a statement to the Tribunal. While the Tribunal has not as yet obtained any comment from Mr. Foley concerning this matter, it would seem nevertheless that a question which arises is as to why such a roundabout method was adopted to effect a very simple transfer of funds which could have been effected by debiting the Guinness & Mahon account with the sum of money in question and lodging the exact same sum into the Kentford Securities Limited account or, alternatively, by effecting a straightforward transfer between the two accounts. Any such straightforward transfer between the two accounts, however, would have been left a very obvious record or trail indicating a clear connection between the two accounts within Guinness & Mahon itself.

The documents concerning Mr. Denis Foley's involvement with the late Mr. Desmond Traynor came to the Tribunal's attention in November of 1999 in circumstances in which, as I have mentioned above, appear to characterise the continuing secrecy surrounding the Ansbacher operation in this jurisdiction and, in particular, the Hamilton Ross entity into which it has now evolved. In November of 1999, it came to the attention of the Tribunal as a result of information made available to it by an official of Guinness & Mahon who had formerly worked as a secretary or clerical assistant to Mr. Collery while he was employed by Guinness & Mahon. The official in question, Ms. Margaret Keogh, informed the Tribunal that sometime in November of

1999, she received a visit from Mr. Collery who deposited with her a sealed package of documents requesting her to retain them in a safe place until, as Ms. Keogh says Mr. Collery said to her, he had an opportunity of visiting his home place which she knew to be in Sligo. Ms. Keogh brought the documents to the attention of her solicitor and, having examined them, her solicitor was satisfied that they were relevant to the work of the Tribunal and so informed the Tribunal's solicitor. Having regard to the circumstances in which the documents were deposited with Ms. Keogh, the Tribunal formed the impression that there was a risk that they would be put beyond its reach and that, in the circumstances, it was appropriate to act speedily and an order was made directing the production of the documents. Because at that time the Tribunal had not had an opportunity examining the documents, the order was made in the absence of the public. The documents proved to be highly relevant and while the bundle contained some documents, the contents of which were previously known to the Tribunal, a substantial part of the bundle of documents had never come to the attention of the Tribunal and contained information of critical relevance to its Terms of Reference and to its investigatory work. The documents were in the main of three kinds:

Firstly, statements of account in the form of the A/A49 account which I have already referred to.

Secondly, handwritten account statements.

Thirdly, other handwritten documents containing coded lists of Hamilton Ross clients or customers.

Some of the names on the coded list of Hamilton Ross clients or customers were already known to the Tribunal. In the course of the investigatory phase of its work and in endeavouring to form a picture of the Ansbacher accounts, the Tribunal had taken evidence at public sittings from which the public were excluded so as to identify the beneficiaries of Ansbacher and Hamilton Ross funds and, so far as possible, to identify the persons associated with the funds passing through the Ansbacher operation in this country, both on a back-to-back basis and otherwise. In the course of those public sittings, the Tribunal brought to the attention of Mr. Padraig Collery a number of coded account references which it was unable to identify with any individual. In the course of those sittings, Mr. Collery had provided the Tribunal with the names of a number of individuals associated with the Ansbacher funds and had, in particular, identified a number of individuals associated with particular codes. One of the codes mentioned in the course of those public sittings was A/A40. In the course of those public sittings, the Tribunal was informed that this code applied to funds held for the benefit of the late Mr. John Furze.

The documents provided to the Tribunal by Ms. Keogh included documents containing the identities of the persons associated with various account codes. The documents in question had been generated by Mr. Padraig Collery and he, Mr. Collery, has so confirmed this. The documents were in fact generated by Mr. Collery in the course of a visit to the Cayman Islands in July of 1998. They were generated, as I will indicate in a moment, in the course of dealings Mr. Collery had with a Mr. Barry Benjamin, a person who has succeeded Mr. Furze in the Hamilton Ross operation in the Cayman Islands.

The list in question, in Mr. Collery's handwriting, identifies the code, A/A40 with Mr. D. Foley. Mr. Collery has confirmed that this was intended to refer to Mr. Denis Foley. The other names on the list have been excluded from what is showing on the overhead projector at the moment.

The Tribunal has raised a number of queries with Mr. Padraig Collery concerning the fact that these documents and this information appears to have been in existence for some considerable time and that neither the documents nor the information was brought to the attention of the Tribunal. The Tribunal's interest in endeavouring to pursue these inquiries is with a view to ascertaining why, notwithstanding the activities of two Tribunals of Inquiry and numerous other investigating agencies, this

information and these documents was not brought to the attention of this Tribunal and as to what prompted the continuing secrecy surrounding the operation of these accounts right up to two months ago. Mr. Collery has informed the Tribunal that the reason he cross referenced the account coded A/A40 with the name of Mr. John Furze is that he was unclear then as to who were the true beneficial owners of the funds, although he now accepts that they either belong to Mr. Foley or his daughter and that he should have so advised the Tribunal.

He has informed the Tribunal that his hesitancy in naming Mr. Foley or his daughter was due to a worry about not being 100 percent sure of the matter rather than any desire or reason to be unhelpful to the Tribunal.

A number of queries concerning the identification of this account with Mr. John Furze and the circumstances which Mr. Colley has continued to be involved in the operation of the Ansbacher accounts has been raised with Mr. Collery and will require further investigation in the course of the Tribunal's public sittings with a view to establishing that the Tribunal has as comprehensive an account as possible of all the circumstances surrounding Mr. Collery's continued dealing with Ansbacher, bearing in mind that it was not until after Ms. Keogh made documents available to the Tribunal in 1999 that the Tribunal was informed for the first time of Mr. Collery's visit to the Cayman Islands in July of 1998.

There is a further feature of this visit which also merits additional inquiry. Once again, this came to the attention of the Tribunal only as a result of the provision of documentation by Ms. Keogh. From this documentation, it would appear that in the course of a lengthy seven-day visit to the Cayman Islands from July 1998, Mr. Collery generated a number of documents based on information which he had accumulated in Ireland and which he brought with him to the Cayman Islands. While in the Cayman Islands, Mr. Collery assisted in bringing up to date the balances on the various coded accounts kept within the Hamilton Ross pooled accounts. He updated a number of other accounts and made a number of other entries in various accounts kept in connection with the operation of the Hamilton Ross accounts. One of the exercises he carried out consisted of making deductions from the balances of the various account beneficiaries or customers in respect of legal fees incurred by Mr. John Furze in connection with the proceedings between him and the McCracken Tribunal before the Cayman court. The deductions from the balances of the various clients or customers of Hamilton Ross for legal fees do not appear to have been made pro rata according to their overall holdings in the Hamilton Ross pooled funds.

The Tribunal has been in touch with a number of the individuals from whose balances deductions were made. It has been informed that those individuals did not consent to

any such deductions and that indeed they were not aware of any such deductions having been made until they were so informed by the Tribunal. A feature of the deductions is that the sum of €5,000 was subtracted from Mr. Denis Foley's A/A40 account for this purpose. It's not very clear on the overhead, but you will see that you will see €5,000, the deduction, and the legend is in respect of John A. Furze, legal fees fees, in fact it says, and we have been informed by Mr. Collery that this was in respect of legal fees. And the date of the posting is referable to the 20th September 1997.

Mr. Foley has informed the Tribunal that he knew nothing about this. Each of the other beneficiaries has, without any compulsion on the part of the Tribunal, furnished the Tribunal with a waiver of confidentiality and an authority and direction to Mr. Barry Benjamin and Hamilton Ross to provide all the information and any documentation he has concerning the operation of these accounts. Solicitors acting for Hamilton Ross within this jurisdiction have indicated in response to each and every one of these requests that they have no instructions from their clients. When the Tribunal, through its solicitor, indicated that it proposed to treat this response as a refusal to provide any information notwithstanding express directions from Mr. Benjamin's and Hamilton Ross' client, the solicitors indicated that once again they had no

instructions from their clients. The Tribunal has since taken up the matter with the Cayman Island Monetary Authority, a regulatory authority operating in the Cayman Islands with jurisdiction over the regulation of financial services in that jurisdiction. Although to date the Tribunal has received no response from this agency, the Tribunal's solicitor has received a telephone call from a Cayman Government lawyer indicating that the Tribunal should make an application to the Grand Court of the Cayman Islands and that that would be the appropriate way to go about seeking the information. In light of the experience of the McCracken Tribunal, it is unlikely that this approach will be adopted by this Tribunal.

One of the features of the investigatory climate in this jurisdiction over the past three years has been the number of inquiries instituted by both the Executive and the Dail. As a result of recent legislation, the report of Mr. Ryan, the Authorised Officer appointed to examine the books and documents of Ansbacher (Cayman) Limited has been furnished to the Tribunal. As the document and its various appendices is voluminous and reflects an enormous amount of work carried out by Mr. Ryan over a considerable amount of time, the Tribunal has not yet had an opportunity of examining it in detail. However, from an initial examination of the report and of the accompanying material, it would appear that the authorised officer has, in general, formed the same impression of the Ansbacher

accounts as that formed by the Tribunal in the course of its investigatory work.

There are a number of minor differences of detail. The thrust of the Authorised Officer's report has a more specific accountancy focus. So far as the identification of individuals associated with the Ansbacher accounts are concerned, there would appear to be little or no difference between the result of work carried out by the Authorised Officer and the results of the work carried out by the Tribunal, with the marked exception of the information which became available to the Tribunal as a result of documents furnished by Ms. Keogh. It is clear that that information was only not made available to the Tribunal but appears not to have been brought to the attention of the other investigatory authorities.

There is one further matter concerning Mr. Denis Foley which the Tribunal will wish to pursue in the course of its public sittings and this concerns a back-to-back loan advanced by Guinness & Mahon to Central Tourist Holdings Limited, a company of which Mr. Foley, together with Mr. John Byrne and the late Mr. William A. Clifford and Mr. Thomas Clifford were directors.

From documents made available to the Tribunal by Guinness & Mahon, it would appear that a sum of the order of €70,000 was borrowed by Central Tourist Holdings in or around June

of 1972 and that that borrowing was backed by a security described by the coded reference which I have already mentioned, namely "suitably secured". It appears that this was one of the badges of an Ansbacher-backed loan.

The loan was renewed from time to time and eventually by the time the loan was cleared, the debit balance stood at œ135,510.68. It would appear that the loan was ultimately repaid on the 4th September 1985 and that the source of the credit to the account to pay the loan was a transfer of funds from Guinness & Mahon Cayman Trust/College Call Account No. 06040454. A small additional sum to make up the full balance was withdrawn from an Amiens Securities Limited account and in a memorandum of one of the bank's officials, Mr. Pat O'Dwyer, dated 16th October 1985, it was confirmed that the loan had been fully repaid.

This is the memorandum from Mr. Pat O'Dwyer, dated 16th October 1985. "The following is the situation in respect of up to date accounts requested by you", which refers to a number of loan accounts and they have been eliminated from the document on the overhead projector and they show Central Tourist Holdings, account fully repaid.

A curious feature of the loan is that although apparently cleared on the date mentioned above, documents appear to be generated within the bank giving the impression that the loan continued to be outstanding. There is an account statement in respect of November of 1985 and it shows the

indebtedness, then the credit to the account and the account stands at a zero balance. Further is a statement purporting to be in respect of the loan to Central Tourist Holdings in 1986 showing interest being added to the account and interest had obviously previously been added in other statements and the balance as being represented on this statement as standing at €149,000-odd.

Mr. Foley has provided the Tribunal with a Memorandum of Evidence concerning this borrowing. However, this feature of the loan mentioned above and the fact that an impression was given that the loan was still outstanding after it had been paid has only just been brought to his attention and he has not yet made a comment in relation to it. He has stated that to his knowledge, the company's solicitor, the late Mr. Joe Grace and the company's accountant, Haughey Boland, reached a compromise with Guinness & Mahon and the Revenue Commissioners, presumably the main debtors of the company, and that as a result of this compromise, he himself had to make a payment of €5,000 towards the discharge of debts due to the company's creditors and a further payment of €2,787.58 towards the discharge of the amounts due to the Revenue Commissioners. The Tribunal has also brought this matter to the attention of Mr. John Byrne from whom further information is awaited in dealing with the queries which I have just mentioned.

In addition to Mr. Denis Foley, two further public office

holders have come to the attention of the Tribunal in connection with the operation of the Ansbacher accounts. They are, Mr. Peter Sutherland, former Attorney General, and the late Mr. Hugh Coveney, former Government Minister and Minister of State.

Mr. Sutherland's involvement in the Ansbacher operation arises in connection with Term of Reference (c). He was not himself the source of or the person entitled to any funds in an Ansbacher account nor was he in any way connected with the source of any funds to any coded Ansbacher account. Term of Reference (c) of the Tribunal's Term of Reference applies to payments to the holders of public office from Ansbacher accounts. Payment within the meaning of the Term of Reference has been defined or interpreted as including money and, in addition, any benefit in kind. The Tribunal has interpreted benefit in kind as embracing the provision of the facility of a backing security where that security consists of an offshore deposit of funds connected with the Ansbacher accounts.

Mr. Peter Sutherland has not come to the attention of the Tribunal as a person who was the source of an Ansbacher account or as a person entitled directly to any funds from an Ansbacher account. The Tribunal's attention was first drawn to Mr. Sutherland in the context of a back-to-back arrangement connected with a provision of bridging finance

to enable him to purchase a family home in Dublin in 1976.

From documents made available to the Tribunal by Guinness & Mahon, it would appear that in June 1976, Mr. Sutherland applied to Guinness & Mahon for bridging finance to enable him to purchase the property in question for €37,000, stating that it was his intention ultimately to obtain long term mortgage finance in the order of €20,000 and to dispose of his then family home in Dublin, which was expected to realise in the order of €20,000. His request was for bridging finance, with an immediate requirement of €5,000 by way of a deposit on the purchase price. The facility was granted subject, as would be expected in the ordinary way in the case of bridging finance, to a solicitor's undertaking to hold the title deeds of the property being purchased in trust for the lender, Guinness & Mahon, and also to lodge the proceeds of sale of Mr. Sutherland's then family home with the bank. And on the overhead projector, we'll be seeing the particular solicitor's undertaking, the bottom of the page, the document reads:

"Dear Sir,

This is to confirm that our above-mentioned client has agreed to purchase the above premises for €37,000 and a sum of €5,000 has been paid by this office by way of deposit on his behalf.

"It is understood that you have agreed to provide our client with accommodation in the amount of œ5,000 to cover such deposit and we would be glad if you would hand the bearer a bank draft in our favour for œ5,000 to reimburse as for the payment by us of the sum referred to above.

"In consideration of such accommodation we hereby undertake as follows:

"To hold the documents of title in respect of the above premises in trust for you pending the discharge of this undertaking.

Yours faithfully..."

The names of the solicitors.

The undertaking in respect of the proceeds of the sale of the then existing family home is not mentioned in the letter but is referred to in the credit committee memorandum in the bank and it was complied with.

None of the correspondence between the bank and Mr. Sutherland's solicitors, nor any of the bank's formal facility letters, refer to any form of security other than that I have just indicated. The loan in question, however, although initially envisaged to be in the form of bridging finance, was extended from time to time and was not in fact cleared until mid-1980. In the initial loan decision memorandum (that is an internal bank document) the

security for the bridging loan is referred to as the solicitor's undertaking which I have just indicated on the overhead projector. In all subsequent bank internal documentation concerning this bridging finance, the security is described as being "suitably secured". It is true to say that unusually, the internal memoranda also contains in the case of a memorandum of the 7th January 1977, a reference to the fact that, in addition to being suitably secured, there was also a solicitor's undertaking. The documentation in question does not refer expressly to any particular backing deposit. However, the loan file provided by the bank with the authority and at the request of Mr. Sutherland to assist the Tribunal contained one page of a bank statement in the name of Guinness & Mahon Channel Island "P3". The statement relates to the period from April 28th 1976 to December 31st 1976 and the balance as of the latter date is €12,296.71. This entry appears to be consistent with a memorandum from Mr. Ru Leonard to Mr. Pat O'Dwyer dated 7th January 1997. Mr. Pat O'Dwyer was responsible for maintaining loan or credit documentation within the bank. Mr. Ru Leonard was the individual with whom Mr. Sutherland was dealing in connection with this loan. Mr. Ru Leonard was also the person who preceded Mr. Pdraig Collery in maintaining the records of offshore depots in connection with Channel Island or Cayman depositors, that is Ansbacher deposits at Guinness & Mahon under the control of Mr. Desmond

Traynor.

In the memorandum which is on the overhead projector, Mr. Leonard, in response to a query from Mr. O'Dwyer to confirm whether the position was "suitably secured" stated that there was €12,000 on deposit. It is only fair to point out that he went on to say that Mr. O'Dwyer would also find that the bank had a solicitor's undertaking as the transaction was a normal bridging situation. It would appear from information provided by Mr. Sutherland concerning his accounts at Guinness & Mahon that he had no deposit account at the bank at that time and from this, it would appear that the €12,000 referred to is the sum of €12,000-odd on deposit in the name of Guinness Mahon Channel Islands "P3".

Mr. Sutherland has provided the Tribunal with his full assistance in endeavouring to assemble all the documents material to this transaction. This includes the documentation in Guinness & Mahon and although Mr. Sutherland has indicated that he has no recollection of making any arrangement with Mr. Ru Leonard in connection with the provision of security for his bridging finance in the form of a backing deposit consisting of funds in the Channel Islands offshore account and he has further indicated that he is aware of no such account connected with his bridging loan, he has informed the Tribunal that his father-in-law, a Spanish national and resident in

Spain, had established a discretionary trust in the Channel Islands and that this had been established through Guinness & Mahon. Mr. Sutherland has not been able to establish whether the "P3" account is one and the same as the account held in the discretionary trust. He has, however, provided the Tribunal with documentation from his Spanish relatives and from Spanish lawyers indicating how the trust in question was set up and how Irish tax advisers were involved in choosing the form of trust and the location of the trust funds. It appears from documents made available from Mr. Sutherland that these funds originally settled in the Channel Islands were ultimately resettled in January of 1980 in the Cayman Islands with Guinness Mahon Cayman Trust.

The late Mr. Hugh Coveney was a Minister and comes within the ambit of Terms of Reference under Term of Reference (b). This Term of Reference requires the Tribunal to inquire into the source of any money held in the Ansbacher accounts inter alia for the benefit of any person who holds or has held ministerial office. From information made available to the Tribunal from Guinness & Mahon and further from information made available by Mr. Coveney prior to his death, it would appear that Mr. Coveney's association with Ansbacher Cayman may be divided into two parts; firstly, Mr. Coveney's involvement with Guinness Mahon offshore operations in the Channel Islands and in the Cayman Islands

mainly in the 1970s and, secondly, his dealings with the Guinness Mahon Cayman Islands operation in the 1980s in connection with an American commercial venture. The second of these involvements is the one in respect of which the Tribunal has had the benefit of obtaining the most detailed response from the late Mr. Coveney. It would appear that in 1980 Mr. Coveney, together with two friends of his, became involved with an American in a property development investment of a 90-acre mobile home park near Phoenix, Arizona. A group of businessmen, many of whom had associations with Guinness & Mahon ultimately became involved with Mr. Coveney in the venture. It was envisaged that a tax strategy would be developed whereby three American investors would put up 50 percent of the investment and the balance would be provided by non-US partners operating from an offshore location.

Prior to his death, Mr. Coveney informed the Tribunal that the structure envisaged the establishment of an entity known as the Lynbrett Trust; that Guinness Mahon Cayman Trust became trustees of that trust and that the beneficiaries of the trust would be five registered Cayman Island companies. It was envisaged that the late Mr. Coveney would be given an opportunity to acquire one of these companies, named Eclipse Holdings Limited. The finance for the venture was to be provided by Allied Irish Bank New York, by whom some US\$2.775 million were to be lent to Lynbrett Trust who, in turn, agreed to lend this

sum to an American resort company which was responsible for carrying out the developments.

The finance arrangement involved the provision of joint and several guarantees by the five Irish participants and the late Mr. Coveney signed his guarantee at AIB's office at 66 South Mall, Cork on the 23rd June 1981. In addition to the borrowing of US \$2.775 million to be provided by Allied Irish Banks, the Lynbrett Trust was also required to put up a further US \$950,000 towards the initial cost of the development. According to a statement provided by the late Mr. Coveney, his share of that sum amounted to \$212,500 and he negotiated a venture capital arrangement with Mr. Desmond Traynor acting for Guinness & Mahon Cayman Trust to provide him with that sum. The sum was provided by way of a further loan facility from Guinness Mahon Cayman Trust to Eclipse Holdings, the company mentioned already. Mr. Coveney's option to acquire the ownership of all the shares at Eclipse at par (for €50) was provided in exchange for a personal guarantee of €50,000 sterling of Eclipse borrowings. The option did not itself become exercisable until Eclipse had recouped all of its borrowings out of its share of the profits of the American venture. Ultimately, the entire venture proved to be a disaster and, although initially the funds used to provide Mr. Coveney's share of the investment came from borrowings in the end he suffered considerable losses in that his

sterling guarantee in return for which he was given an option to acquire shares in Eclipse was called in, resulting in a €50,000 sterling loss. In addition, Allied Irish Banks in New York called in the personal guarantee in consideration of which they had provided sums to Lynbrett. After some litigation, Mr. Coveney's ultimate share of the cost of a settlement with Allied Irish Banks was in the order of US \$500,000. Mr. Coveney's involvement with Guinness Mahon Cayman Trust was purely a commercial one involving a loan account rather than a deposit account, and it seems to have concluded somewhere in or around 1987.

Mr. Coveney's earlier involvement with Guinness Mahon Cayman Trust involved the operation of offshore deposits bearing all the badges of the Ansbacher operation, in as much as the accounts in question were coded at least in part, a form of Guinness Mahon Cayman Trust Limited.

These deposit accounts appear to have operated from 1972 to 1979 and there appears to have no involvement after 1979 which was some two years prior to the date in which Mr. Coveney was first elected to the Dail.

Prior to his death, the late Mr. Coveney provided very considerable assistance to the Tribunal regarding his association with Ansbacher and his dealings with the late Mr. Traynor. Since his death, his family have further assisted the Tribunal and have made extensive inquiries as

to the sources of these deposits which were in the main held in US dollars. From the documents and information provided, it appears that the sources of these deposits were entirely of a private and commercial nature, and may substantially be accounted for by the proceeds of the sale of a racing yacht, "Silver Apple", which was sold by Mr. Coveney in Newport, USA in 1975.

That, Sir, is the completion of the outline statement at the moment. Matters may arise in the course of the sittings which would warrant further indication to the parties involved and to the public where the Tribunal is going in its inquiries and that would be done, if necessary, in due course.

CHAIRMAN: Thank you, Mr. Coughlan. Mr. Healy?

MR. COUGHLAN: Mr. Martin Keane.

MR. QUINN: Mr. Chairman, perhaps if I could just take the opportunity to indicate that I appear for Mr. Keane, instructed by William Fry, solicitors, and if I could just formally apply for limited representation on his behalf.

CHAIRMAN: Yes. Well, I will perhaps just allow you to take part as may be necessary for the time being and I may hold over the actual ruling as to limited representation. But, I will apply a particular difference to the previous rulings save that I am trying to avoid a proliferation of

orders for limited representation but we will proceed for the time being and I will certainly give you an opportunity of taking part and clarifying any questions that may transpire in the course of your client's evidence.

MR. BARNIVILLE: I wonder, Sir, before you proceed with this witness, I have an application on behalf of Mr. Foley for representation. I appear with Mr. Donal O'Donnell, instructed by Thomas O'Halloran, solicitor, and my application is for representation on behalf of Mr. Foley for this phase of the Tribunal's inquiries.

CHAIRMAN: Yes, Mr. Barniville, I think that is distinguishable from the application at this juncture just made on behalf of the other intended witness and in the context of what has transpired as mentioned in Mr. Coughlan's opening in relation to dealings in the investigative phase of the Tribunal and other aspects, I think it's right that I accede to that application.

Obviously without, as on previous rulings, giving any guarantee or anything of that sort in regard to any ultimate adjudication as to costs.

MR. BARNIVILLE: Thank you, Sir.

CHAIRMAN: Thank you.

MR. HEALY: Mr. Keane please.

MARTIN KEANE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HEALY:

CHAIRMAN: Thank you, Mr. Keane, please sit down.

MR. HEALY: Thanks, Mr. Keane. Now, Mr. Keane, you provided the Tribunal with a statement of evidence. Do you have a copy of that statement of evidence in front of you?

A. I do.

Q. To assist you. The statement of evidence with which we are now going to deal applies or concerns almost exclusively with your dealings with Mr. Denis Foley who has been mentioned in the course of the opening statement, isn't that right?

A. Yes.

Q. You have also provided the Tribunal with considerable assistance concerning your general dealings with Mr. Traynor in the course of your early career, some maybe fifteen or twenty years ago in Guinness & Mahon and this forms the basis of a second visit you intend to make to the Tribunal and a second statement of evidence you have made to the Tribunal, isn't that right?

A. That's correct.

Q. But we don't propose to deal with that today.

A. Fine.

Q. You say in your statement that you have been asked by the Tribunal to give evidence in relation to your contact with Mr. Denis Foley during the time that you were employed by

Guinness & Mahon. You say that you were an employee in the corporate finance department of Guinness & Mahon between 1972 and 1988.

A. That's correct.

Q. You say that you recall that sometime in the late 1970s, early 1980s, you were asked by the late Mr. Traynor to come to a meeting which he was having with a customer in Guinness & Mahon. That Mr. Traynor introduced you to Mr. Denis Foley and that Mr. Traynor gave you to understand that he was looking after money for Mr. Foley. You say that by this, you understood that Mr. Traynor had control of funds for Mr. Foley in Guinness & Mahon or one of its subsidiaries. You say that Mr. Traynor indicated that if he was away or otherwise unavailable, Mr. Foley should contact you and that you should deal with Mr. Foley's request.

Now, did this all happen in a room in Guinness & Mahon?

A. That's correct.

Q. In whose room was that?

A. It would have been one of the meeting rooms.

Q. It wasn't done in the main banking core or anything like that?

A. No.

Q. And were you summoned to the room by Mr. Traynor from some other part of the bank?

A. I would think I was summoned and he was already in that room.

Q. And was Mr. Foley with him when you went into the room?

A. My memory is he was.

Q. And when you were introduced to Mr. Foley, did you know who Mr. Foley was?

A. I did not.

Q. You say that the Tribunal has provided you with copies of Guinness & Mahon lodgment dockets dated October 1979 for œ20,000, and œ30,000 in the name of Foley. Those two dockets are on the overhead projector. I think that you have copies of them and they are also on the monitor in front of you.

A. Okay.

Q. And when you say the name Foley, you are referring to the fact that they simply contain the words "Foley" on the line for name.

A. That's correct.

Q. On the form without any christian name or first name, isn't that right?

A. Correct.

Q. You say that you do not know anything about these lodgment dockets and you say that the handwriting on these lodgment dockets is not yours?

A. That is correct.

Q. Now I think you can confirm that they are lodgment dockets of the kind normally used by Guinness & Mahon, is that right?

A. That would be my recollection, they look like that.

Q. Do you recognise the handwriting on the documents?

A. It looks familiar, but I couldn't be certain.

Q. The handwriting looks familiar to you, you say, but you can't be certain of it?

A. No.

Q. I am not asking you to identify it as somebody's handwriting unless you can be fairly certain, but you don't have to be absolutely certain. I assume that in the course of your dealings with Mr. Traynor, you would have come across the handwriting of most of the people with whom he would normally deal on a day to day basis.

A. I would.

Q. And you'd recognise the handwriting of some of the individuals that we have already come across in the course of Tribunal sittings, such as Mr. Padraig Collery's handwriting perhaps or the handwriting of Mr. O'Dwyer, he has been mentioned already as the officer of the bank responsible for lending or credit documentation. Is there any person associated with or closely associated with Mr. Traynor's operation whose handwriting that resembles?

A. It seems to me to resemble Miss Joan Williams' handwriting, his secretary.

Q. Miss Joan Williams' handwriting?

A. That's correct.

Q. Now Miss Joan Williams was not a banker, is that right?

A. She was Mr. Traynor's secretary.

Q. And she came into the bank with Mr. Traynor, is that

correct?

A. I can't remember.

Q. She did not come through the normal banking career structure in any case, is that right?

A. I think she was in the bank when I joined.

Q. I see. But as a secretary as opposed to as a bank official?

A. Absolutely, a secretary.

Q. And I am not meaning in any way to demean the work she was doing but I am simply seeking to distinguish her work as a secretary as purely administrative from the work of a banker?

A. That is true.

Q. Now the document does not contain any account number, isn't that right?

A. That's correct.

Q. And in your experience, in the ordinary way, where there was a lodgment for a bank account, would you expect that a bank official would include the account number?

A. Normally I think, yes, and I think also the brand would be on both lodgment dockets.

Q. I think that there probably is a brand on both of these but it's very, very indistinct on the œ30,000 document, or at least my impression is that it's very indistinct. You can see a diagonal line on the left-hand side of the document. It's now being outlined on the overhead projector. Do you see that?

A. Yes, I see it.

Q. If somebody was coming to a bank for the first time to make a lodgment, one assumes that some account-opening documentation had come into the existence, is that right?

A. That's correct.

Q. And what in the ordinary way would come into existence by way of account-opening documentation?

A. It would be name, specimen signature, address, all the standard

Q. I see. And is there any difference between the type of account-opening documentation that Guinness & Mahon operated and that which would apply in any other bank, in principle?

A. In principle, of course not.

Q. It's a similar procedure in almost all banks. There may be slight differences. And is there any difference between the type of account-opening documentation that would be used for a current account as opposed to a deposit account?

A. My memory of Guinness & Mahon it was the same one and you just indicated which it was.

Q. On the account-opening documents?

A. Yes.

Q. You would say it was a current account or a deposit account?

A. Yes.

Q. And these lodgment docketts are for a current account, isn't

that right, or purport to be for a current account?

A. Correct.

Q. And in the ordinary way where a person opens a current account, they expect to get not just a lodgment docket representing their lodgment, but usually a cheque book, isn't that right?

A. Normally.

Q. Perhaps not right away, unless I am sure if you wanted one right away, that could be done but usually within a short time after opening the account, isn't that right?

A. Correct.

Q. Now, I think your main role in the bank and this is something I am aware of from other information you have provided to the Tribunal, but I don't want to go into it in detail, was on the corporate finance as opposed to what I call the banking side, isn't that right?

A. That's correct.

Q. And the opening of accounts or transactions on accounts were conducted on what I think I am correct in describing as the banking side of the bank's business, is that right?

A. Correct.

Q. You'd be more concerned with capital ventures, investments, major investments on the other side altogether of the bank's affairs, providing capital for businessmen embarking on commercial ventures?

A. More advisory, mergers and acquisitions

Q. Providing advice to such people?

A. That's right.

Q. So you'd be providing advice to such people who might be obtaining money from you or from somebody else even?

A. Either, or using their own money.

Q. Or using their own. How did you come to be associated therefore with this particular activity or this particular transaction whereby you were called into a room to meet Mr. Foley?

A. My recollection is that Mr. Traynor, having told me that he was looking after funds for Mr. Foley, said to me, or said to Mr. Foley, or to both of us, you know, if for some reason I am not available and you wish to contact me, contact Mr. Keane and, you know, he will deal with your request.

Q. I understand that, but as you were the person dealing with corporate finance, why would you be asked to deal with what might appear to be on the face of these documents some banking matter?

A. Guinness & Mahon was a very small bank. I mean, I think I really don't know.

Q. I see. In your statement of evidence, and this isn't clear from the questions I have asked you nor indeed from the answers that you have given me, I am not suggesting that you have attempted to mislead anyone, but in your statement you say that when Mr. Traynor asked you or when Mr. Traynor gave you to understand that he was looking after money for Mr. Foley, you have put those two words

"looking after" money in parenthesis.

A. Yes.

Q. Am I right in thinking that by that you meant to convey something more than merely opening an account or indeed anything but the opening of an account in Guinness & Mahon?

A. I don't think I intended anything that he it was a more I think a trader-type expression which, you know, could mean anything. I mean, it didn't necessarily mean to me that the money was necessarily in Guinness & Mahon. That it could be in one of the subsidiaries. That's

Q. I understand but that in any case the expression comprehended or could comprehend rather more than a bank account in Guinness & Mahon?

A. Oh absolutely.

Q. And could involve some other services that you may have been aware Mr. Traynor was providing for contacts of his in any case, if I can use that neutral word?

A. I think private clients.

Q. Private clients. And while at the time I am not sure of the extent of your knowledge of the services Mr. Traynor was giving, were you aware that those services involved putting money offshore?

A. I was.

Q. And if Mr. Traynor had a private client and met a private client in this way, in the ordinary way, would you whether you can say you came to the conclusion that

it involved offshore money, was there anything Mr. Traynor said that left you with the impression that offshore investment was involved in this case at that time?

A. No. That's all he said.

Q. You went on to say in your statement "At no time did I know the extent of the funds that Mr. Traynor held on behalf of Mr. Foley and I was not involved in any way with the crediting of funds to any account in Guinness & Mahon or any other bank or institution in connection with or on behalf of Mr. Foley."

You are now aware, I think, from information made available to you by the Tribunal for the purpose of seeking your assistance, that these funds appear to have gone into what I can for short call the Ansbacher accounts. Does it surprise you in retrospect that this is where they ended up?

A. Not really.

Q. You say that "The Tribunal has also provided with you a copy statement in which there is a manuscript entry referring to Klic Investments Limited with your name. You say that you had never before seen this statement. You say that you do recall the name Klic Investments Limited but you do believe is a Channel Islands company but you had no knowledge or involvement of it." Is that correct?

A. That's correct.

Q. You say "I also have a vague recollection of having a further communication with Mr. Foley. Whether this

communication was over the telephone or in the course of a meeting with Mr. Foley, I cannot now remember. Nor can I remember what transpired during the course of the conversation."

Now, if we could just come to that second document that Mr. Foley referred to, as you say it's a document which contains your name. This document contains what would appear to be two handwritten legends. The first in different handwriting to the second which we know from Mr. Foley to be in his own handwriting, says Klic €72,893 sterling and Mr. Foley in his statement informed the Tribunal that he understood that to be a statement of the balance of his investment at some particular time. Now, do you recognise that handwriting?

A. I don't.

Q. The second entry on the paper says "Guinness & Mahon position 3/3/88 €82,688 per Martin Keane". Mr. Foley has said that he made that note as a result of being informed by you in 1988 that his investment stood at €82,688 and that following your having informed him, so he says, he made that note.

A. I have no recollection and as I previously said, I believe I never knew what money Mr. Foley had.

Q. Is it possible that nevertheless you could have given him that information?

A. I think it's unlikely.

Q. Is it possible that Mr. Traynor could have given you that information with instructions to give it to Mr. Foley?

A. I suppose it's possible, but I think it's very unlikely.

Q. Let me put it this way, in the course of the work that you were doing for Mr. Traynor, was he ever in the habit of asking you to convey information like that without giving you any background knowledge of the circumstances to clients of his?

A. No.

Q. You had never done that?

A. I mean one of the reasons I remember the meeting with Mr. Foley was that it was very, very unusual to meet one of Mr. Traynor's private clients in that context.

Q. I see. In 1988 Mr. Traynor had left Guinness & Mahon, isn't that right?

A. That's correct.

Q. And indeed, he had left the bank for some two years by that date, isn't that correct?

A. That's correct.

Q. Do you remember when you left Guinness & Mahon?

A. In summer '88.

Q. Summer in '88 as well?

A. Yes.

Q. Can you assist us if it was before or after March?

A. I think it was in June or July.

Q. I see. After Mr. Traynor left Guinness & Mahon, did you have any contact with him?

A. Hardly ever, once or twice socially, that's all.

Q. So can I take it that you had no business contact with him?

A. Absolutely no business contact.

Q. But he never phoned you or wrote to you with any information or asked you to do anything for him?

A. Absolutely none.

Q. In the bank?

A. Absolutely not.

Q. So when you gave that information as has been suggested in March of 1988, it would have to be on the basis of some knowledge you obtained yourself, isn't that right? I am saying if you had, it would have to be on the basis of knowledge you assembled yourself?

A. Yes.

Q. From information the Tribunal has made available to you, you now know that this money was in what would appear to be an Ansbacher account. Had you any access to information concerning Ansbacher accounts?

A. I think we are looking here at '88 and the bureau system?

Q. Yes.

A. And I had absolutely no access to the bureau system.

Q. The bureau system at that time was computer operated as opposed to manually operated?

A. That is correct.

Q. And you had no access to the information on that computer software?

A. None at all.

Q. Could you have received information from Mr. Collery whom we know did have control of the bureau system for the purpose of providing that information or relaying it

A. It's possible. I genuinely don't remember.

Q. I take it therefore that for the record, if we could just pass to the other document which contains a reference to your name, this appears to be in some way a recording of much earlier events, if you look at the document that's on the overhead projector. And as with the evidence you gave me a moment ago, I take it you had no dealings with Mr. Foley in connection with any of the balances mentioned on the two statements that are on the overhead projector?

A. None whatsoever.

Q. If £50,000 was put on deposit by anyone in Guinness & Mahon, in the ordinary way during the eighties, what would happen to the money after it was handed over?

A. I suppose just as in any other bank, you know, it would be lodged across into the cashiers.

Q. It would be lodged to the cashiers?

A. Yes.

Q. That's to a cashier's account?

A. To the normal cash account.

Q. And then it would eventually find its way into the client's account or, if the client didn't have an account, to a new account opened for him?

A. Exactly.

Q. Am I right in thinking, although evidence will be given

about this by other bank officials as well, that from the time the money goes over the counter, as it were, it may pass over the table in a private room, it's always in some bank account provided it goes through the ordinary bank's process?

A. It would always be in some account. It has to go to some account.

Q. And bearing in mind we have access to a lot of ordinary Guinness & Mahon records from that period, it would be highly visible on those accounts, isn't that right?

A. I would expect so.

Q. The mere fact of œ50,000 lodgment to a cashier's account would be visible on the transactions on the cashier's account for the day of the lodgment, isn't that right?

A. Correct.

Q. Thanks very much, Mr. Keane.

MR. CONNOLLY: No questions.

CHAIRMAN: Mr. Barniville?

MR. BARNIVILLE: Yes, Sir, I have just one or two questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BARNIVILLE:

Q. Mr. Keane, I appear for Mr. Foley and I have just a couple of questions for you. At the conclusion of your statement of evidence, Mr. Keane, you state in evidence that you had a vague recollection of having had a further communication

with Mr. Foley after the initial meeting in the late 1970s,
is that right?

A. That's correct.

Q. But you don't have a recollection as to what that
communication referred to, is that right?

A. I do not.

Q. Mr. Foley's recollection, Mr. Keane, and I should just put
it to you as Mr. Healy did, is that he spoke with you on
the 3rd March 1988 and inquired as to the balance of his
investment account and you informed him that it was in the
sum of slightly over €82,000 sterling. You don't have a
recollection of that discussion?

A. I do not.

Q. But I take it if Mr. Foley's recollection is clear, you
won't disagree with Mr. Foley in that regard?

A. Well all I say is I don't recollect.

Q. You don't recollect it, and wouldn't it be entirely
consistent that you may have had that discussion with
Mr. Foley with the purpose for which you were initially
introduced to Mr. Foley by Mr. Traynor back in the 1970s?

A. I suppose it would.

Q. Because wasn't the purpose of introducing you to Mr. Foley
so that you could deal with any requests Mr. Foley had if
Mr. Traynor was unavailable?

A. I think that's consistent, yes.

Q. And I think you accept that whilst Mr. Traynor whilst
you may not yourself have had direct access to the relevant

information, that's information that you could have got from Mr. Collery at the time in 1988?

A. Yes, that's possible.

Q. Thanks very much, Mr. Keane.

CHAIRMAN: Anything you wish to raise with your own client? And I think in the circumstances of my being reminded that your client may be asked to return to deal with some historical aspects of the day to day management at a particular phase, in those circumstances, I think it's proper that on the same basis as acceded to with Mr. Barniville in relation to Mr. Foley, that I grant your application for limited representation. Thank you very much for your assistance, Mr. Keane.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Collery.

PADRAIG COLLERY, ALREADY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. COUGHLAN:

CHAIRMAN: Thank you, Mr. Collery. You are, of course, as you already know by now, sworn.

Q. MR. COUGHLAN: I think, Mr. Collery, you have furnished a further memorandum of evidence to the Tribunal in reply to a letter from the Tribunal of the 19th January of this year, isn't that correct?

A. I have indeed, Mr. Coughlan.

Q. And I think you say that in this memorandum you endeavour to answer the matters raised in the schedule appended to a letter from the Tribunal dated 19th January 2000 and you give the reply to the best of your knowledge and recollection of events and details, should further details emerge during the course of recollection which trigger further recollection of events, you would expand on these during your giving of evidence, isn't that correct?

A. I will indeed because due to the shortage of notice here, I have endeavoured to be as detailed as I possibly can, Mr. Chairman, but there may be items that come to my notice and we will deal with those.

Q. Of course. Now I think the Tribunal, first of all, asked you of your knowledge, direct or indirect, of the manner in which funds amounting to €50,000 and provided to the late Mr. Traynor by Mr. Denis Foley in October 1979 were dealt with in Guinness & Mahon and the manner in which such funds were credited to an account with Guinness Mahon Cayman Trust and when you were asked that question, the Tribunal enclosed for your assistance a copy of a lodgment docket dated October 1979 in the name of Foley. I think you will see those.

A. You referred to those earlier in Mr. Keane's evidence.

Q. I think, yes now you have seen those two, and I think you replied that you have no knowledge direct or indirect of the means or ways in which the funds amounting to €50,000 were processed within Guinness & Mahon Ireland

Limited in October 1979, that you have advised the Tribunal of the accounting methods and records that would have existed in Guinness & Mahon Ireland at the time and you do not know if this information was sought from Guinness & Mahon Ireland Limited, isn't that correct?

A. That's correct. Indeed in the course of private talks, we have extensively dealt with the records

Q. What I want to ask you now, Mr. Collery, you were on the banking side of Guinness & Mahon, isn't that correct?

A. I was on the accounts side, in the bank office.

Q. Like Mr. Keane, can you confirm that they were Guinness Mahon type or they were Guinness Mahon lodgment slips?

A. To the best of my recollection, with the logo on them, they do signify that they were the lodgment docket pertaining at that particular time.

Q. Yes, and you can see the name of Foley on both of them, isn't that correct?

A. I do indeed, yes.

Q. And they contain, you can take it that they both contain the brand?

A. Yes, I do accept that the brand is on both of them.

Q. One is in the sum of €20,000, one is in the sum of €30,000, isn't that correct?

A. Correct.

Q. They contain no account number?

A. That is correct.

Q. Or any first name, isn't that correct?

A. That is correct.

Q. And would it have been your experience that it would be usual to fill in an account number if there was an account if there was an account in the bank?

A. Yes, as previously stated, it would be normal practice that if there were an existing account there, that there would indeed be an account number filled in because that facilitates the processing of the transaction within the bank. Whereas if it were a new account as you referred to earlier, it may not be that the account number was available at that point in time.

Q. That's perfectly understandable, but what we are talking about here is that these are lodgments for a current account, isn't that correct?

A. That is as the documents indicate, yes.

Q. And one would then expect then to see them moving across the accounts of Guinness & Mahon for that day, wouldn't you?

A. You would indeed. As I explained to you privately

Q. Now, Mr. Collery, I just want your evidence now.

A. Sorry, Mr. Coughlan.

Q. You would expect to see either €30,000 and/or €20,000 moving across the accounts of Guinness & Mahon on that day?

A. I would expect that, Mr. Coughlan, yes.

Q. Or an aggregate, €50,000, moving across?

A. Yes.

Q. Now, we have been informed by Guinness & Mahon that that

didn't happen on that day. That there is no record of that happening. I am not saying it didn't happen. There is no record of it happening on that day.

A. Okay.

Q. Would you consider that unusual?

A. I would indeed.

Q. Other than that the money may have been going somewhere else, isn't that correct?

A. Well irrespective of where it eventually was credited, I would expect those transactions, if they were in Irish pounds, would have been reflected in the bank accounts of the bank.

Q. Right. Even if they were going into the Amiens account or if they were going ultimately for an offshore designation or an offshore investment vehicle, would you expect them?

A. Absolutely, yes.

Q. Other than if they were being used to switch funds, isn't that correct?

A. Well in the examples that we have had and we have dealt with previously, Mr. Coughlan, you know in the switching, we have seen the Irish pound items credited to an account so therefore my expectations here would be that

Q. That would see the €50,000 showing somewhere?

A. That is correct, unless of course a decision was made not to lodge them to the account and just physically hand that on to a third party.

Q. That's precisely what I want to ask you and I am trying to

examine and inquire into all the permutations and options in relation to it. In the normal course of events coming into the bank, once money comes in, it should go into the some account, if it's the bank's own account for the moment?

A. That is indeed the normal process.

Q. And then it will either go into a current account, a deposit account or some other account, but it should be showing in the bank's books somewhere, isn't that correct?

A. Absolutely correct.

Q. Now, there is no record we have been informed by Guinness & Mahon and there will be evidence in respect of that, that there is no record of that in respect of these two sums or the aggregate of the sum.

A. Okay.

Q. Right. Now you have and we have in the course of evidence seen in the past where switches have taken place between Irish and sterling funds represented by transactions taking place on various bank accounts, isn't that correct?

A. We have indeed, yes.

Q. And now I think what you are going to give evidence about is that there is another option which could have been used is that Mr. Foley, I think, will give evidence that these were in draft form?

A. I wasn't aware of that, so I was purely dealing with cash, but if that is the case, okay. If it's draft then

we definitely must expect them to go through a bank account.

Q. Somewhere?

A. Somewhere.

Q. If it was cash, the cash could be retained and this did happen, did it, would be retained by Mr. Traynor, somebody who wanted to wanted Irish money would give him sterling money, isn't that correct?

A. I have no evidence of that but it's a possibility that of course could have happened.

Q. Are you saying it never happened?

A. Well, if the person if Mr. Foley gave say €50,000 cash to Mr. Traynor and Mr. Traynor then had another customer who was coming in to say I wanted €50,000 cash, then he may well have given it

Q. Isn't that an option that you could see and probably did happen in respect of the offshore accounts. A customer who had an offshore facility might have needed Irish cash, isn't that correct?

A. Correct.

Q. He would be given this €50,000, is that correct? His offshore account which would be in sterling, perhaps

A. Correct.

Q. Would then be debited the equivalent, isn't that correct?

A. That is correct.

Q. And an account could be opened for the person who had brought in the Irish money in the first instance by the use

of the debit from the offshore account to another offshore account which had been opened for that purpose?

A. That is correct.

Q. So if we could just recap on that. There is no record of this going into accounts in Guinness & Mahon. You can take that as so?

A. Okay, I accept what you have there.

Q. It is feasible that this Irish money could have been used by Mr. Traynor to make payments to somebody here in Irish money or a number of people here in Irish money?

A. If it were in cash.

Q. And he would then, provided that person had offshore facilities which Mr. Traynor had control over, isn't that correct?

A. We have dealt with situations like that previously, that is correct.

Q. And he would deduct from that individual, or a number of individuals, the sterling equivalent from their accounts, isn't that correct?

A. Correct.

Q. And he could open an account or place in an investment fund under his control that sterling money, isn't that correct?

A. That is correct.

Q. And then that would be reflected on a bureau system?

A. Correct.

Q. Now, let's take the situation if these were drafts. Again when you say if they were drafts, that they had to go into

an account. Why would that be necessarily so?

A. To get value for them, you have to clear them through a bank account. Now whether they were cleared through a Guinness & Mahon bank account or somewhere else, but the only way to get value for those cheques is to process them through the clearance system.

Q. That's for the person who wants the value?

A. Correct.

Q. A draft could be handed to somebody, isn't that correct?

A. Yes, it could, yes, and countersigned on the back, yeah, it could, but in that case the same process would happen.

They would have to pay that into their bank account and then get cash back out, yeah.

Q. If I might just take this slowly again.

A. May I expand in an example?

Q. Yes, please do.

A. If I wanted to give you, say, one of those 20 thousands, then I could have endorsed the cheque payable to you and then you would take that cheque endorsed over to you, go along to your bank and present it for payment and get the cash, so that is indeed a possibility.

Q. Well in your experience, what would be on the draft? If they were in drafts, if these sums were in drafts, what would the draft state on it? It would be drawn on a bank

A. In the normal practice it's payable to an individual or to a bank itself or in some cases we have seen in evidence

here, payable to cash, so unfortunately we don't have copies of the cheque so we don't know.

Q. If they were payable to cash if they were payable to cash, I am just trying to consider all the eventualities.

They could just be given to somebody else who had offshore facilities themselves who required Irish money, isn't that correct?

A. That is indeed a possibility, yes.

Q. And the same procedure as with cash, there would be a deduction from their offshore account which could be moved to an investment account under Mr. Traynor's control or a new account opened for the person who had provided the Irish money and in that way, in that way, an offshore account is created

A. That's as we know what the process was, yeah.

Q. Without having to apply for exchange control to open the offshore account, isn't that correct?

A. Correct, yeah.

Q. It's a switch?

A. It could well have been part of a switch.

Q. That is the process. The process is a switch?

A. Those are the different elements of the process.

Q. Now, if the drafts were made payable to a bank or if the drafts were made payable to an individual, how could they be negotiated?

A. Well if they were made payable to the bank, then you would have expect them to be processed through that bank. The

bank could not would not endorse them onwards. If they were made payable to Guinness & Mahon, then you would expect that they would be processed.

Q. They'd have to show up on an account?

A. Absolutely, because no other bank would accept those.

Q. If they were made payable to an individual?

A. The individual could endorse them forward on to somebody else, unless of course it was crossed but then we are getting into technicalities of banking.

Q. That would have to be paid through a bank account, a bank account?

A. Yeah

CHAIRMAN: But apparently a draft is appreciably more easily negotiable than a cheque?

A. Correct.

MR. COUGHLAN: So, a draft sorry, cash or a draft made out to cash is the same as cash effectively?

A. It can have the same results.

Q. Now, there can be little doubt but that Mr. Foley was informed by somebody that his money was in an entity called Klic Investments, isn't that correct?

A. Well I would have expected that Mr. Traynor would have explained the process to him.

Q. Well, if we just get the facts first. I think from information and documents seen by you, he undoubtedly money of his ended up in a company called

Klic Investments?

A. Absolutely. I think there was a document there, if I recall, had Klic Investments and €50,000.

Q. Obviously Mr. Foley has informed the Tribunal that that's what he was informed, whether it was by Mr. Keane or by Mr. Traynor or somebody else, but that is what he was informed.

A. Okay.

Q. I think you are aware that Klic Investments was a Channel Islands vehicle, isn't that correct?

A. Well by the association that Mr. Keane was involved, said it must have been a Channel Islands company.

Q. Are you now aware it was a Channel Islands vehicle?

A. Yeah.

Q. Which Mr. Traynor used for the purpose of managing funds, is that correct?

A. Well I don't think Mr. Traynor Mr. Traynor would have invested the funds in Klic to manage them on behalf of Mr. Foley, yeah.

Q. Yes.

A. So it was the legal entity which held the funds effectively.

Q. Yes. To get into Klic Investments, the money had to come out of somewhere, isn't that correct?

A. Yes.

Q. And we have to hear from Mr. Foley yet, but from what he has informed us so far, he went to Guinness & Mahon in

Dublin and handed over €50,000 in Irish money, isn't that correct?

A. That is correct. You know, again, from evidence that we have seen earlier and as you have just referred to there of the process through which this went, would seem to indicate that there was a switch and therefore the sterling

Q. I want to take that slowly, Mr. Collery.

A. Okay. Fine.

Q. Mr. Foley went to Guinness & Mahon in Dublin and he handed over €50,000 to Mr. Traynor. Now he will give evidence that Mr. Traynor had, over previous years, said to him if he had any few bob to invest, that he would get him a good rate or words to that effect. So he went to Mr. Traynor anyway and he had money and he gave it to him, whether it was in cash, drafts, cheque, I don't know he gave him €50,000.

A. Okay.

Q. And it ended up in Klic Investments, isn't that correct?

A. That's as we understand it.

Q. Isn't that what happened?

A. That's what happened, yes.

Q. And as I said, Mr. Foley has not indicated that he directly made the investment into Klic Investments, isn't that correct?

A. That's what I believe the case, yes.

Q. And Klic was an offshore entity, isn't that correct?

A. It was indeed.

Q. And it would have required exchange control approval for an Irish resident to have put the money into that offshore vehicle, isn't that correct?

A. In 1979, I believe that is correct.

Q. So can we take it from your knowledge and experience that a switch must have occurred to avoid there is no evidence of any application for offshore or for exchange control approval that a switch must have taken place to facilitate the particular movement of this money offshore?

A. I would concur with that analysis, yes.

Q. Now, were you carrying out the transaction or sorry were you supervising the carrying out of the entries on the bureau system as of this time?

A. In 1979, yes, I was.

Q. And Mr. Traynor was in the bank?

A. He was, yes.

Q. So this would have been reflected on the bureau system, isn't that right?

A. It would indeed, yes.

Q. Now you used a phrase there and I just want you to be fairly fair to yourself and to Mr. Foley as well, you said that if Mr. Foley as Mr. Foley did bring this money to Mr. Traynor that Mr. Traynor would have explained the process to him?

A. For Klic Investments in that he was having a company called Klic Investments to manage his funds.

Q. Why do you to manage or to hold?

A. Well you know, unfortunately I wasn't at the the use of manage and hold to me means similar things.

Q. Well most of these funds were placed back on deposit either here in Dublin or in London, isn't that right?

A. That is the management holding the funds.

Q. And why do you say that if he came with the money that Mr. Traynor would have explained the process? Why do you say that?

A. Well because he had the words Klic Investments €50,000.

Q. This is sometime subsequently the word 'Klic Investments' arise.

A. Sorry, I have misconnected then the two dates.

Q. We will come to it slowly. That's why I want to be fair to yourself and be fair to Mr. Foley in respect to this.

A. Okay.

Q. Now, sometime in fact, Mr. Foley furnished us with a document I think which you have seen which is on a bank statement in this name "Klic Investments Limited per Martin Keane" and added some years later or sometime later, "now left, see Pdraig Collery". But the statement relates to a period 1981, do you see the statement?

A. Yes indeed.

Q. Can you first of all confirm that that is a statement generated out of the bureau system?

A. It would appear to be but of course as you referred to earlier with the tops taken off.

Q. That's what I just want to isn't that a statement and

wasn't the simple expedient that the tops were cut off

them?

A. That's correct.

Q. The tops would have contained whatever the legend, Ansbacher Cayman, whatever, Guinness Mahon Cayman Trust, a designation as to who this particular money related to, isn't that correct?

A. That is correct.

Q. In coded form on the statement?

A. In coded form, it would have been in coded form.

Q. The tops were cut off, isn't that correct?

A. That's correct.

Q. So this was sent to Mr. Foley and Mr. Foley has furnished them to the Tribunal so that there can be no doubt about it but that Mr. Foley's money was in the bureau system, in the Ansbacher system, isn't that right?

A. That's correct.

Q. Or in the Ansbacher operation. Why were the tops cut off when they were sent?

A. I don't know. It was it seemed to be that Mr. Traynor did that and why he did it, you know

Q. Wasn't it obvious that it was for the purpose of secrecy?

A. It's confidentiality, yes, it was.

Q. Who actually cut them off?

A. I don't know whether he did it himself or his secretary, you know.

Q. But sure you were generating these weren't you?

A. I would hand them I would just hand them.

Q. And in fact, all of the documents we will come to deal with it at a later time when you give further evidence of a general nature, that all of the statements were in fact generated in Dublin, isn't that correct?

A. That is correct, yes.

Q. Initially in Guinness & Mahon and subsequently in 42 Fitzwilliam Square and finally in Winetavern Street?

A. Yes, I confirm that before.

Q. And that a copy was sent to Cayman, isn't that correct?

A. That is correct.

Q. Almost as if Cayman was just a postal address in respect of the matter. The transactions all occurred here in Dublin, isn't that correct?

A. Well, I stated previously the transactions occurred here and I believe for the balance sheet purposes and the accounting records, in Cayman

Q. Mr. Collery come on, the business was carried on here, isn't that correct, that's where it was all carried on.

There were copies of them sent out to Cayman and they entered them on their balance sheet out there, isn't that correct?

A. That's what I am saying, yes.

Q. And can we just confirm another thing as well? These bank statements were printed here in Ireland, weren't they?

A. They were indeed.

Q. When I say printed, I mean the blank statement was printed

by a stationery printer in Ireland and then the entries were made on the computer system, isn't that correct, the credits and debits?

A. In the normal production of data from a computer, yes, that's how they were done, blank stationery was printed here and then they were fed into the computer and the programme was run which then put the date

Q. All of that documentation was kept in the offices of Guinness & Mahon in Dame Street, isn't that correct?

A. At that time indeed it was.

Q. For the period it was dealt with in Guinness & Mahon?

A. Correct.

Q. And can we take it it was purchased in through the Guinness & Mahon system as well, the stationery?

A. Well it may be but I expect it would have been reimbursed.

Q. I accept there would have been an adjustment made or a reconciliation made, but it was purchased in through Guinness Mahon?

A. The normal process.

Q. The normal process of purchasing.

A. Yes.

Q. So a printer in Dublin was in fact printing the Guinness Mahon Cayman Trust documents?

A. That's correct.

Q. Stationery. Stationery and account statements headings the headings?

A. It came in flow-line paper which was continuous.

Q. Now I think you were asked by the Tribunal of any dealings sorry, if I could come back for a moment and you know that the name Klic Investments was put onto the document by Mr. Foley perhaps sometime later. Well obviously it had to be because that was an account statement in relation to 1981, isn't that correct?

A. Correct.

Q. At least. And he had another little handwritten note on which he had mentioned Klic Investments and balances.

Remember it was one

A. I do indeed.

Q. There was one showing a balance of 72 odd thousand pounds and another then Guinness Mahon position 3/3/88 62,688.

Now the writing as of the 3rd March 1988 was his own. Do you recognise the writing above?

A. No, I don't.

Q. So when you say that the process would have been explained to Mr. Foley. Did you ever have experience of or witness Mr. Traynor explain the process to a client?

A. No. I was reminded by Mr. Keane when, you know, when Mr. Traynor seen his clients they were one-to-one meetings with him and I certainly wasn't a party to those meetings and I have confirmed that previously.

Q. But why did you, except on erroneous information, why did you form the view that the process would have been explained to Mr. Foley?

A. Well I expect there was a conversation and unfortunately

it's only my own opinion

Q. Well don't speculate. Unless you had previous experience of Mr. Traynor speaking to a client or your involvement with a client would lead you to believe that...

A. Then I have to withdraw that earlier statement so.

Q. Now then the Tribunal asked you for details of your dealings with Mr. Foley in relation to his account with Guinness Mahon Cayman Trust for 1979 to your departure from Guinness & Mahon and you were sent copy statements provided to Mr. Foley by the late Mr. Traynor on which Mr. Foley wrote the name "Klic Investments Limited per Martin Keane, now left, see Pdraig Collery, Guinness & Mahon œ50,000". You see that particular note made by Mr. Foley.

A. I just note my name spelt incorrectly, but that's immaterial.

Q. Well Mr. Foley has recorded there - somebody must have said to him - you'd never met him before?

A. No, I hadn't.

Q. Somebody must have told him there was a man called Pdraig Collery in the bank and when he made that entry

A. We will come to a letter later on in 1990.

Q. I know that. But as of that time

A. Well we don't know I notice that it's a different handwriting than the, than say the original body of that.

Am I correct?

Q. No. I think it's the same handwriting. I think it's Mr. Foley's handwriting.

A. It's not as heavy

Q. I see. Well, I think you informed the Tribunal when you were asked about this that you do not recall having any direct dealings with Mr. Foley relating to his account in Guinness & Mahon Cayman Trust while you were employed in Guinness & Mahon Ireland Limited. You have no knowledge of the company in the name of Klic Investments Limited "nor do I know where the company is registered. If Mr. Keane was involved in the formation of the company it is most probable that the company was registered in Guernsey. I have no knowledge as to when or how the name of Mr. Keane or mine were given to Mr. Foley," is that correct?

A. That is correct.

Q. Well, can we take it so that you, as the person in charge of the bureau system in Dublin in the time that you were in Guinness & Mahon, would have been familiar with the holdings within the bureau system?

A. I would have been very familiar with the individual referenced accounts.

Q. And can I take it that you never saw any reference to Klic Investments Limited inside in those accounts - never?

A. As we discussed before there was no cross reference. They were all coded there.

Q. There was no reference to Klic Investments?

A. No.

Q. And there can be little doubt that it was definitely Mr. Foley's funds you were dealing with because he was

receiving bureau statements, isn't that correct, as we have seen?

A. At that time I would have recognised him as A/A40, you know.

Q. You always recognised it you knew there was an A/A40 and that was the statement that was going out?

A. And if I were asked for an A/A40 statement, then I would have given it to Mr. Traynor.

Q. I think the next issue which was raised by the Tribunal with you was your knowledge of a withdrawal of €20,000 made by Mr. Foley from his Guinness Mahon Cayman Trust fund in 1989 and whether you recall giving instructions or making arrangements in Guinness Mahon or making entries across the bureau system accounts in relation to the withdrawal?

A. Yes, I was asked for that information.

Q. And I think you have informed the Tribunal that you have no recollection of a specific sum of €20,000 drawn from Guinness Mahon Cayman Trust funds in 1989 nor to the giving of instructions to Guinness & Mahon Ireland Limited. "If the Tribunal believes that this transaction did take place, I am available to the Tribunal to advise them (A) on the accounting records that would exist in Guinness Mahon Ireland Limited and (B) approach they should take in tracking the transaction. It is most probable that the late Mr. Traynor gave these instructions."

Now, I think the next issue which was raised with you was

the purpose for which the letter of the 22nd March 1990 from Mr. Collery to Mr. Foley was sent, the matter or matters which Mr. Collery wishes to discuss with Mr. Foley and which were referred to in the letter and you were sent a copy of the letter. If we just read the letter.

You had left Guinness & Mahon at this stage, isn't that correct?

A. That is correct.

Q. This is a letter purely with the heading 42 Fitzwilliam Square, Dublin 2 on it?

A. That is correct.

Q. No reference to Guinness Mahon Trust, Ansbacher Cayman, College Trustees, Channel there is no reference to anything other than 42 Fitzwilliam Square.

A. Correct.

Q. And you write to Mr. Denis Foley and his address at 6 Day Place, Tralee in Kerry. You write;

"Dear Denis,

I am writing to advise you that I am no longer working in Guinness & Mahon. My new telephone number is " that is blanked out. The Tribunal has been given this number by you. It's not relevant. I just want to point that out.

A. Thank you.

Q. But it is a number where you can be contacted from, where you could have been contacted, isn't that correct. Is that right?

A. That is correct.

Q. And it's not the 42 Fitzwilliam Square telephone number.

A. That is correct.

Q. "Or you can leave a message with Joan Williams, Mr. Des Traynor's secretary at the above number and she will contact me.

I would be grateful if you could give me a call in the next week or so to arrange a meeting as there are one or two things I would like to discuss with you.

Yours sincerely

D. P. Collery," but it's just signed "Padraig," isn't that correct?

A. Correct.

Q. And if we just move it right up please. There is a reference then, isn't there, DPC/AJW.

A. That is correct.

Q. The DPC is you?

A. That's correct.

Q. And the AJW is Ms. Williams, is that correct?

A. Yes.

Q. Now, I think you have informed the Tribunal that you have no recollection of writing this letter in March 1990 "nor do I recall details of matters I wish to discuss. On viewing the statement of account which Mr. Foley had with Guinness & Mahon Limited, it is possible that I wish to advise him of the name of the person to contact to collect

his statement but I cannot be absolutely sure of that

fact."

Now, what statement of accounts are you talking about?

His resident call

A. If you recall in the documents sent to me, the address had been changed from his address to care of P Collery in

Guinness & Mahon and that was a it was a facility within

Guinness & Mahon where accounts were care of senior people

within the bank and then people called and collected those

statements. Now, I don't remember the exact that this

was relating to that but I can only make an assumption that

it may have been. Mr. Humphreys had taken over

Q. Can that really be the case, Mr. Collery? Let's take it

now slowly. The resident call account in Guinness & Mahon

was in the name of Mr. Foley, isn't that correct?

A. And his daughter at that stage.

Q. It had been converted yes, it had gone into their joint

names, isn't that correct?

A. Yes.

Q. You knew that?

A. I did indeed, yes.

Q. Because you were the person who received the account statements, isn't that correct?

A. That's correct.

Q. And in respect of that, had you ever met Mr. Foley?

A. No, I don't recall that I did.

Q. Hold on a second now. Is it that you don't recall or you didn't? Now I want an answer about that, Mr. Collery.

A. I did not meet Mr. Foley.

Q. You did not meet Mr. Foley?

A. In Guinness & Mahon.

Q. All right. Sorry, I am not asking did you meet Mr. Foley in Guinness & Mahon. I am asking did you meet Mr. Foley in your Guinness & Mahon days?

A. No.

Q. You did not?

A. No.

Q. All right. You are receiving his statements?

A. That is correct.

Q. On an account which has nothing out of the ordinary about it. It is purely a resident deposit account, isn't that correct?

A. That is correct.

Q. An ordinary every day type of account that hundreds of thousands of people in this country have up and down the land in various banks, isn't that correct?

A. That is correct, yes.

Q. There was no particular reason - this was an account of an individual or individuals, isn't that correct?

A. That is correct.

Q. And was it usual in respect of ordinary individual customers of Guinness & Mahon for you to receive their bank statements, their Guinness & Mahon bank statements?

A. For me and indeed for other individuals in the bank, yes, there were a number of accounts which were held by individuals within the bank.

Q. Unrelated to offshore activities?

A. Absolutely, yes.

Q. I mean unrelated in that the account holders had no connection good, bad or indifferent with any offshore activity?

A. Yes.

Q. How many of those would you have dealt with?

A. Sorry, I thought you were referring to generally around the bank, if there were other individuals

Q. No

A. With me myself. That's ten years ago, you know, there could have I don't know, there could have been ten it could be fifteen, you know.

Q. You would have known them all, wouldn't you?

A. In some cases I would, in some cases I have never met the individuals, you know.

Q. How would the statements be collected from you?

A. They would come into the counter and say Mr. Bloggs is at the counter, he is here to collect his statements.

Q. Did you ever have any dealings with Mr. Foley's daughter in your Guinness & Mahon days?

A. No, never met Mr. Foley's daughter or had any dealings with her.

Q. I see. So what did you do with the statements when you

got them?

A. To the best of my recollection I gave them to Mr. Traynor.

Q. All right. Can I just ask you this now, Mr. Traynor was the chairman of Cement Roadstone Holdings at this time?

A. At this time he was.

Q. How many people how many people, if you could just narrow it down, who had ordinary deposit accounts in Guinness & Mahon for whom you received statements did you take to Mr. Traynor?

A. Probably three I think, probably three out of the ten that I referred to earlier and again, you know, you are putting questions in this context, so you know, I am struggling to recollect, but probably three.

Q. Just try if you recollect more, you can tell the Tribunal but probably three. And of those three, were any of them, to your knowledge, just purely Guinness & Mahon customers and had no relationship with offshore facilities?

A. As it transpired later in all three cases they had connections.

Q. So in the normal course of banking work where you would receive a statement from somebody for somebody, they'd normally come to the counter or somebody on their behalf would come and select it?

A. They would come in and collect them, yes.

Q. This had a characteristic which was unusual in that it was one of three you took to Mr. Traynor?

A. That is correct.

Q. Now, you then leave the bank and had you made any facilities or had you made any arrangements when you were leaving the bank before you left the bank to arrange for customer statements to be received by somebody else in the bank?

A. No. To the best of my recollection when I left, I did quite a substantial long time of six months, maybe not quite six months, I think it was four months where Mr. Humphreys, who was my deputy came in, and I worked very closely with him because it was quite complex and an onerous task that was being handed over and he came on board into the bank and I worked very closely with him in explaining the services and tasks that I did within the bank and he took over from me.

Q. Just in this simple task of receiving statements?

A. I explained to him the position, you know, that any statements that would be in my name, obviously should now be coded care of his name and he should then carry on with that facility.

Q. That would be the normal this was Guinness & Mahon's business, not yours, isn't that correct?

A. Absolutely.

Q. So can we take it that when you surmise that the letter you sent to Mr. Foley was in respect of receiving the statements on his deposit account in Guinness & Mahon, that that can't be the situation?

A. No, I hold by that, Mr. Coughlan, because I can't remember

any other reason why I should have and that was the only thing that I was doing in relation to him.

Q. Hold on a second now. Let's look at the final paragraph there. "I will be grateful if you would give me a call in the next week or so to arrange a meeting as there are one or two things I would like to discuss with you."

A. That's a turn of phrase, with respect.

Q. Ah come on now, Mr. Collery. And we then have around the same time the movement of the money out of the resident call deposit account going offshore, isn't that correct?

A. I think it was six months later was it not?

Q. And that occurred. That movement of the money out of the resident call deposit account took place on your instructions, isn't that correct?

A. That is correct, yes.

Q. So now, Mr. Collery, let's look at the letter that you sent to Mr. Humphreys. The 22nd March you write to Mr. Foley. On the 9th November you write to Mr. Humphreys, isn't that correct?

A. Yeah, again in that letter, I just, as I say, I don't have it in the first file you gave to me, may I please have a copy of it?

Q. Sorry, I beg your pardon. I will get you a copy.

(Document handed to witness.)

A. Sorry, I think there is a previous letter that you are referring to because this is the acknowledgment.

CHAIRMAN: Well there is one on the monitor.

Q. MR. COUGHLAN: Sorry, I beg your pardon, it's on the monitor.

A. I am confused by this, Mr. Coughlan, because there must be some contact with me because I am referring to Mr. Humphreys' letter of the 16th July which I don't know I don't know what that reference is to.

Q. Mr. Collery, let's get the sequence of events of your dealings with Mr. Foley out of the way, then we will turn to Mr. Humphreys.

A. Okay.

Q. You write to Mr. Foley saying you'd like him to contact you?

A. I did indeed, yes.

Q. Let's get it very clear again. You knew who Mr. Foley was when you were writing to him from 42 Fitzwilliam Square where the business from Ansbacher Cayman was being conducted, isn't that right? . That's the business that was being carried on from 42 Fitzwilliam Square?

A. That was one of the businesses.

Q. Not any Guinness & Mahon business.

A. That is correct.

Q. And you are writing to a man in Kerry and you are asking him to contact you, isn't that correct? Isn't that correct?

A. That is correct, yes.

Q. To discuss one or two things with him.

A. That is correct.

Q. And on the 9th November 1990, whatever has transpired between yourself and Mr. Humphreys, you are asking for a cheque payable to them for the balance plus interest to date on their account, isn't that correct?

A. That is correct.

Q. So you must have had instructions from the people who were described there as Mr. D and Mrs. M Foley, isn't that correct?

A. Well I either had instructions from them or Mr. Traynor and I believe, as I have said in my evidence, that it would have come from Mr. Traynor.

Q. Okay. Okay. What do you mean by to issue an instruction to close off an account and to receive a cheque in respect of the balance, one has to have instructions in one way or the other from the person who is entitled to the account, isn't that right?

A. Well if I was asking Mr. Traynor, I don't recollect, but I assume I was, then I would have expected him and I would have trusted him that he would have had the instructions from Mr. Foley.

Q. Why would it be why would these have been going out under your signature?

A. I was - I had just recently left the bank. I don't recall but I expect that Mr. Traynor would have known and indeed as you know, I have had Mr. Humphreys was the person taking over from me.

Q. I appreciate that. But what I want to know is why were these letters going out under your signature contacting a client of Mr. Traynor's? You have told us that Mr. Traynor never showed his clients to people. You were the one making the contact. Not Mr. Traynor. You were using Mr. Traynor's secretary. You were writing to the client. You were issuing instructions in respect of that client to Guinness & Mahon. Now, why were you doing it if you were just a person who made entries on the bureau system?

A. I can give you my explanation of I think what happened but, you know...

Q. No, tell me what happened. Why were you doing it?

A. I don't recall as to precisely what happened but what I can say is that, as I have stated, yes, I would have given the statements, they would have come care of myself, to Mr. Traynor in the first place. Then I would have expected that now I had left Guinness & Mahon and I was no longer going to be providing that facility to Mr. Traynor, that I was asked to write to Mr. Foley and explain that Mr. Humphreys was the person he should contact in future.

Q. Hold on a second now, Mr. Collery. Hold on a second, Mr. Collery. Mr. Foley has informed the Tribunal, I presume it will be his evidence, he came up to Dublin. He knew Mr. Traynor. He gave Mr. Traynor the €50,000. All right. Mr. Foley made various notations over the years and one of them was "Klic Investments per Martin Keane now

left contact Padraig Collery". Isn't that right? You were receiving the statements on his ordinary resident deposit account in Guinness & Mahon in Dublin?

A. From a certain date.

Q. From a certain date. And you were giving those to Mr. Traynor?

A. I was indeed, yes.

Q. He was Mr. Traynor's client as far as you were concerned?

A. Yes, that is correct.

Q. And Mr. Traynor avoided letting people know who his clients were, is that what you are saying?

A. To the greatest extent, yes, he did.

Q. Can I ask you this, how many other people did you write to who were Mr. Traynor's clients in this period when you left Guinness & Mahon?

A. I don't know that there were any other persons who were in that category.

Q. What category?

A. That had a call deposit account with Guinness & Mahon and had a connection with Mr. Traynor.

Q. What did you do with 24 odd thousand pounds you got?

A. Well, first of all I acknowledged it which was proper to do and then I obviously must have passed the €24,000 to Mr. Traynor because I know now in evidence which I didn't know until I got your documentation as to what the process that happened.

Q. Where it went?

A. Yeah.

Q. And it went in

A. In a very circuitous route into Kentford.

Q. A washout route. It was designed to obscure, isn't that right?

A. Yes, but as I said and in talking to you in private, I had no knowledge it was a complete surprise to me, in fact, when that emerged from the documentation that you sent to me.

Q. Why was it a complete surprise to you because it was a route that was used, a similar type of route that was used on other occasions to wash money through accounts, wasn't it, by Mr. Traynor?

A. Yes, I accept that in the case of putting money into Kentford, yes, but I think it wasn't a commonly used route, in fact, I don't know of any other time

Q. I am not saying the precise route was commonly used, but that type of route was used, isn't that correct?

A. That is correct.

Q. And sure didn't we even see it with the Carlisle money?

A. We did indeed.

Q. That we spoke about previously, the Dunnes Stores money going through?

A. Absolutely, yes.

Q. So why does it come as a surprise to you?

A. Because I had given the cheque to Mr. Traynor and as far as I was concerned, you know, that was the end of it. Now

again as we can see there, there was a month or something I think, elapsed between the time it was got and the time it was processed.

Q. Well if you had authority, as you appear to have, by virtue of the letter of the 9th November 1990 or else

Mr. Humphreys was taking instructions from a stranger in respect of somebody else's account, why didn't you just

write and say close the account, send the balance to

Mr. Foley at 6 Day Place, Tralee, County Kerry?

A. Because I believe I must have been asked by Mr. Traynor get the cheque for him. That is the fact that's the only explanation

Q. We are in the real world now. Why? Why?

A. Absolutely. Because Mr. Traynor asked me.

Q. I know that, Mr. Collery, but why?

A. You know, with respect, I have given my reasons and I cannot

Q. Ah, Mr. Collery, you are going to be asked a few more questions because your memory is going to be tested. You are going to be asked a few more questions.

MR. DEVITT: If I could just interrupt there.

Mr. Coughlan I think has reprimanded Mr. Collery previously for speculating and I think the purpose of Mr. Coughlan's question now is to get Mr. Collery to speculate.

CHAIRMAN: I think it's actually much more of a factual response that he is seeking, Mr. Devitt.

I don't propose, since we have an early start at ten o'clock tomorrow going on much further, Mr. Coughlan.

MR. COUGHLAN: Perhaps I will cease now.

CHAIRMAN: Just in conclusion, Mr. Collery, reverting to the initial €30,000 that appears to have been brought into the Guinness & Mahon premises, I think you have indicated that you think and it would be wrong to draw any conclusions until other evidence including Mr. Foley has been heard, that there is a reasonable possibility it may have been a switch mechanism that was used?

A. Yeah, indeed from all the analysis we have done there, Mr. Chairman, yes, I think there is reasonable in whichever way it was done, it was a switch.

CHAIRMAN: This would mean the actual cash was in fact given to the benefit of another private client of Mr. Traynor's and effectively the value of the €50,000 leapfrogged out of Guinness & Mahon into one of the offshore vehicles?

A. That is indeed correct.

CHAIRMAN: So, in effect, although there was there were the two purported deposit receipts referring indeed to current accounts, there was no actual Guinness & Mahon involvement at all in the transactions, would that be correct, if this is so?

A. I believe, because there are no records existing there, I

believe that to be the case.

CHAIRMAN: And, in effect, it would have been Mr. Traynor wearing one of his offshore executive hats rather than acting as a senior officer of Guinness & Mahon?

A. That is indeed correct.

CHAIRMAN: And I think you are aware that because of reasons indicated earlier, we do need to make a somewhat earlier start. Would ten o'clock to be convenient?

A. I would be delighted to be here, Mr. Chairman.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 28TH JANUARY 2000 AT 10AM.