

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 3RD FEBRUARY

2000, AT 10:30AM:

CONTINUATION OF EXAMINATION OF MR. COLLERY BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now Mr. Collery, I think yesterday evening

when we finished, I had asked you to consider a cheque

which was on the screen and I think it was its document

number 18. It's not too clear on the screen, but I can

tell you that on the 23rd October 1987 the Amiens SL No. 2

account, number 10407006, was credited in the sum of

€42,680. The source of this credit was a cheque dated

20th October 1987 drawn by Central Tourist Holdings on an

account with Bank of Ireland at Listowel, County Kerry.

That's document number 19. The cheque was signed by

Mr. Foley and another party at the time of the lodgment.

Amiens SL account was overdrawn to the amount of €67,844.

That's just the narrative, the background in relation to

the particular cheque. I think, first of all, you were

asked to consider that particular cheque and the lodgment

to the Amiens SL account and the account number given,

isn't that correct?

A. That is correct.

Q. And as we know, that particular account, the Amiens SL

account was an account used by Mr. Traynor for moving

monies connected with the offshore monies, isn't that

correct?

A. That is correct.

Q. Now, I think you have informed the Tribunal that you have no knowledge, direct or indirect, of the dealings in connection with the lodgment of œ42,680 to the Amiens Securities Limited account on the 20th October 1987, isn't that correct?

A. That is indeed correct.

Q. Just because it forms part of the picture of the Central Tourist Holdings, I just inform you of Mr. Foley's understanding of what happened in respect of this particular cheque.

A. Okay.

Q. I think Mr. Foley has informed the Tribunal that he has been shown the cheque and the reference to it in the Memorandum of Evidence of Ms. Kells. And it's his understanding that the circumstances in which this cheque was paid were as follows:

The proceeds of the sale of the hotel premises in 1986 were, he believed, lodged to an account which was opened in the name of the company in the Bank of Ireland Listowel by the late Mr. Joe Grace, who was then the company's solicitor. The cheque dated 20th October 1987 was made payable to Guinness & Mahon and was drawn on the account opened by Mr. Grace in the name of the company in the Bank of Ireland. That he, Mr. Foley, was one of the signatories of the cheque, the other signatory was John Byrne. That appears to be so from the signatories on the cheque.

He has informed the Tribunal that his recollection is that he was requested to draw the cheque by Mr. Grace in order to finalise matters with Guinness & Mahon. He gave the cheque to either Mr. Grace or to a Mr. Paul Carty, who would have been the accountant for the company. That Mr. Foley was unaware as to what Guinness & Mahon did with the cheque when it received the cheque but that he understands from paragraph 15 of Ms. Kells' memorandum that the proceeds of the cheque were credited on the 23rd October 1987 to an account entitled Amiens SL No. 2 account and the account number was given. However he has no knowledge whatsoever how the account, and was unaware as to how the cheque was dealt with once it was paid over. He felt, i.e. Mr. Foley felt that all matters concerning the finalisation of the company's affairs, including the discharge of the Guinness & Mahon loan to Mr. Grace and to Mr. Carty, he was very glad to be out of the business as it has cost him money and his health was affected. In fact, he had lost some money in respect of this particular business transaction.

Now, I think the cheque could you confirm is made payable to Guinness & Mahon, isn't that correct?

A. Yes, it appears to be. That is correct.

Q. And how would a cheque which would arrive in Guinness & Mahon made payable to Guinness & Mahon in the normal course of the banking business have been dealt with, to your

knowledge?

A. I would have expected it would have gone into an account of Guinness & Mahon.

Q. An account of Guinness & Mahon.

A. Mm-hmm.

Q. And then if it was for the purpose of dealing with an outstanding loan or matters of that nature, would the transfer then take place from the account of Guinness & Mahon into the account of the customer or client?

A. That would be the proper process and procedure to go through.

Q. And how would a payment made payable to Guinness & Mahon end up in an Amiens SL account, physically, how would that happen?

A. Through the process that we just outlined. It should have first gone into an account of Guinness & Mahon and then if it were deemed to be for the benefit of Amiens, then it should be transferred in there.

Q. But somebody would have to issue instructions within the bank, isn't that correct?

A. That is correct, yes.

Q. And who gave instructions in respect of the Amiens SL accounts at this stage, to your knowledge?

A. Mr. Traynor would have given instructions.

Q. So in the first instance when that cheque arrived at Guinness & Mahon, because it was made payable to Guinness & Mahon, it would have to go into a Guinness & Mahon account?

A. It should have done so, yes.

Q. Would there be any way that it couldn't

A. Well again as I say, we would have to get the backing logs, the audit logs would indicate to us if it took the correct route or an incorrect

Q. Very good. But just from your experience as a banker, if it was made payable to Guinness & Mahon, would it, for example, have to be endorsed if it wasn't going into a Guinness & Mahon account?

A. No, endorsement wouldn't be required because it actually would be credited to an internal bank account. Most likely a clearing account there in that case and then as I say, a senior bank official of the bank would have to then make the transfer across into the intended account.

Q. And likewise, Mr. Foley obviously thought that this was a cheque being sent to Guinness & Mahon to finalise the affairs of the company, he knew that they had a loan from Guinness & Mahon. We don't see it ever going into a Central Tourist Holdings account, isn't that correct, on the statements we have seen?

A. That is correct. Although as I say, we have an issue outstanding that the final statement isn't available to us.

Q. And can we take it that you don't have any recollection of having any involvement in relation to this particular transaction?

A. None whatsoever.

Q. But it would have had to have been a senior person in Guinness & Mahon would have authorised the movement of that particular sum of money made payable to Guinness & Mahon into the Amiens SL account, is that correct?

A. I think that's the route that it took, that would be my belief that that was the process and procedures that should have been followed at that particular time.

Q. And which senior executives other than Mr. Traynor would have had authority to move the money into an Amiens SL account?

A. I would be one of them. Mr. O'Dwyer, I think Mr. Martin Keane would have been there. It would have been that level of management would make such transactions or instruct such transactions to take place. They may not necessarily have done the physical transaction, but would certainly have given the instruction to do so.

Q. But was the Amiens SL account, was access to it only on the instruction of Mr. Traynor or did other executives use it?

A. I would say at that stage, because Mr. Traynor had now left the bank, that the mandate would have been, and I think it always was, well certainly in drawings, we are talking about a lodgment here, of course anybody can make a lodgment to an account

Q. Of course.

A. So he wouldn't have it wouldn't contravene the mandate instructions.

Q. Well we are talking about a period when Mr. Traynor was out

of the bank, isn't that correct?

A. That is correct, yes.

Q. And a cheque arrives made payable to Guinness & Mahon and the normal procedure or best practice would be for that cheque to go into a Guinness & Mahon account?

A. That's what I would expect to happen, yes.

Q. Mr. Traynor could not have issued any instruction in relation to a Guinness & Mahon's internal account, isn't that correct, as of 1989?

A. '87, sorry.

Q. '87, I beg your pardon.

A. That is correct.

Q. So it had to be somebody inside in Guinness & Mahon would have issued an instruction in respect of where the proceeds of that cheque were to go, isn't that correct?

A. That's indeed correct.

Q. If I might just finally just return for the moment, that is, return to the meeting you had with Mr. Foley in August of 1998, Mr. Foley was looking for statements, isn't that correct?

A. Yes, he was.

Q. And you had brought the balances up to date as of, say, July of that year, isn't that correct?

A. I had indeed, yes.

Q. You then furnished statements to Mr. Foley, isn't that correct, subsequently you say?

A. At a later date, yes.

Q. Which brought the balances up to what period exactly?

A. I think it's March or April '86 I think is the date sorry, '87 I think it is. March

Q. '97, I beg your pardon, isn't that right? I think you had in fact printed statements or computer generated statements up to March of '97, isn't that correct?

A. That is correct.

Q. Sorry, I beg your pardon, Mr. Healy corrects me, April perhaps, but up to early/mid-'97.

A. Correct.

Q. And you had a handwritten adjustment on the balances up to the end of, we'll say July of 1998, isn't that correct?

A. That is correct.

Q. Why did you only send statements which showed the balance up to March or April of 1997 and not up to date statements?

A. Because as I have said, my cut off date for responsibility of the balances and the accounts in my own mind was that, in or around that period and any information that was required on the accounts was then the responsibility of Mr. Barry Benjamin. Obviously if Mr. Furze had died Mr. Furze, between that date and when he died, they were his responsibilities but, you know, Mr. Barry Benjamin was his partner and then by him being so, in the company, they were his responsibility.

Q. Now, you had the printed statements which you furnished in your possession?

A. In my possession, that's correct.

Q. You also had the handwritten document but you have offered an explanation as to why you felt that you wouldn't furnish that type of information?

A. That is correct.

Q. Why did it take so long then to send the printed statements to Mr. Foley?

A. Again I was extremely busy around that period. I can't explain why it took that long. When I got around to it, I did it and I know it's a long period of time

Q. Well I suppose the first thing I should ask you, is it your recollection that it did take that long?

A. It is, yeah.

Q. It's your definite recollection?

A. As I said, something I have always, in my mind, I did something in early '99 and the precise date I couldn't be I thought it was a meeting I had but it may be that and I have always said that.

Q. But you thought it was early '99?

A. I thought it was early '99.

Q. And not as late as May?

A. Not as late as May, but if it was May, I accept it was May, because, you know, I don't have the physical record of triggering that.

Q. Thank you, Mr. Collery.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

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

Mr. Collery, about the keeping of records over the years on your part. If I understand correctly, the different periods of time which you operated the record-keeping of the Ansbacher accounts, they were at all stages kept in offices where Mr. Traynor worked or at a later stage in Mr. Field-Corbett's office, is that correct?

A. That is correct.

Q. So that if I understand your evidence correctly, from '74 up to '86 when Mr. Traynor left Guinness & Mahon, the records were there. After that, for a period of time they were in his office in Trinity Street and then they were in his offices in CRH in 42 Fitzwilliam Square until '97. Then they were kept in Mr. Field-Corbett's office in Winetavern Street.

A. I think the '97 date, it would be '94 when Mr. Traynor died.

Q. But that's where the records were kept throughout those periods of time?

A. That is correct.

Q. Did you keep duplicates of any of these records?

A. Not at all. There was no reason for me to do so. They were there. As I say, there were two categories of records. There were what we now know as the bureau accounts, which is the physical statements which, as we said, was a duplicate because the original was sent to Cayman, but they were just filed in a lever arch file and then there was correspondence which was kept by Mr. Traynor

himself.

Q. Well was there also software material on a disk or hard drive?

A. Yes. Up till '89, as we know, the programmes or the data was held on a Guinness & Mahon software. It was a separate set of data files held on the Guinness & Mahon software.

Q. I just want to be precise about this. When you say records were kept at those various addresses over those periods of time, are you also including software as well as paper material?

A. Yes, that is correct, there would be.

Q. Did you ever keep any of the software material at your own home or elsewhere?

A. No, other than the offices that you have just outlined there.

Q. So in from 1997 to 1998, did you keep duplicates of either the software material or the paperwork material at your own home or elsewhere?

A. From 1997 onwards, the contract with that software company ceased and I cleared down the disk of the software because I was advised they were not longer using it.

Q. From '97 onwards?

A. From '97 onwards.

Q. And did you keep paperwork from '97 onwards?

A. Well I created paperwork when I went to Cayman in '98.

Q. But between '97 and that time, you had no paperwork?

A. No records of the accounts.

Q. So if I understand, you brought back paperwork from the Caymans in '98 which you have kept?

A. That is indeed correct.

Q. And all of that has been given to the Tribunal?

A. That is correct.

Q. There is nothing else anywhere else?

A. That is correct.

Q. Well in early '99, as you think it may be now, or May '99 when you were in a position to provide statements of the balances of a number of deposit account holders with Ansbacher, were you involved in the compilation of those figures?

A. Well, what I did was I went to the records that I have at this point in time and copied the statements from '92 up to '92/'93 I think it is, up to whatever date, up to '97. Am I

Q. Well you were working out obviously the interest that would have accrued

A. No, the interest was calculated by the system itself. So we have ledger sheets from '92 to '97 of all the memorandum accounts.

Q. Yeah, but you calculated sometime in '99 what the entitlement was for each of these persons who requested a copy statement to be made available to them?

A. A manual calculation.

Q. A manual calculation, all right. So in order to do that,

you would have had to work out what the interest rate was, which you probably knew, but you would have also have to have known whether or not there were any drawings of these accounts which would have involved you having access to the main file, isn't that right?

A. No. I had access to the bank statement which Mr. Benjamin had and, in fact, which he actually had sent me a copy of and those are with the documents that are with the Tribunal.

Q. Are you saying that you were involved in no computer generated calculations from '98 onwards on any of these accounts in Ansbacher?

A. From '97 onwards.

Q. From '97?

A. Yeah.

Q. Well then is it your evidence that you have held no software material of any kind in relation to these Ansbacher accounts from that date onwards?

A. That is my evidence, yes.

Q. Well the documentation that you were giving you gave, in fact as we know, to Ms. Keogh in October of last year, that was entirely paperwork generated by you from the time you had been in the Cayman Islands in '98 and nothing else?

A. That and the files that we have in evidence here, plus some other 30 or 40 documents which related to an earlier period.

Q. But I thought all the documentation that you had available

to you was available only to you from the time you were in the Cayman Islands in '98. Where did this other material come from?

A. It came back from the Caymans. There was two categories of documents that I brought back with me. One was the manual calculated and one was some statements of an account which were related to an earlier period.

Q. I follow that, but that came into the state and in your hands in 1998.

A. It did indeed, yes.

Q. And if I am understanding your evidence correctly, you had no sole control and custody of records, either paper or software, up to that time. It was kept in an office such as Mr. Traynor's or Mr. Field-Corbett's and so on. That was the first time that you had the sole custody of relevant documentation concerning the Ansbacher accounts?

A. That is correct.

Q. Well then what you were giving to Ms. Keogh in October of last year was documentation that came into your sole custody for the first time in '98 when you came back from the Cayman Islands, is that right?

A. That can be worded that way, yes.

Q. And what you gave to Ms. Keogh in October of last year, was that everything that you had or was that selectively chosen?

A. No, that was everything I had, yes.

Q. And what was the urgency that arose in October of last year

that made you concern that you should pass this material on to somebody else for safekeeping?

A. Well I said there was a number of events and will I I have to go over it again is that my state of mind was that

Q. I am concerned about I know what you told, Mr. Coughlan. What I am asking you is a different question. Why the timing? Why was it suddenly a problem in October rather than earlier in the year or some stage earlier? That's my point.

A. Because the crescendo, I felt pressure myself, of articles in the paper, there was media reports and there were leaks and I was afraid that my house I do genuinely believe that my house was going to be broken into because it was known around that time that I had, I think, the Ryan report

Q. And you kept the material from, when you came back from the Caymans in 1998, in your home

A. In my home.

Q. Up to this time.

A. I did indeed, yes.

Q. And you thought that some person would break into your home to have access to this information?

A. That is correct.

Q. You had no concern about any state driven authority that might have caused to come and investigate the matter and ask you to disclose information? That wasn't part of your

thinking at all?

A. That was not part of my thinking.

Q. And did you have duplicates at this time of any of the information that you have given to the Tribunal or to Ms. Keogh?

A. The Tribunal furnished me with copies of

Q. This is for the purpose of your evidence, but not otherwise?

A. Not otherwise.

Q. Can I just turn back to a procedure I described that operated from time to time in relation to the making available of cash to Ansbacher customers. You have described it as a switch mechanism. And I think if I understand the procedure, it follows the following lines: Man A, we'll say, has a sum of money, we'll say œ10,000, he wants to put into his account, whereas man B who is also an Ansbacher account wants some money.

A. Take out

Q. To take out of his account. Rather than transferring the money all the way over to the Caymans or into a deposit account, the procedure followed in what was described by you as this switch mechanism was that you organised the money, became available from man A to be passed on to man B with a minimum of formalities and paperwork intervening, isn't that right?

A. That is indeed correct.

Q. Now, how widespread was that?

A. I don't think it was very widespread, but it did happen from time to time.

Q. When you say from time to time, we are looking at about 30 years, would it have happened a number of times a year over the 30 years of the operation of these accounts?

A. Yes, I think in looking at the evidence and reviews of accounts, it did appear to happen a couple of times a year, yes, and the amounts, in fairness, did vary from small sums to large sums.

Q. Well I take it then the procedure was that some note taking of a cursory nature was necessary so that you would know what the appropriate balance was for man A and man B in this transaction. That would be entered up by you on the computer at a later stage or into the records and the cursory documentation was disposed of?

A. No, I would have received instructions from Mr. Traynor to say please debit X and credit Y and that was done on those instructions. Now

Q. By telephone?

A. Well

Q. Face to face?

A. Well, face to face and indeed often by a memorandum.

Q. The memorandum would have been disposed of once the

A. Yes.

Q. That's what I am getting at. That paperwork was put to one side, whereas a normal bank transaction would have a lodgment docket and receipts and so on. These intervening

pieces of papers would be destroyed. They were simply notes?

A. Notes, exactly.

Q. And because of the absence of formality in the keeping of records on your part on behalf of the various Ansbacher holders, they were dependent on you and your record-keeping to put them in a position where they could request payments of money or know what their position was at any given time. All of the account holders were really dependent on you right through those years?

A. They were dependent on Mr. Traynor. You know, he was the face up till '94 until his death. Obviously a lot of them I don't know what knowledge they would be aware.

Q. Of well they were dependent on Mr. Traynor who effectively had delegated a great deal of the record-keeping to yourself, although he was the person today

A. They wouldn't be aware of obviously the background or the back room support mechanism, let's put it that way.

Q. All right. Well, once a situation that arose that Mr. Traynor had died, all of these account holders were completely dependent on you to be kept in the picture as to where they stood in relation to these accounts?

A. There was a void there that had to be filled by somebody.

Q. Filled by?

A. And Mr. Furze asked me then, you know, Mr. Traynor has died, would you mind doing this in an interim period. Now that interim period, as I say, lasted for well then he

died and bang, I am still, thank God, left with my health and been in this terrible position to be have responsibility on my shoulders of accounting to these people because yes, I have had a connection.

Q. Well, be that as it may but between Mr. Traynor's death and the termination of your involvement, which you described as sometime in 1997, all the account holders were dependent on you completely?

A. They were, yes, here in Dublin, yes.

Q. In order to have access to their money and to have access to information, isn't that right?

A. That is correct.

Q. So if any one of them wanted to regularise their position with the Revenue Commissioners, they had to depend on to you put them in the picture to have the information to make the appropriate revelations to the Revenue Commissioners, is that right?

A. To the best of my ability, I have assisted them in doing so, yes.

Q. Well, you have assisted them in recent times, but up to 1997 if they wanted the information

A. If they asked me

Q. There was no other way they would be able to cooperate with the Revenue fully, isn't that right?

A. That is correct.

Q. In a situation where an overseas deposit was applied to meet an Irish-based loan, as we know from yesterday's

evidence, didn't happen often but I am just asking in a general way, in anything of that kind happening, there would have been particular concern on behalf of all of the Ansbacher holders to be careful about how the paperwork was prepared in relation to that kind of transaction, isn't that right?

A. I would expect that to be the case, yes.

Q. Because if the paperwork on that kind of transaction wasn't handled in a delicate way, the whole of the Ansbacher accounting system could come to the notice of the Revenue Commissioners, isn't that right?

A. That is indeed correct.

Q. And when I say handled in a particular way, handled to the point where documentation which might be appropriate to be given to an auditor of a company might well be misleading, not just for the purpose of that particular transaction, but because of the concern of preserving the confidentiality of all of the Ansbacher holders, isn't that right?

A. That certainly would be a concern, yes.

Q. Thanks, Mr. Collery.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BARNIVILLE:

Q. MR. BARNIVILLE: Mr. Collery, I have one or two questions on behalf of Mr. Foley.

Mr. Collery, can I ask you at the outset, were you asked by Mr. Foley or any person representing Mr. Foley to conceal

his identity from this Tribunal?

A. No, I was not.

Q. Were you asked by Mr. Foley or any person representing him to conceal documents referring to Mr. Foley from this Tribunal?

A. No, I was not.

Q. Can we take it then that the action that you took was your own decision for your own personal reasons?

A. For my personal reasons, for my insecurity that I had at the time and my concerns. It was, I now acknowledge, an incorrect decision, but it was for that decision.

Q. Now, I think you had two meetings in total with Mr. Foley, isn't that correct?

A. That is correct, '95 and

Q. 18th August 1998, isn't that correct?

A. That is correct.

Q. I think after the second of those two meetings on the 18th August 1998, you never met or spoke with Mr. Foley after that, isn't that correct?

A. That is correct.

Q. In relation to the first of those meetings, the meeting in early September 1995, I think you indicated in your Memorandum of Evidence that your recollection of that meeting was less than clear for your own personal reasons, isn't that right? There was a personal family tragedy at the time which

A. That is correct.

Q. And that affected your recollection, I think, of that meeting, isn't that right?

A. Well my focus of what I was trying to do was other than concentrating on this.

Q. The meeting that you had with Mr. Foley in August of 1998, I think that was a meeting that you initially sought took place sometime later in 1999, isn't that right?

A. I beg your pardon?

Q. I think that meeting, the meeting that you had with Mr. Foley in Dublin Airport on the 18th August 1998, I think that was meeting that you initially sought took place sometime later in 1999, isn't that correct?

A. That is correct, yes.

Q. But I think you now accept that Mr. Foley's account of that meeting or of the date of that meeting is correct?

A. Well I expect that as he flew from Farrenfore or had cancelled meetings, that there would be records to indicate that those meetings were set up on that day. I don't have such records, so I'll accept Mr. Foley's evidence of that.

Q. You do not now maintain that that meeting took place in 1999?

A. That is correct.

Q. Now I have to say to you, Mr. Collery, there are significant differences between Mr. Foley's recollection of that meeting and the account of the meeting that you have given in your Memorandum of Evidence and in your evidence to this Tribunal. And there are just a number of matters

that I want to raise with you in that regard.

Do you accept, Mr. Collery, that Mr. Foley contacted you by telephone to arrange that meeting?

A. Yes, I do.

Q. And do you accept that the purpose for Mr. Foley contacting you was that so that he could obtain statements in relation to his investment?

A. Yes, as I stated, that was one of the discussions we had.

Q. Not that it was one of the discussions, that it was the very purpose for arranging the meeting. Do you accept that?

A. Well I don't I don't know what Mr. Foley's mind was of what he wanted to do, you know, I can only tell you the discussions we had during the meeting. He asked to meet me and that is, you know, I don't understand I don't I wouldn't know what his intentions were.

Q. Mr. Collery, I am not asking you what was in Mr. Foley's mind. I am asking you about the contact Mr. Foley made to you to arrange the meeting and I have to put it to you and Mr. Foley will say he telephoned you for the specific purpose of arranging to meet you to obtain statements in relation to his investment. Would you accept that if that's what Mr. Foley's recollection of events were and if that's the evidence that he is going to give?

A. He phoned me to say that he wished to meet me and then during the course of the meeting he asked me for

statements.

Q. Wasn't the very purpose of meeting, Mr. Collery, so that you could produce statements for Mr. Foley?

A. But if it were, I would have prepared myself and brought the statements along.

Q. Well precisely. Weren't you aware that Mr. Foley had arranged an appointment with his accountant on that day in Dublin, the purpose of which was to bring the statements to his accountant to reconcile his financial affairs?

A. Not

Q. Weren't you aware?

A. Not until I got to the meeting.

Q. Weren't you aware that when you got to the meeting, that the meeting was a very short meeting, isn't that right?

A. I cannot remember the precise but it was long enough to have the conversation that we had. How long that took, ten minutes or fifteen minutes, I don't know.

Q. It was a very short meeting, Mr. Collery, because you indicated to Mr. Foley that you didn't have the statements which Mr. Foley had come specifically to the meeting for, isn't that right?

A. I don't accept that. Yes, I did not have the statements with me but it wasn't short because of the fact that I didn't have the statements there.

Q. And Mr. Foley was angry that you didn't have the statements because you knew that he had made an appointment to see his accountant later that day in Dublin and he needed the

statements for that purpose?

A. I didn't know when I was going to the meeting because if I did, I would have taken the statements with me. But yes, he did indicate to me during the meeting that that was his plans.

Q. We'll come to whether you would have brought the statements to the meeting or not in a minute. What I think you indicated to Mr. Foley, Mr. Collery, was that you needed time to obtain the statements and you initially told Mr. Foley that you needed two more weeks to get the statements. Do you recall that?

A. I don't.

Q. And that you suggested that you might meet again at that time. Do you recall that?

A. I don't.

CHAIRMAN: Sorry to interrupt you momentarily, Mr. Barniville. I think at an early stage in this portion of your evidence, Mr. Collery, you had indicated that you were definite that you hadn't brought the handwritten memoranda compiled in Cayman which, as you have stated, you were keeping for your own protection, but that you thought you might have brought some of the computer generated statements. Are you now satisfied that in fact you didn't have those either?

A. Because obviously I sent them sometime in the beginning of '99.

CHAIRMAN: Once you had resolved in your own mind that it was considerably into the following year, 1999, you are now sure that you didn't bring either the handwritten or the computer generated data pertaining to Mr. Foley's account?

A. That is correct, Mr. Chairman.

CHAIRMAN: Sorry, Mr. Barniville.

Q. MR. BARNIVILLE: I think, Mr. Collery, in the Memorandum of Evidence you furnished to the Tribunal, you did indicate that you may have brought those computer generated copy statements to that meeting. You now accept that that's incorrect?

A. I do.

Q. Now, Mr. Collery, I was indicating to you that you informed Mr. Foley that you needed two more weeks to get the statements and suggested a meeting after that period of time had elapsed, do you accept that?

A. No, I don't because we never had a meeting. If a meeting was set up for two weeks after, I think we would have had that meeting and for that reason I don't believe that that arrangement took place.

Q. We will come to that in a minute, Mr. Collery. That was the arrangement that was made and to that end Mr. Foley made another appointment with his accountant on the 10th September 1998 so that you could produce the statements for him in the intervening period. Do you accept that?

A. No, I don't, I have no knowledge of that.

Q. And that you never came back to Mr. Foley within that period, and Mr. Foley was unable to make contact with you by telephone for a considerable period after that. Do you accept that?

A. I am not aware of that.

Q. Now in your evidence to the Tribunal, in your Memorandum of Evidence, you indicate that a number of issues were discussed with Mr. Foley at that meeting and I just want to go through some of those because there is a significant difference between Mr. Foley's recollection and the evidence that you gave.

Now, I think you indicated that you discussed at the meeting Mr. Foley's wish to close his account, isn't that right? It's in your Memorandum of Evidence, Mr. Collery.

A. No, I don't think there was any mention of the closing of account.

Q. I will read it out.

MR. DEVITT: Could I just ensure that Mr. Collery has the memorandum of his own evidence available to him.

CHAIRMAN: Do you have it there, Mr. Collery?

A. It's in my briefcase.

CHAIRMAN: Mr. Devitt, perhaps you or Mr. Sheehan could furnish him with a copy. I agree it's desirable he has it to hand.

MR. DEVITT: Thank you, Chairman. (Document handed to

witness.)

Q. MR. BARNIVILLE: Mr. Collery, I am just referring to paragraph 14 of your Memorandum of Evidence. This is evidence that you confirmed in your evidence to the Tribunal. Do you have it there?

A. Sorry, when may I correct, when you said closing the account, I was referring to the Cayman situation.

Q. That wasn't the purpose of the meeting at all, was it, Mr. Collery? Wasn't the purpose of meeting so that Mr. Foley could obtain statements in relation to his account? There was no question of any discussion about closing the account?

A. In the totality of the conversation, when I say closing, I meant an account which had been closed in Guinness & Mahon.

Q. I see. And furthermore, Mr. Collery, you said in your evidence and in this Memorandum of Evidence that you had seen reference to Mr. Foley in Mr. Furze's records in conjunction with A/A40. That's what you said in your evidence and in this memorandum?

A. Yes.

Q. I have to say it to you, Mr. Collery, Mr. Foley strongly disputes that anything of that nature was discussed at this meeting. Mr. Foley will say to the Tribunal, Mr. Collery, and you can comment in a moment, that Mr. Furze's name was never mentioned at this meeting. That A/A40 was never mentioned at this meeting. That the Cayman Islands were

never mentioned at this meeting. That you never mentioned to Mr. Foley that you had just come back from the Cayman Islands. Do you dispute that?

A. Well, I find it incredible, he was looking for statements of his account and that those things were never mentioned, because those are the very things that surround this account.

Q. But Mr. Foley's belief was, and you have seen the documentation, that his investment was in a fund called Klic Investments, isn't that right? You have seen the documentation?

A. Yes, I have seen the documentation with Mr. Foley. I was not aware of Klic Investments.

Q. And there was no mention at this meeting in Dublin Airport of Mr. Furze, of A/A40 or of the Cayman Islands. You don't accept that. Clearly we will hear from Mr. Foley in a moment.

A. Well I find that totally incredible that, you know, here we are looking for statements of his investment and we are not mentioning the Cayman Islands or where it was.

Q. Because you didn't produce any statements at the meeting. The very purpose of meeting was to get statements and you never produced any statements.

A. Precisely and we discussed it.

Q. And you indicate in your evidence to the Tribunal that you told Mr. Foley that he should contact Mr. Barry Benjamin and you gave him a phone number for Mr. Benjamin, isn't

that right?

A. That is correct.

Q. You never made any mention of that in your Memorandum of Evidence to the Tribunal, did you Mr. Collery?

A. I think

Q. I think if you look at paragraph 14, you will see no mention of Mr. Barry Benjamin.

A. I think in my evidence, and many times during my conversations here, I have always contended that from 1997 onwards, anything that should be got from Cayman should be through Mr. Barry Benjamin.

Q. But isn't your statement that you informed Mr. Foley at the meeting that he should contact Mr. Benjamin, isn't that entirely inconsistent with you sending statements yourself some nine months later to Mr. Foley?

A. Not at all. I sent Mr. Foley statements up to a certain date. After that date and the up to date position and the future position of that account was contact with Mr. Barry Benjamin which I have just stated.

Q. Mr. Foley will say there was no mention of Mr. Barry Benjamin or no mention of any phone number for Barry Benjamin at that meeting.

Now, the other matter that you indicated was discussed at the meeting was the holding of a joint account by Mr. Foley in Guinness & Mahon. This is a resident account in Guinness & Mahon. I think you indicated that that was discussed at the meeting?

A. I do indeed.

Q. I think you indicated that Mr. Foley gave you a copy of a letter, showed you a copy of a letter dated 25th May 1988 transferring that account into the joint names of Mr. Foley and his daughter, isn't that right?

A. Yes indeed.

Q. But isn't it the case and that's where you say that's where you heard about this joint account, is that right, at this meeting?

A. That is correct.

Q. Well, Mr. Collery, can that be consistent with the correspondence that you were referred to by Mr. Coughlan in your evidence, back in November of 1990 when you were writing to Mr. Humphreys in Guinness & Mahon closing that joint account, you knew about it back then, didn't you?

A. I did indeed, yes.

Q. So it wasn't it wasn't news to you. There was no reason for Mr. Foley to be discussing these circumstances surrounding the opening of that joint account in Dublin Airport in 1988. You knew about it back in 1990.

A. I think we are confusing the joint account. There was no confusion about the joint account that was in Guinness & Mahon. The confusion was about the joint account or the intention of Mr. Foley, as I understood it, that was in relation to his Cayman investment, that it should not be in his name, it should be in his name and his daughter or in his daughter's name.

Q. I see, Mr. Collery. Well Mr. Foley will say there was no discussion of that nature whatsoever at that meeting.

Now, after the meeting, I have indicated Mr. Foley will say that you were to come back to him within two weeks for statements but you didn't do so. You don't accept that?

A. I have no recollection of that.

Q. The fact of the matter is you didn't, in fact, come back to Mr. Foley at all, did you? You sent, nine months later, a series of statements in May 1998, isn't that right 1999, excuse me.

A. I did.

Q. I think you said there was no covering letter with those statements, isn't that right?

A. That is correct.

Q. And I think those statements did refer to Ansbacher Limited and Hamilton Ross and then the codes A/A40, A/A49, isn't that right?

A. To the best of my knowledge, that is correct.

Q. There was no indication on of any of those statements that they related to Mr. Foley?

A. That is correct.

Q. Mr. Foley will say that that was the first time he saw those names or heard those names and it was not clear to him that they related to his investment in Klic Investments. Do you accept that?

A. No, I don't.

Q. That's the evidence Mr. Foley will be giving in due course,

Mr. Collery.

One other issue I want to take up with you, Mr. Collery, is in relation to statements. You indicated on last Friday, Mr. Collery, in answer to Mr. Coughlan that if Mr. Foley had asked you for statements, they would have been no difficulty in sending them to him. Would you like to change or qualify that answer in the light of what we know about the meeting in August 1998 and the subsequent sending of statements some nine months later?

A. I think, by the fact that I sent the statements indicated my that there was no difficulty. I did comply with his request, be it sometime later, but I did comply

Q. Nine months later, Mr. Collery. The meeting that you had with Mr. Foley in September 1995, I think you are aware that Mr. Foley was looking for statements at that time as well, isn't that right?

A. I don't recall that he was, but

Q. I think it was put to you by Mr. Coughlan that that was Mr. Foley's account of the discussion that took place prior to that meeting and I think you accepted that.

Mr. Coughlan had indicated Mr. Foley will say that he was looking for statements and wanted to make a withdrawal.

You accepted if that was his recollection, that you accepted that. Now he didn't get any statements at that meeting, did he?

A. No.

Q. And he didn't get any statements thereafter, did he, until

May of 1999?

A. That is correct.

Q. So I think it's clear and I have to ask you to accept that Mr. Foley, in fact, had enormous difficulties in obtaining statements from you throughout the entire period, isn't that right?

A. I don't believe that is correct. If he had contacted me, I would have, and as I have done for others, given him the statements and I did give him the statements in '99.

Q. You did, nine months after Mr. Foley had arranged specifically to meet you to get them, isn't that right?

A. That is the period that it took, yes.

Q. Thanks, Mr. Collery.

CHAIRMAN: Before I invite Mr. Devitt, as Mr. Collery's own counsel, there are one or two practitioners present.

Anybody else wish to address any matters to Mr. Collery?

Mr. Devitt.

MR. DEVITT: Thank you, Sir.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. DEVITT:

Q. MR. DEVITT: Mr. Collery, I will return to Mr. Foley in due course, but I'd like to return to two matters which I think are significant both for you and for the Tribunal at this juncture.

I think this is your fifth day giving evidence and you have

been taken through quite a wide range of material covering a significant span of years and you have dealt with material in great detail. However, I think there are two matters which were visited and revisited and I think it's important that we again turn to them now. And those two matters are the decision you made to return or go to Cayman in July of '98 and the other matter is the giving of documents to one Margaret Keogh.

Now, you have given a certain deal of evidence, a certain amount of evidence in relation to this already. Can I just ask you to clarify, when you went to Cayman, you had a certain amount of information. You had given a certain amount of information to the Tribunal. When you returned from Cayman, did you have any more information in relation to the matters, the subject matter that the Tribunal was investigating into? Did you acquire or get any more information as a result of your trip to Cayman in July '98?

A. Other than two names. The content of the information was purely the bringing up of the financial records from a period which was March/April of '97 to July of '98 and then the listing of the names to which I referred and yes, that was additional.

Q. You didn't, in fact, come back with documentary evidence. You came back with handwritten statements that weren't in your possession before you went

A. And those in themselves, as I explained to Mr. Connolly, were manually calculated records from the cut off date from

when the computer records ended up to July '98.

Q. But that was all information that you could have compiled from records here, is that correct, and Mr. Coughlan has pointed that out.

A. Absolutely, as I concurred with Mr. Coughlan.

Q. And the reason that you gave to Mr. Coughlan and indeed the Sole Member of the Tribunal, that you wanted to go to Cayman to be in a position to reconcile all of the accounts, as it were, it's been suggested to you that this reason is implausible?

A. Well I wanted to meet Mr. Barry Benjamin first of all

Q. Well it was at Mr. Benjamin's request that you went to Cayman in the first place?

A. Absolutely. And I was travelling extensively during that year and I had a number of calls to assist him and to meet him but I wasn't able to do so and that was the first opportunity I had in doing so. In fact it was a week out of my own personal holidays.

Q. Can I put a direct question to you. Did you go to Cayman to collect any new information?

A. No.

Q. Did you go to Cayman to collect any new information that might assist somebody in either hiding or covering or concealing information that might be of assistance to this Tribunal?

A. No, I did not.

Q. Was the decision to go to Cayman your own and your own

solely?

A. My decision, driven by the request from Mr. Barry Benjamin.

Q. Were you influenced or offered an inducement or reward by anybody to go to Cayman on their behalf?

A. Other than Mr. Benjamin paying for my airfares, no.

Q. Did any holder of public office or anybody acting on behalf of the holder of public office offer you any inducement or reward or favour to go to Cayman?

A. Absolutely not.

Q. Would somebody without your knowledge and acting on behalf of a holder of public office have asked you to go to Cayman to do something that might obstruct the workings of this Tribunal?

A. No.

Q. In other words, were you requested by any third party to go to Cayman?

A. No.

Q. When you left Cayman, you returned with documents, you brought back documents into this jurisdiction, is that correct?

A. That is correct.

Q. You didn't make these documents available to the Tribunal?

A. That is correct.

Q. These documents contained largely information that was already available to the Tribunal?

A. Well the Tribunal had a cut off balance and they didn't have the calculated-up daily balances, yeah.

Q. These documents would no doubt have assisted the Tribunal?

A. Yes, they would have assisted them in bringing them to the up-to-date position, or up to the July '98 position.

Q. Can I take it then, if it was your intention to obstruct the work of the Tribunal in any way, or if it was your intention that these documents should not be made available to the Tribunal, you wouldn't have brought them back into this jurisdiction?

A. That's true, yes.

Q. Well can I take it then from that that it wasn't your intention to obstruct or deprive the Tribunal of the benefit of these documents?

A. Absolutely not. As I said, and I do accept from Mr. Coughlan earlier on, that my hesitancy in doing so was a personal decision of protection which, in the view of hindsight, I now accept I was wrong in doing so.

Q. But you are quite definite you were acting for purely your own purpose and not on anybody's behest on this occasion?

A. Absolutely, without any shadow of a doubt.

Q. When you took the documents back into the jurisdiction in around 1998, is that correct, July of 1998?

A. That is correct.

Q. And as I understand from your evidence and from my instructions, you had these documents in your possession for approximately one year, is that correct?

A. That is correct.

Q. And then subsequently in October of '99, you gave the

documents to a Margaret Keogh, is that correct?

A. That is correct.

Q. Now, I think it's been it was suggested to you or

perhaps stronger than that, it was put to you by

Mr. Coughlan that this was an effort to conceal documents

from the Tribunal, to put them beyond the reach of the

investigation of that Tribunal. Wasn't that what

Mr. Coughlan was suggesting to you?

A. That is one of the suggestions that was put to me.

Q. Well now, when you gave the documents to Margaret Keogh,

she would have been aware of your involvement in both this

Tribunal and the McCracken Tribunal?

A. She was very much aware of that, yes.

Q. She is aware, let's say, of your active participation in

both Tribunals?

A. She is indeed.

Q. Well did you give her any instruction in relation to these

documents?

A. Other than to keep them for safekeeping for me and that I

would, in due course, come back to her but again, I had

some travel schedules around that time and didn't get

around to doing so and then subsequently, actually the day

that I was travelling abroad, got the notification that she

or her solicitor had handed or been in touch with the

Tribunal.

Q. Yes, well they eventually found their way to the Tribunal?

A. That is correct.

Q. But did you instruct, inform or advise her that these documents should be destroyed or should under no circumstances be shown to any third party, including members of the Tribunal?

A. Absolutely not.

Q. So you gave her these documents, you say, for safekeeping?

A. For my own personal safekeeping.

Q. They would have been available to you and, be it very belatedly, to show to the Tribunal at some later stage?

A. Yes, they were here within the jurisdiction to do that.

Q. Would you accept, and you have accepted in your evidence, that you didn't inform the Tribunal of the fact that you went to Cayman or that you had given these documents to Margaret Keogh?

A. That is correct.

Q. And it was as a result of Margaret Keogh's own actions that the Tribunal are now in possession of these documents?

A. That is indeed correct.

Q. However, if it was your intention to conceal these documents, would you agree with me that it was a fairly inept one?

A. It certainly was.

Q. That you would have had ample opportunity, if it was your intention to keep these documents, you would have had ample opportunity during the course of the year to take more effective means of depriving the Tribunal of these documents?

A. Yes, that is true.

Q. Just one final thing, in relation to the journey to Cayman and your meeting with Mr. Barry Benjamin, the deductions that were made in respect of legal fees, the deductions from the accounts.

A. Yes.

Q. Who instigated this notion or this idea?

A. He did. These were, as I said, they were items, maybe seven or eight items outstanding on the account ledger sheet from the bank and these were payments by Mr. Furze, they were totalled up and totalled I think 58,000 and then he made the decision of the apportionment to the various accounts.

Q. Would you, Mr. Collery, have seen yourself in a position of control or authority to have made a decision in relation to those deductions?

A. In relation to my own account, yes, I did exercise that, but in relation to the others, no. They were his clients.

Q. Now, if I can just move on a bit. Mr. Coughlan suggested to you, rather unfairly in my view, but he suggested to you that you were the new Des Traynor. Now, without going into all the evidence in this Tribunal and the previous Tribunal, the McCracken Tribunal, Mr. Traynor seems to have been involved in a lot of things. You were involved in the operation here of the accounts, isn't that correct?

A. My function was purely clerical thing. I never had the

profile of Mr. Traynor's society. In business, he was chairman and directors of many very, very large companies, so I just have never met those standards.

Q. Who did Mr. Traynor take his instructions from?

A. In relation to

Q. In relation to accounts? As I understand it, Mr. Traynor was involved in setting up a bank, in soliciting clients, in soliciting deposits and took instructions actually from clients.

A. I think now, I can't say now that he solicited deposits, I am not aware of that but he certainly liaised with people and set up situations for them in an offshore environment.

Q. I understand. Did you take instructions directly from clients or were you acting in a more supportive role?

A. After Mr. Traynor's death, Mr. Furze asked me to facilitate his clients in the withdrawing of funds from their accounts with him and that I did.

Q. Well, Mr. Coughlan said that he would rely on, among other things, the evidence of Mr. Sam Field-Corbett and I think you have had a chance to have a look at that memorandum of Mr. Sam Field-Corbett and the page 3 of Mr. Sam Field-Corbett's memorandum, in the fourth paragraph down, in the middle of that paragraph he says "My understanding as earlier indicated was that after Des Traynor's death, John Furze effectively took control of the accounts.

Padraig Collery operated them on a day to day basis in Ireland." Would you agree with that description of your

role?

A. Yes. Mr. Furze did take control and take responsibility for them.

Q. Would you agree with me then that if you were the new Des Traynor, it was in a very limited or moderated or slimmed down version of what Mr. Traynor had been doing up till then?

A. Yeah, I was not a director of the bank as Mr. Traynor was. I was purely acting in a clerical capacity.

Q. A number of questions were put to you in relation to what Mr. Furze was or was not doing in and around 1997 prior to and during the initial stages of the McCracken Tribunal.

You, as I understand it, cooperated fully in respect of investigations in the McCracken Tribunal, is that correct?

A. That is correct.

Q. And as I understand it, your evidence was very central, it was a core part of the evidence heard by that Tribunal, is that correct?

A. Well, how core it was, I certainly acted and gave confirmations in relation to transactions that we believe happened, how they happened, the process, I went through all the process with the Tribunal and gave them support in tracking the funds into the accounts.

Q. You gave substantial evidence in relation to the memorandum accounts, the S8 accounts held, I think, by Mr. Charles Haughey, is that correct?

A. That is indeed correct.

Q. And findings were made as a result of evidence you had given, is that correct?

A. Yes, from '94 onwards, obviously there was substantial evidence of the payments that I made to Mr. Stakelum and eventually was used for the payments of Mr. Haughey's expenses.

Q. Well, I am not quite sure what the suggestion was Mr. Coughlan was trying to make but just for the purposes of clarity, during this time, were you or did you have any discussions with Mr. Furze or did you collaborate with him in any way that might have obstructed the workings of the McCracken Tribunal?

A. Absolutely not. In fact I would go further to say that both Mr. Furze and Mr. Benjamin has said to me that I must cooperate and fulfill all my obligations to whatever regulatory authorities are in this country.

Q. And perhaps with the exception of your trip to Cayman and handing the documents to Margaret Keogh, you have endeavoured to do that?

A. Absolutely.

Q. Now, yesterday morning Mr. Coughlan took you through the A/A30 account, which I think is your own account?

A. That is correct.

Q. And I think a question was put to you in relation to funds that were held in a suspense account in Hamilton Ross I think and I think this account was holding what we call fees and differential?

A. That is as I described it, yes.

Q. And Mr. Coughlan eventually put it to you that you were the owner of half of these funds.

A. Absolutely not. Those, as I explained to Mr. Coughlan, those were Mr. Furze's funds. They were in that company. He then made a decision to split it. 50 percent to myself and 50 percent to Poinciana Fund.

Q. Yes, you gave evidence that you received a payment out of that and that the payment out represented approximately 50 percent of funds?

A. And it was his decision to do that.

Q. In your answer to the question when Mr. Coughlan said you were the owner of these funds, what was your answer?

A. My answer is no.

Q. In your understanding, who owned those funds?

A. Mr. Furze.

Q. Were you in a position to make a call on those funds? Could you say I have an entitlement to 50 percent of those funds?

A. No.

Q. Nevertheless, that was what happened?

A. That's what happened.

Q. What was your understanding in relation to that payment?

Was that a payment in respect of services rendered or services that would be rendered into the future?

A. The I do recall the conversations that were had around that time in relation to the splitting of that, that he was

saying I have had a good living out of my operation here in Cayman, where he was working for Ansbacher (Cayman) Limited. He was setting up his own new company. He was going to, all future fees etc. was going to accrue to him from the balances and accruals and the account connections that he had here in Ireland, he was going to use that as a basis for the launch of his new company, both from an asset point of view with the balances, the cash that he had from these depositors and he wished to say "Look, Mr. Traynor and myself have had this account here. You have contributed to the accounting aspect of this and assisted both me and Mr. Traynor in doing so and I think it is fair that we should close this account and split the fees. You get half and the Poinciana Fund would get the other half." That was the kind of discussion that took place.

Q. Moving on a bit, I think Mr. Coughlan, in looking going through these statements in relation to this account, suggested to you that your receipts, the money you were received were increasing over the years?

A. Certainly from after Mr. Traynor's death, they did increase and increase substantially but that was the premium that I wanted to put on providing this service, because unless I did, you know, I wanted to make sure that I was going to get out of this very, very quickly and that there was going to be a heavy premium there.

Q. Does it suggest that you were doing more work or that you were getting more pay for less work?

A. I was getting more pay and less work.

Q. So I think you previously said that you were trying to scale down, the accounts themselves were being scaled down and you saw your cut off point as somewhere between April '97?

A. Well the Ansbacher funds at that time had been transferred back to Cayman, so therefore that account keeping had ceased to be required and so now we are concentrating solely on Hamilton Ross.

Q. And just before I deal with the evidence that I understand Mr. Foley is going to give, just again in reference to Mr. Barry Benjamin's current position. In as much as the present position which has been described by Mr. Coughlan as closing up the shutters, in as much as that is detrimental to the work of this Tribunal and I am not sure that it is, did you encourage, invite or assist him in any way in coming to adopt that position, the position that he now adopts?

A. Absolutely not. In fact my actions are contrary to his because all the documentation of his in relation to Hamilton Ross is here in this jurisdiction and is with the Tribunal.

Q. If I could turn to the meeting with Mr. Foley in 1998. You were asked about the purpose of this meeting. You met Mr. Foley, and I think it's agreed now that you met him on the 18th August of 1998. Were you aware of the purpose of the meeting before you met Mr. Foley?

A. As I stated before the meeting, no. The request was if I could have a meeting with him.

Q. You could, of course, have speculated but you weren't aware what was in his mind. He requested the meeting

A. I can't recall, you know, what was discussed on the telephone.

Q. It's been suggested to you that this was a very short meeting, is that your recollection?

A. I think it was about, in between fifteen minutes and a half an hour. If that's short, well then that's the extent of what it was.

Q. It's been suggested to you that in your Memorandum of Evidence, which I think is dated the 19th January, that you are incorrect in a number of things that you said about this meeting. These are dealt with at paragraph 14. And I think you have clarified some of them for the Tribunal in answer to Mr. Barniville's questions, is that correct?

A. That's correct.

Q. Well, Mr. Barniville suggested to you that there was no reference to Mr. Furze.

A. I find it hard to believe that you could have a conversation about an overseas account at Ansbacher and not have a reference to Mr. Furze and Mr. Benjamin.

Q. Now, you are quite definite about this. You are quite definite that the name came up between you and Mr. Foley?

A. Yes. It would have had to.

Q. And you are quite definite in your recollection about this?

A. Yes.

Q. And you do make mention of AA40 or A/A40 in your memorandum, can you say now that there was a definite reference to that?

A. In that I named the actual account by its actual reference number, I would accept, perhaps I may not but I certainly would have discussed his offshore account.

Q. Did you tell Mr. Foley that you had been to the Cayman Islands?

A. Yes, I believe I would have done.

Q. Why then do you think that Mr. Foley is now saying that there was no mention of Mr. Furze, no mention of Cayman?

A. As I said, I find that extraordinary as to why he says that. I don't know.

CHAIRMAN: Mr. Devitt, I am giving you as much latitude as I can but I don't think that's a particularly appropriate question.

MR. DEVITT: In the memorandum that Mr. Foley initially furnished, he didn't include any reference to this meeting but he subsequently submitted a memorandum to the Tribunal and the meeting with yourself is dealt with under the heading "Material inadvertently omitted from the first memorandum" and he goes on to recall then what he remembers of the meeting in August.

Now, in your statement, you say at paragraph 14, "I

mentioned to him that I had seen in the records of Mr. Furze a reference to him in conjunction with A/A40." And you have already dealt with that. You then in the next sentence say "He appeared surprised at this and proceeded to show me a copy of the letter he had sent to Guinness & Mahon Ireland Limited in which he requested the account to be held in joint names with his daughter."

Now, is this are you quite clear in your recollection about this?

A. I am indeed, yeah.

Q. I am not sure what evidence Mr. Foley is going to give but you are saying that this letter was produced?

A. Well, you know, this was a 1988 letter that went to other than me in Guinness & Mahon. I saw it there and then subsequently saw it obviously in the documentation which the Tribunal sent to me and it was a very

Q. Just let me try to establish that please. This letter is dated 1988. So it was ten years old when you had seen it in August?

A. Correct.

Q. And had you seen it previously?

A. No.

Q. You hadn't seen it in the interim?

A. No.

Q. And when did you next see it or a copy of it?

A. After the Tribunal sent me the evidence of Mr. Foley and the documentation was sent to me.

Q. And the evidence, the Memorandum of Evidence, both the original one and the supplemental one, was furnished to you by this Tribunal after you had submitted your memorandum?

A. That is correct.

Q. So the next sight you had of that letter or a copy of that letter was at the Tribunal here?

A. That is correct.

Q. So I take it then it's your, you are unequivocally saying under oath that that letter was produced?

A. Absolutely, you know, because I distinctly I would have no other way of knowing even the reason why the letter was written or why the name even of the domestic account was changed in Guinness & Mahon, you know. He explained that he had written to Guinness & Mahon to change the domestic account into a joint account and the reason was that, at that stage it was for health reasons. I just don't want to elaborate on that and that he seemed to recall as well that also around that time he would have had a discussion with Mr. Traynor and that his account or his investment would also have been in that name or in the name of his daughter.

Q. It was suggested to you that arising from your conversation with Mr. Foley, that a further meeting was to be arranged. Do you have any recollection of that?

A. I have no recollection of that.

Q. And I take it then that no further meeting took place?

A. That is correct.

Q. You subsequently sent statements to Mr. Foley?

A. Yes, I did.

Q. Was it your understanding that these statements referred to Mr. Foley? They may not have done so directly, but

A. They had a connection with him, be it direct or indirect.

Q. And from your involvement as has been previously discussed at the Tribunal, you took it as referring to him?

A. Him and his daughter or them jointly.

Q. And were these statements trimmed off in any way, the headings trimmed off as we have previously heard of?

A. No.

Q. And were you ever involved in trimming off any statements?

A. No, it was not my custom to do that.

Q. Mr. Collery, finally then, I think you have told Mr. Connolly for the Revenue Commissioners that if somebody wanted to regularise their position with the Revenue, that you would furnish statements or give them whatever information you had, is that

A. I had been giving them, but of late I have not done that now.

Q. And I take it that it is your position that since the McCracken Tribunal, that you have, on your own behalf, have had discussions with the Revenue in relation to your own position, is that correct?

A. Yes, my professional tax adviser is dealing with the Revenue.

Q. In relation to matters arising from this, that you met with

Mr. Justice Costello and you have given evidence to him and his co-inspectors, is that correct?

A. I have indeed and we will indeed continue to work together.

Q. And I think you have also met with the Government-appointed inspector, Mr. Ryan, is that correct?

A. That is correct.

Q. And can I take it that it's your intention then to continue to assist this Tribunal in whatever way you can in the gathering of information?

A. Absolutely.

Q. Thank you, Mr. Collery.

THE WITNESS WAS EXAMINED FURTHER BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Collery, could you assist us now and tell us about the conversation you had first of all with Mr. Furze and secondly, with Mr. Benjamin whereby you were told by both of them to assist regulatory and cooperate with regulatory authorities in this jurisdiction please.

A. Well they were general conversations over many periods. And they are well aware that I am assisting

Q. No, Mr. Collery. You just said in response to your counsel that over and above assisting, that you had conversations with Mr. Furze and Mr. Benjamin where you were told to cooperate and assist with regulatory authorities in this jurisdiction. Now, what I want to know is each and every occasion you discussed that with Mr. Furze, what the discussion was, what he told you and

likewise in relation to Mr. Benjamin, and when those discussions took place please.

A. I wouldn't be able to remember exact dates of conversations, Mr. Coughlan.

Q. As best as you can, and

A. But the period in where it was most likely to have happened

Q. No, you have given evidence that they did happen. So let us say, yes, the period when they

A. I can only do my best and say the period.

Q. Yes.

A. At the beginning of the McCracken Tribunal, I would have had an order served on me in relation to documents that I had in my possession at that particular time.

Q. Yes.

A. I would have advised Mr. Furze that this order had been made up on me.

Q. Yes.

A. And that I was complying with that order.

Q. You had to by law comply with it?

A. Absolutely, yeah. You know and it was at that point in time that we'll say, you know, you are resident in that jurisdiction and yes, you have to comply with the regulatory authorities within that jurisdiction.

Q. So that is the comment.

A. Yes.

Q. Now there are two things that arise from that. First of

all, you needed nobody to tell you that you had to comply with the law, isn't that right?

A. Absolutely. That's the advice obviously I get from my professional advisers as well, but I am stating

Q. Why did you advise Mr. Furze that this order had been served on you and that you had to comply with it? Why?

A. Not that I had to, that I was complying with it.

Q. You had to.

A. Okay, sorry well we are going into splitting words.

Q. Oh no, no. It is a legal obligation on you.

A. It is indeed and I accept that totally.

Q. Why were you advising Mr. Furze?

A. Because after all I was working on his behalf at this point in time. I was carrying out record-keeping of his books and I was saying, look, I am handing over your books and indeed of Ansbacher as well, I am handing over their books to this inquiry.

Q. This is in the first instance you told us in relation to the McCracken Tribunal?

A. That is in relation to the McCracken Tribunal, yes.

Q. Was it just one conversation you had with him?

A. No, there would have been a number, as I explained, and we had conversations. We then had the request from Ansbacher for their files to be sent back to them and there would have been a conversation at that stage and we were they were released, but the Hamilton Ross were retained here and continued to be so. Then when the order would have come

from Mr. Moriarty's Tribunal, obviously I would have advised Mr. Furze at that stage that I was, had now had an order from your Tribunal to comply and that I was complying in the same way as I had done with the McCracken.

Q. And what did Mr. Benjamin say?

A. It was Mr. Furze

Q. Mr. Furze in the first instance, what did he say then?

A. As you have done so, words that you are resident in that jurisdiction and the rules, the law of the land applies to you, so you must comply with that and I did.

Q. Of any documents you held in your possession?

A. Yes.

Q. And in relation to any information which was being lawfully sought by the Tribunal?

A. That is correct.

Q. And you were told by him that you must comply with that?

A. That is correct.

Q. Now, did you then have a similar conversation with Mr. Barry Benjamin?

A. I wouldn't have had a similar one. Obviously I was complying at that point in time so he would have been aware that I was indeed complying. As I said, I have actively if people mentioned to me that they had a request from the Tribunal to sign a document requesting information, I would have said yes, you must sign that. He has chosen otherwise. I am surprised and amazed that he has not complied with that.

Q. But you didn't comply with it either, Mr. Collery, isn't that right?

A. In relation to the documents, I have accepted my position of where

Q. Leaving Mr. Foley out of it, you didn't comply with the orders of the Tribunal in respect of the information which was being sought or the documents which were being sought, isn't that correct? There is no doubt

A. In relation to the documents that I had in question, that is correct.

Q. There is no doubt. You say that you were instructed by the person. You were instructed you are now saying you were instructed by the person on whose behalf you say you were carrying this document out to comply with it, is that right?

A. Yes.

Q. So can we take it that after you received the schedule of information being sought and documents being sought by the Tribunal, that you so advised Mr. Barry Benjamin?

A. This is the '98

Q. Yes.

A. I don't recollect that I had a conversation around there.

I am talking about the previous the first order that I would have received. I don't recall that I had any specific of the '98 document.

Q. So Mr. Benjamin had, you say, instructed you to comply

A. Well instruct is a I know I used the word instruct and

sometimes I misuse words. It was in a conversation we'll say, "You know, Pdraig, you are in the jurisdiction, you must comply." It was a conversation of that nature.

Q. And you have told us was that in the context of should I comply or what?

A. Absolutely not. No. It's, you know, a conversation, "Look, I have this order. This requires me to hand over all the documents that I have in my possession etc, etc."

And the retort to that would be, "Well you know, you are in the jurisdiction, you must comply."

Q. Very good. So can we take it from that conversation, whoever was running the operation, the two people involved in Hamilton Ross, in terms of the operational sense here in Dublin and as you say, responsibility sense in Cayman, had arrived at a position that Hamilton Ross was to comply, isn't that correct, in relation to Hamilton Ross' documents?

A. Certainly here in Ireland, yes, Hamilton Ross was to comply.

Q. And you didn't, isn't that right?

A. In respect of the documents that I had, I didn't.

Q. You didn't comply, isn't that right? Isn't that right?

Isn't that right, Mr. Collery?

A. I have already accepted that.

Q. Did you advise Mr. Barry Benjamin that in respect of the company for which you had responsibility, that you had failed to comply with a lawful order or direction from this

Tribunal?

A. No, I had not, because again I was told that I should not discuss it with anybody.

Q. Just to be fair to yourself there, Mr. Collery, when you said you were told not to discuss it with anybody, I think what you were told not to discuss with anybody was the making of the 1999 order made by the Tribunal to obtain the documents which were in the possession of Ms. Margaret Keogh, isn't that correct?

A. If that's the strict meaning of what was told to me. I took it as a wider implication, that I shouldn't discuss anything with anybody about those documents in relation to the order.

Q. In relation to the confidentiality and the protection the Tribunal was affording or was giving to Mr. Foley to vindicate his constitutional rights in respect of this matter, that you were told not to discuss it with anybody else and only discuss it with the Tribunal.

A. That is correct.

Q. That related to what happened in 1999, in November of 1999, isn't that correct?

A. That is correct.

Q. In relation to the previous orders and directions and information being sought from the Tribunal, you had not complied with those, isn't that correct?

A. That's correct.

Q. You had not been told by the Tribunal not to discuss that

with Barry Benjamin, because the Tribunal didn't know anything about the documentation.

A. That is indeed correct.

Q. It's in that period I want to know did you inform Mr. Benjamin that you had not complied with the requirements, lawful requirements of this Tribunal?

A. No, because I had those documents for my own personal self and I had not told him.

Q. Now, in response to a question from your own counsel, maybe it came across erroneously to my hearing at least, I don't think you are suggesting for a moment, are you, that if these documents hadn't been obtained by the Tribunal, that you had ever any intention of bringing them to the attention of the Tribunal?

A. I think what I understood, did I ever make any effort to take them outside the state? They were in my own personal thing. I know you have asked me that question yourself as well who knows what would have happened in the future? We can't that's a question I cannot answer, because it's purely

Q. Mr. Collery, Mr. Collery, they could have been destroyed in the future by you?

A. Sorry?

Q. They could have been destroyed by you?

A. Well I had a year to destroy them.

Q. They could have been destroyed by you if they hadn't been discovered.

A. They could have been, yes.

Q. They could have been taken down to Sligo and buried, for all we know, isn't that correct?

A. They could have been, yes.

Q. You didn't tell the Tribunal about them. You didn't seek any legal advice about them, isn't that correct?

A. It is indeed correct.

Q. You didn't even inform your own solicitors, isn't that correct?

A. That is correct.

Q. Now, I know you have been asked a number of questions about the statements which were furnished to Mr. Foley and when you did that. I know Mr. Foley has informed the Tribunal that that occurred in May or that's his memory or recollection in relation to events. Can you be any more specific in respect of your own recollection?

A. Regrettably, Sir, I can't.

Q. Thank you, Mr. Collery.

CHAIRMAN: Well there are some matters still do arise in my mind, Mr. Collery, but I think after some 14 hours in the witness-box, I will give you an opportunity to recharge your batteries for taking them up on another occasion.

Very good. There is not a great deal of point in starting Mr. Foley's evidence. I take it it is intended for him to be the next witness, so we will resume with Mr. Foley's evidence at a quarter to two.

MR. BARNIVILLE: There was just one point I wanted to raise I apologise to Mr. Coughlan. It's a matter that arose in the course of Mr. Devitt's examination of this witness and I don't want to put the question to Mr. Collery, but lest there is

MR. COUGHLAN: Perhaps My Friend can take it up with me in the first instance and we will see.

MR. BARNIVILLE: It's just lest it be misconstrued elsewhere and it relates to the inadvertence of including in the first Memorandum of Evidence of Mr. Foley the meeting in August 1998

CHAIRMAN: Without breaking the normal rule that has been devised, Mr. Barniville, I think in the circumstances I will let you put a limited matter.

MR. COUGHLAN: Perhaps it's a matter that I should explain. I think that's what Mr. Barniville probably is requiring at this stage, Sir.

MR. BARNIVILLE: Thank you, Sir.

MR. COUGHLAN: Memoranda of Evidence are furnished to the Tribunal. Persons furnishing them know they are not in the form of a statement like a statement given to the police. A second memorandum was furnished by Mr. Foley whereby we inadvertently left out information which he, in fact, furnished to the Tribunal previously. I think it's

in that context of a reference to a second memorandum that

My Friend, Mr. Barniville, wanted clarified.

CHAIRMAN: I think that was reasonably clearly set out,

but lest there be any doubt, it's well that it has been

specifically and explicitly put. A quarter to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:45PM:

CHAIRMAN: Good afternoon.

MR. COUGHLAN: Mr. Denis Foley.

Mr. DENIS FOLEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY Mr. COUGHLAN:

CHAIRMAN: Good afternoon, Mr. Foley, thank you for coming

to the Tribunal. Please sit down.

Q. MR. COUGHLAN: Mr. Foley, I think you have furnished

Memoranda of Evidence for the assistance of the Tribunal,

isn't that correct?

A. That's right.

Q. And the procedure I intend adopting is to take you through

those Memoranda of Evidence to lead you through them and

then when I have completed that, to come back and ask you

some questions if any questions arise. Is that procedure

acceptable to you?

A. Thank you, Mr. Coughlan.

Q. You may have the Memorandum with you in the witness-box for the purpose of giving your evidence. I think you have it with you?

A. I have, yes.

Q. Now I think you have informed the Tribunal in this Memorandum that you make this Memorandum of Evidence in response to a request from Mr. Davis, solicitor to the Tribunal, is that correct?

A. That's right.

Q. And I think you have informed the Tribunal that if the Tribunal has any queries arising out of this Memorandum, both you and your solicitor will be happy to respond to assist, is that correct?

A. That's right.

Q. And I think you said that you have cooperated with the Tribunal and "am happy to continue to do so."

A. That's correct.

Q. Now, I just briefly pause there just to depart slightly. I think it is correct to say, Mr. Foley, that once the Tribunal brought this matter to your attention, you have cooperated fully with the Tribunal?

A. Fully, and I have also instructed my solicitor to cooperate fully.

Q. And I think there was some time delay, we needn't go into the specifics of this but there were extensive discussions of a legitimate legal nature going on between your lawyers and Tribunal lawyers?

A. That is correct, Sir.

Q. But that whilst those discussions were going on, you instructed your solicitor to furnish all documents in your possession in relation to the matter to the Tribunal, isn't that right?

A. That's correct, Mr. Coughlan.

Q. Now I think in your Memorandum you go on to say that you are a member of Dail Eireann for the constituency of Kerry north?

A. That's correct.

Q. That you first stood as candidate for the Fianna Fail Party in that constituency in the 1977 General Elections?

A. That's correct.

Q. I think you were unsuccessful?

A. That's correct.

Q. I think you stood again in 1981 and you were elected for the first time to the Dail.

A. That's correct.

Q. And apart from a period between 1989 and 1992 when you were a member of Seanad Eireann, you have continuously been a member of the Dail for the constituency of Kerry north?

A. That's correct.

Q. I think you are also a member of Kerry County Council, having been elected to the council for the first time in 1979?

A. That's correct.

Q. Now I think under the heading of "Personal involvement with

Guinness & Mahon and Desmond Traynor" you have informed the Tribunal that during the 1960s you were appointed rate collector for the town of Tralee?

A. That's correct.

Q. And that you remained in that position until you were elected as a member of Dail Eireann in 1991?

A. Correct.

Q. 1981, I beg your pardon.

A. 1981.

Q. I think you have informed the Tribunal that in 1965 you were asked by one of the directors of the Mount Brandon Hotel in Tralee, which was in the course of construction at that time, to assist the hotel in obtaining bands to play in the hotel's ballroom?

A. That's correct.

Q. I think you have also informed the Tribunal that you were also asked to give some assistance in arranging publicity for the new ballroom?

A. That's correct.

Q. And that as part of your arrangement with the Mount Brandon Hotel, you would receive payment from both the ballroom and from the bands themselves?

A. That's correct.

Q. I think you informed the Tribunal that you were also asked to book bands for The Central Ballroom in Ballybunion.

A. That's correct.

Q. And the Mount Brandon and The Central were highly

successful and you succeeded in obtaining all the top bands in the country.

A. That's correct.

Q. And that you terminated your arrangement with the Brandon ballroom when you became a member of the Dail in 1991?

A. That's correct.

Q. I think you have informed the Tribunal that you met Des Traynor at the time of your involvement with the Mount Brandon Hotel?

A. That's correct.

Q. That Mr. Traynor used to visit the Mount Brandon Hotel in his capacity as accountant with the firm of Haughey Boland whom you believed did the accounts for the Brandon?

A. That's correct.

Q. That you remember on occasion discussing with Mr. Traynor your involvement with the ballroom and in particular in the booking of bands for the ballroom, is that correct?

A. That's correct.

Q. And you have informed the Tribunal that you believe Mr. Traynor visited the Mount Brandon Hotel once or twice a year, is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that in 1975 or 1976, you can't recall the year precisely but in that period, Mr. Traynor asked you about your financial position, is that correct?

A. That's correct, Sir.

Q. And that he informed you that through the bank Guinness & Mahon he would be able to get you a good return on any funds you might have to invest.

A. That's correct.

Q. I think you informed the Tribunal that you believe that Guinness & Mahon were involved in assisting in the financing of the purchase of The Central Hotel in 1972 in which you had acquired a one quarter interest?

A. That's right, I know now that is correct.

Q. I think you informed the Tribunal that some years later, in or around October of 1979, you had the sum of €50,000 to invest?

A. That's correct.

Q. And that the sum was made up as follows: Firstly, in the region of €30,000 which you had accumulated since 1965 from commission payments from bands booked by you for the Mount Brandon Hotel and The Central Ballroom and also from payments made to you by the ballroom?

A. That's correct.

Q. You believe that these amounted to a total in the region of €30,000?

A. That's correct.

Q. Is that correct?

A. Correct.

Q. And that you had converted this sum to bank drafts from time to time which you renewed during the period, is that correct?

A. That's correct.

Q. Secondly, a sum in the region of €20,000 approximately which you had received by way of a contribution towards your election expenses for the General Election of 1977?

A. That's correct.

Q. Of this €20,000, approximately €14,000 was received from members of your own family with a balance of €6,000 from other persons?

A. That's correct.

Q. And again you believe that in the period since 1977, you had converted these receipts into bank drafts which were received from time to time.

A. That's right.

Q. Or renewed from time to time.

A. That's right.

Q. I think you informed the Tribunal that you decided to invest the €50,000 with Guinness & Mahon as you remembered your conversation with Mr. Traynor back in 1975 or 1976.

A. That's correct.

Q. I think you have informed the Tribunal that in October 1979, you gave Mr. Traynor €50,000 to invest with Guinness & Mahon, is that correct?

A. That's correct.

Q. I think you informed the Tribunal that you received two Guinness & Mahon lodgment documents for €30,000 and €20,000 respectively?

A. That's correct.

Q. And I think you furnished those two particular documents or lodgment documents to the Tribunal, is that correct?

A. That's correct.

Q. And I think those are the two documents which are showing on the screen, isn't that correct?

A. That's correct.

Q. Both with the name Foley on them, both do contain the brand of Guinness & Mahon on them, isn't that correct?

A. That is correct.

Q. One is in the sum of €20,000 and the other is in the sum of €30,000, is that correct?

A. That's correct.

Q. I think you say in your Memorandum that your solicitor has already furnished copies of lodgment documents to the Tribunal?

A. That is correct.

Q. I think you informed the Tribunal that your recollection is that Mr. Traynor informed you that your funds would be invested in a fund called Klic Investments?

A. That's correct.

Q. And you have informed the Tribunal that you believe that Mr. Traynor informed you that you would be furnished with statements periodically, is that correct?

A. That is correct, Sir.

Q. I think you have informed the Tribunal that however, you were not receiving any statements and you contacted Mr. Traynor about this, is that correct?

A. That is correct.

Q. That following your request, you were furnished with some statements sometime in 1982?

A. That is correct, Sir.

Q. The statements related to the period from 19th August 1981 to the 20th December 1982 and your solicitor furnished copies of those to the Tribunal.

A. That is correct.

Q. Could you just confirm, I will come back to deal with the handwriting, we will just confirm at this stage the handwriting on the statements is your own handwriting.

A. Yes.

Q. Those are the statements you received?

A. That is right, Sir.

Q. Now, I think you have informed the Tribunal when you received the statements, you wrote in your own handwriting on one of the pages of the statement, "€50,000 lodged Guinness & Mahon October 1979," I think we can see that on the top of the statements.

A. That is correct.

Q. And you have informed the Tribunal that you also wrote on the same page, Klic Investments Limited, sorry, in this name, Klic Investments Limited per Martin Keane sorry, Guinness & Mahon €50,000.

A. That's correct.

Q. That's what was written initially?

A. That's right.

Q. And just for the moment, when did you put that particular writing on them?

A. I'd say it was when I got the information as far as I'd say, I had Klic Investments on and, I'd say around the same time to be honest.

Q. Well we can come back to it.

A. I'd say around the same time, yeah.

Q. Now, I think you have informed the Tribunal that you subsequently added the other words written on the page, that is the words "Martin Keane now left, see Pdraig Collery."

A. That's right.

Q. I think you informed the Tribunal that you believe that you wrote these latter words sometime prior to 1990?

A. That's correct.

Q. That sometime later you made further inquiries concerning your investment and was given, by Des Traynor, a slip of paper with the words "Klic Stg œ72,893."

A. That's correct.

Q. And that later in 1988 you were informed by Martin Keane of Guinness & Mahon that your involvement stood at Stg œ82,688, is that correct?

A. That is correct.

Q. And you informed the Tribunal that you noted this in handwriting on the slip.

A. That's correct.

Q. That is the slip that you had received from Mr. Traynor.

A. Yes, that is.

Q. And I think you have informed the Tribunal as far as you were concerned, your involvement was with Guinness & Mahon in a fund known as Klic Investments?

A. That is correct.

Q. And at no time were you informed that your funds were being invested otherwise or held by another entity such as Ansbacher or Hamilton Ross?

A. That's correct.

Q. That's what you informed the Tribunal.

A. Yeah.

Q. I think you have informed the Tribunal you made two withdrawals from your investment by arrangement with Mr. Traynor, is that correct?

A. That is correct.

Q. Those two withdrawals were in the sum of €20,000 made on the 13th April 1989 and €10,000 on the 16th June 1993.

A. That's correct.

Q. The proceeds of the first withdrawal was furnished to you in the form of a draft drawn on Guinness & Mahon at its branch in South Mall, Cork.

A. That is correct.

Q. And the second withdrawal was paid in cash.

A. That's correct.

Q. These withdrawals were made by arrangement with Mr. Traynor?

A. That's correct.

Q. Now, I think that you have informed the Tribunal that following your election to Dail Eireann in 1991, your contacts with Mr. Traynor were very rare, is that correct?

A. That is correct.

Q. That you telephoned him on a number of occasions and called to see him on two occasions at his office in Fitzwilliam Square to discuss how your investment was progressing?

A. That's correct.

Q. I think you informed the Tribunal that in March of 1990 you received a letter from Mr. Collery informing you that he no longer was working with Guinness & Mahon and that he could be contacted at Mr. Traynor's office, is that correct?

A. That's correct.

Q. And I think your solicitor furnished a copy of Mr. Collery's to you dated 22nd March 1990 and it's just on the screen now and it's from 42 Fitzwilliam Square, it's addressed to you and it reads, "Dear Denis, I am writing to advise you I am no longer working in Guinness & Mahon. My new telephone number is " we have excised that particular number, it does contain a number which Mr. Collery could be contacted at "or you can leave a message with Joan Williams, Mr. Des Traynor's secretary, at the above number and she will contact me. I will 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'd like to discuss with you.

Yours sincerely

Padraig"

I think you received that letter and you furnished a copy of that to the solicitor to the Tribunal, is that right?

A. That's right.

Q. I think you informed the Tribunal that following Mr. Traynor's death in May 1994, you became concerned about your investment, is that correct?

A. That's correct.

Q. You had not been receiving statements, is that correct?

A. That's correct.

Q. I think you informed the Tribunal that you were also having difficulty contacting Mr. Collery.

A. That is correct, Sir.

Q. But that you did finally succeed in making contact with Mr. Collery in August of 1995.

A. That is correct.

Q. I think you have informed the Tribunal that you informed Mr. Collery that you were anxious to withdraw €50,000 from your investment?

A. That is correct.

Q. I think you also informed him that you were anxious to obtain statements in relation to your investment so that you could see where you stood, is that correct?

A. That is correct, Sir.

Q. I think you informed the Tribunal that Mr. Collery informed you that you were seeking a large withdrawal and he informed you that your involvement was being dealt with by

a Mr. John Furze?

A. That is correct.

Q. I think you have informed the Tribunal that you had not heard of the name before and you had never met with or dealt with Mr. Furze?

A. That is correct, Sir.

Q. I think you informed the Tribunal that in early September 1995 you arranged to meet Mr. Collery in Jurys Hotel in Dublin so that Mr. Collery could furnish you with the funds you wished to withdraw?

A. That's correct.

Q. I think you have informed the Tribunal that you had never met with Mr. Collery in person before and he gave you a description of himself so that you would recognise him?

A. That is correct, Sir.

Q. I think you informed the Tribunal that you met with Mr. Collery at Jurys Hotel and he furnished you with the proceeds of your withdrawal, that is €50,000, which was in cash?

A. That is correct.

Q. I think you informed the Tribunal that you converted the cash into two bank drafts from Bank of Ireland in Tralee, is that correct?

A. That's correct.

Q. And that you kept the bank drafts with a view to paying the Revenue Commissioners until December 1999?

A. That is correct, Sir.

Q. I think you informed the Tribunal that the proceeds have been applied by you towards discharging outstanding tax liabilities to the Revenue Commissioners with whom your accountant is currently in discussion?

A. That is correct.

Q. I think you have informed the Tribunal that your only further contact with Mr. Collery was to press him for statements, is that correct?

A. That is correct, Sir, I had a supplementary presentation there.

Q. Yes, I understand and I will come to that. I am just taking them in sequence.

A. I apologise.

Q. And just to clarify an issue that your counsel raised just before lunch, what is contained in the second Memorandum is information which you had always furnished to the Tribunal, it was purely an oversight in the preparation perhaps on the legal side that the second Memorandum didn't form part of it.

A. That is correct.

Q. And I think you informed the Tribunal that you received no statements from Mr. Collery until May of 1999?

A. That is correct, Sir.

Q. And that copies of the statements furnished to you by Mr. Collery in May 1999 were furnished by your solicitor to the Tribunal?

A. That is correct, Sir.

Q. And I think you have informed the Tribunal that until you received those statements, you had never seen any document concerning your investment which contained the name Ansbacher and Hamilton Ross, is that correct?

A. That's correct.

Q. And that's what appears from these statements concerning the period from January 1993 until April of 1997.

A. That's correct.

Q. I think that is a sample, isn't it, of what you received?

A. That is correct.

Q. That's one of the statements.

A. That's one, yeah.

Q. I think you have informed the Tribunal that in addition to the investment which you have referred to, that is the €50,000, you also opened a bank account with Guinness & Mahon in December of 1986?

A. That is correct.

Q. The account was a resident call deposit account which had the account number 10583009, isn't that correct?

A. That's correct.

Q. The account was opened in December 1986 with a cheque in the sum of €3,342.05?

A. That is correct.

Q. And I think confirmation of the opening of the account is contained in a letter to you dated the 22nd December 1986 from Mr. Collery and a copy of this letter was furnished by your solicitor to the Tribunal?

A. That is correct.

Q. And I think that is a letter of the

A. That is correct.

Q. The 22nd December 1986 addressed to you and it's, "Dear Sir, re:" the account number, and "We refer to your recent visit to our office. We confirm having lodged cheque in that sum, œ3,342.05 to a new resident call deposit account in your name, value date the 22/12/86.

The interest rate applicable to your account for this month is 11 percent gross when applied is subject to 35 percent retention tax. The rate paid is reviewable on the last working day of each month. The prevailing rate may be ascertained by telephone, written inquiry or by reference to the Irish independent and the Irish Times each Monday.

Please sign enclosed signature card to be signed by yourself and returned to us at your earliest convenience.

Yours sincerely

For Guinness & Mahon" and it's signed P Collery.

A. That's correct.

Q. Sorry, I beg your pardon, it's PP Margaret Keogh for D P Collery, associate director.

A. Margaret Keogh.

Q. Yes. I think we know that Ms. Keogh was Mr. Collery's assistant or secretary at the time, from evidence.

A. Yes.

Q. I think you have informed the Tribunal that the initial

lodgment was made up of the proceeds of various expenses?

A. That's correct.

Q. And that a further lodgment of €4,485.27 was made on the 11st August 1997 sorry, 1987.

A. Yeah, 1987.

Q. And that you made further lodgments of €12,180.54 in March 1988, is that correct?

A. That's correct.

Q. And that in May 1988 you decided to put this account into the joint name of yourself and your daughter Margaret as you were concerned about your health, having at the time suffered a heart attack in June of 1987?

A. That's correct.

Q. And I think we can, we have seen or we can see, this is the letter in your handwriting, is that correct?

A. That's correct.

Q. It's addressed to Mr. O'Dwyer of Guinness & Mahon, College Green, Dublin 2,

"Dear Pat, further to our telephone conversation today, I wish for many reasons to have my daughter's name Margaret Foley included in the above account." Is that right?

A. Yeah.

Q. With your own name?

A. With my own name.

Q. "Thank you, Yours sincerely, Dennis Foley."

A. That's right.

Q. Can I take it just in relation to that, you'd have rung the

bank indicating you wanted to do this?

A. And they told me to put it in writing.

Q. Put it in writing. I think you have informed the Tribunal that on the 15th November 1990, this account was closed when the then balance of œ24,005.90 was withdrawn?

A. That is correct.

Q. I think you informed the Tribunal that it was Des Traynor who indicated that he proposed to close the account and transfer the balance to the investment account, is that correct?

A. That is correct.

Q. You did not receive the statement from Guinness & Mahon relating to the withdrawal until sometime later?

A. That is correct.

Q. I think you have furnished the Tribunal with all statements received from Guinness & Mahon?

A. That's correct.

Q. And that you had assumed that the money was transferred to the Klic account?

A. That is correct.

Q. I think you have informed the Tribunal that you did not ever receive any documentation relating to this and was not aware until recently informed by the Tribunal that the money was an account in Hamilton Ross?

A. That is correct.

Q. That is the proceeds of the resident call account in the sum of 24 odd thousand pounds.

A. That is true.

Q. I think you have informed the Tribunal that you have not had any dealings with Mr. Furze in relation to your investment, is that correct?

A. That is correct, Sir.

Q. And I think you have informed the Tribunal that you have been informed by the Tribunal that the sum of œ5,000 was withdrawn from the balance of your investment account apparently for the purpose of funding legal costs incurred by Hamilton Ross and Mr. Furze in resisting proceedings issued in the Cayman Islands in 1997 by the Tribunal of Inquiry (Dunnes Payments) for access to documents of Hamilton Ross and Ansbacher Cayman Limited?

A. That is correct, Sir.

Q. And you have informed the Tribunal that your consent to such withdrawal was not sought and until the Tribunal drew it to your attention, you were unaware that the amount had been deducted from your account?

A. That is correct.

Q. Now, I think perhaps before I go to deal with that portion of your Memorandum dealing with Central Tourist Holdings, perhaps we would go to the supplemental Memorandum of Evidence of yours to deal with some of the matters we have already been dealing with.

A. Okay.

Q. I think you informed the Tribunal that this Memorandum of Evidence is supplemental to the Memorandum furnished by you

to the Tribunal, the one we have been dealing with.

A. That is correct.

Q. And the purpose of this Supplemental Memorandum is to address three matters. The first is a matter which was inadvertently omitted from your Memorandum of Evidence, is that correct?

A. That is correct.

Q. The second matter addressed is a response to new queries raised on behalf of the Tribunal in a letter from the Tribunal solicitor on the 26th January?

A. That is correct.

Q. And the third matter concerns an issue which was raised in the letter of the 14th December from the Tribunal solicitor to your solicitor and concerns the circumstances in which the resident call deposit account in your name and of your daughter in Guinness & Mahon was closed in November of 1990 and the proceeds lodged to the investment account, isn't that correct?

A. That's right.

Q. Now, I think the matter, the material inadvertently omitted from the first memorandum deals with the meeting with Mr. Collery in 1995 in Jurys Hotel?

A. That's correct.

Q. And I think you have informed the Tribunal that at paragraph 9 of your Memorandum of Evidence, you made reference to a meeting which you had with Mr. Collery in Jurys Hotel in Dublin in early September 1995.

A. That's correct.

Q. This was the first occasion on which you met Mr. Collery?

A. That is correct, Sir.

Q. Notwithstanding that, in a letter of the 22nd March 1990, Mr. Collery indicated that he would like to arrange a meeting with you?

A. That is correct, Sir.

Q. And you have informed the Tribunal that you can confirm no meeting ever in fact took place?

A. That's right.

Q. I think you go on to say in this Supplemental Memorandum that at paragraph 10 of your Memorandum of Evidence you stated that my only further contact with Mr. Collery was to press him for statements?

A. That is correct.

Q. And you say that this is correct.

A. Yeah.

Q. And then you go on to deal with what was inadvertently omitted. You say "However, inadvertently my Memorandum of Evidence did not refer to the meeting in detail," that is the one in August of 1988, 1998 sorry, in August of 1998, the meeting, the Dublin Airport meeting.

A. That's correct.

Q. You believe that this was on the 18th August?

A. 18th August, I can confirm that now.

Q. I think, and it can be confirmed that you had previously discussed this meeting with members of the Tribunal legal

team at a meeting with them in November of 1998?

A. That is correct.

Q. 1999. You then go on to deal with "The circumstances in which this meeting occurred were as follows:" That you telephoned Mr. Collery to look for statements in relation to your investment account, is that correct?

A. That's right.

Q. That you arranged to meet with Mr. Collery at Dublin Airport, is that correct?

A. That's correct.

Q. Mr. Collery drove both of you around to the Trust House Forte Hotel at the airport?

A. That's correct.

Q. The meeting was a very short one, lasting in all about ten minutes?

A. That's what I would say.

Q. The purpose of the meeting was so that you could obtain statements from Mr. Collery?

A. That's right.

Q. You have informed the Tribunal that you had made an appointment that day to bring the statements to your accountant so that your financial affairs could be sorted out?

A. That is correct, Sir.

Q. I think you have informed the Tribunal however Mr. Collery informed you at the outset of the meeting that he did not have the statements.

A. That is correct, Sir.

Q. The meeting broke up shortly after this, is that correct?

A. That's right, Sir.

Q. And you informed the Tribunal that Mr. Collery promised to get you statements, is that correct?

A. Mr. Collery promised to get me statements, I said within two weeks if possible but he did say that he was very busy but if I didn't get them within two weeks, I would definitely get the statements.

Q. Very good. I think you have informed the Tribunal that seeing as you didn't have statements, you then telephoned your accountant and cancelled the appointment that you had for that day?

A. That is right, yes.

Q. And can I ask you, did you express any anger or annoyance on that occasion with Mr. Collery?

A. Well, I was annoyed because I had an appointment set up with my Dublin accountant for 12 noon that day and he had impressed on me I would have to have statements in order for him to deal with the Revenue Commissioners.

Q. Did you express any annoyance?

A. I expressed annoyance, I told him I had an appointment with my accountant at 12 noon and told him I'd have to cancel that appointment.

Q. I think you have informed the Tribunal that you did not meet Mr. Collery after the meeting, is that correct?

A. No, I did not meet him, no.

Q. But that however a number of months later, in May 1999, you received by post a set of statements which you have furnished to the Tribunal and which you have referred to at paragraph 10 of your Memorandum of Evidence.

A. That is right, Sir.

Q. That is the statements, the sample of which are one of the statements which has already been on the screen?

A. That is correct.

Q. I think you have informed the Tribunal that those statements concerned the period between January 1993 and April 1997, is that correct?

A. That is correct.

Q. And that apart from the statements which you received from Mr. Traynor in 1982 which you have referred to in your original Memorandum, that is the statements which have already been shown on the scene screen with the handwriting on them

A. That's correct.

Q. And the statements which you received by post in May of 1999, that is the statements, one of which has been shown on the screen?

A. That is correct, Sir.

Q. You received no other statements concerning the investment which you made with Mr. Traynor in 1979?

A. No, Sir.

Q. I think you have informed the Tribunal that you did however receive statements in respect of the resident call deposit

account held with Guinness & Mahon and those statements have been furnished to the Tribunal?

A. That is correct.

Q. Now if I could go to paragraph 9 of your Supplemental Memorandum, Mr. Foley, dealing with the closure of the resident call deposit account, because the other paragraphs relate I think to the Central Tourist Holdings loan, is that correct, and I'd like to take those altogether.

Paragraph 9 of the Supplemental, under the heading "Closure of Resident Call Deposit Account," do you have that? It's page 5 of the Supplemental.

A. Yeah, page 5, yeah.

Q. You see paragraph number 9, "Closure of Resident Call Deposit," do you see that?

A. What I have here for number 9 is "I would be happy to clarify any issues in the Supplemental Memorandum" .

Q. We will get you a copy.

A. Right.

Q. Just to show you. (Document handed to witness.)

A. Yes, I have it now.

Q. Now, I think you say in this that "You would like to address briefly in this Supplemental Memorandum something concerning the circumstances in which the resident call deposit account in your name and that of your daughter was closed in November of 1990," is that correct?

A. That's right.

Q. And I think this issue was referred to at paragraph 11 of

your first memorandum?

A. That's correct.

Q. Now I think you have informed the Tribunal that Mr. Traynor informed you around that time that he had proposed closing that account and transferring the balance to your investment account, is that correct?

A. That's right, Sir.

Q. I think you have informed the Tribunal that you do not believe that you dealt with Mr. Collery in relation to this transaction?

A. No, that is correct.

Q. I think you have informed the Tribunal that Mr. Traynor did not inform you as to the mechanism as to how the account would be closed and the monies transferred to your investment account?

A. That is correct, Sir.

Q. I think you have informed you have indicated that you have been furnished with documentation by the Tribunal which discloses a series of transaction between various accounts in different financial institutions involving the sum of œ24,005.95 which was the balance in the deposit account when it was closed in November of 1990, isn't that right?

A. That is correct.

Q. And you have informed the Tribunal that you have no knowledge whatsoever of any of these transactions, is that correct?

A. That is correct, Sir.

Q. That your understanding was that the deposit account would be closed and the proceeds transferred to your investment account?

A. That is correct, Sir.

Q. That you did not know the mechanics of how Mr. Traynor was proposing to do this?

A. That is correct.

Q. And you then said you would be happy to clarify any issues raised in the Supplemental Memorandum.

A. That is correct.

Q. If I could then return to your original memorandum to deal with the question of Central Tourist Holdings Limited.

Now, I think that at paragraph 13 of your Memorandum of Evidence, you have informed the Tribunal that you became a director of Central Tourist Holdings Limited in 1972, is that correct?

A. That is correct.

Q. That you had been informed by the late Mr. Billy Clifford that the directors of the Mount Brandon Hotel were interested in developing the old Central Hotel and ballroom in Ballybunion?

A. That is correct.

Q. The other directors of the company were Mr. John Byrne of Simmonscourt Lodge, Simmonscourt Road, Ballsbridge, Dublin 4; Thomas Clifford of The Kerries, Tralee, County Kerry and William A Clifford, native of Spa, Tralee, County Kerry.

A. That is correct.

Q. You have informed the Tribunal that you became involved on the basis of an investment of €5,000?

A. That is correct.

Q. And you have informed the Tribunal that you understand that the other directors were making a similar investment and the balance of the money required was being borrowed?

A. That is correct, Sir.

Q. And that you understood that the borrowing was in the region of €70,000?

A. Correct.

Q. I think you have informed the Tribunal that the premises were purchased and renovated and were operated solely as an entertainment centre with an associated bar?

A. That's correct.

Q. I think you have informed the Tribunal it was agreed that you would be the licensee for the company as the two other local directors already held licences in other premises.

A. That's correct.

Q. I think you have informed the Tribunal that you were not involved in the financing of the purchase of the hotel in any way?

A. That is correct.

Q. You were aware that the companies had borrowed monies from Guinness & Mahon, is that right?

A. That is correct.

Q. You have informed the Tribunal that the company made

repayments to Guinness & Mahon which were effectively to clear the interest on the loan?

A. That's correct.

Q. However, after a number of years, the business was not going so well and the premises were sold in or about 1986 or thereabouts, is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that there were insufficient funds to discharge the creditors?

A. That's correct.

Q. And that you understand that the company's solicitor, the late Mr. Grace, and the accountants Haughey Boland reached a settlement with Guinness & Mahon and the Revenue Commissioners?

A. That is correct, Sir. Could I refer there to Joe Grace there, he had died previous to that and his son Ray took over.

Q. I just mentioned Mr. Grace, I don't think we need to be in any way specific. I think you have informed the Tribunal that the directors of the company had to pay monies from their own funds to fund the settlement?

A. That is correct.

Q. And that you made one payment of €5,000 towards the payment of the creditors and a further payment of €2,787.58 towards the payment of the Revenue Commissioners?

A. That is correct.

Q. I think you have informed the Tribunal when the premises

were sold and the creditors paid, you had no further involvement in the company, is that correct?

A. That is correct, Sir.

Q. And that you understand that the company would that you understood the company would therefore be dissolved?

A. That's correct.

Q. And I think you have said that you would be happy to assist the Tribunal in its inquiries into the company in so far as they may be relevant and address that in queries that were raised in the Supplemental Memorandum?

A. Yes, that is correct. Mr. Coughlan, I mentioned entertainments part of it was also a hotel although it wasn't registered.

Q. Thank you, Mr. Foley, you needn't concern yourself, nothing turns on it. Now I think under the heading "Responses to Tribunal's Letter of the 26th January 2000" under paragraph 6 at paragraph 6 of your Supplemental Memorandum, Mr. Foley, I think you say you propose to respond to queries raised from the Tribunal's solicitor to your solicitor dated 26th January 2000, is that correct?

A. That's correct.

Q. I think you say these queries concerned the loan from Guinness & Mahon Limited to Central Tourist Holdings Limited in June 1992?

A. That is correct.

Q. And I think you have informed the Tribunal that it was your understanding this loan was a straightforward loan from

Guinness & Mahon to the company?

A. That is correct, Sir.

Q. The repayments made were of interest only in accordance with the terms of the loan?

A. That is correct.

Q. I think you have informed the Tribunal that you did receive statements relating to the loan on a regular basis up to or in or around the date of the closing of the sale of the hotel in 1986?

A. That is correct.

Q. That's The Central?

A. The Central.

Q. I think you have informed the Tribunal that statements you received around the date of the closing of the sale were furnished by you to Mr. Paul Carty of Haughey Boland, the company's office?

A. That is correct.

Q. I think you have informed the Tribunal that statements which you had received during the course of the loan prior to that period were kept by you and retained for a short time after the sale?

A. That's right.

Q. However you believe that you discarded the statements sometime later when you understood matters had been finalised?

A. That is correct, Sir.

Q. And it is your belief that the premises were sold in 1986?

A. 1986.

Q. And I think you have informed the Tribunal that the payments which are referred to at paragraph 13 of your Memorandum of Evidence were made in October 1987?

A. That's right.

Q. That's the payment that you made of €5,000

A. And 27.

Q. To discharge indebtedness to Guinness & Mahon as you understood it and the two seven odd pounds in respect of the Revenue?

A. Yes, 26th October.

Q. 1987.

A. Yes.

Q. Now I think you have informed the Tribunal that you paid the sum of €5,000 by cheque payable to Haughey Boland on the 16th October, is that correct?

A. That is so.

Q. And that the purpose of the payment was your contribution towards the repayment of the creditors of the company?

A. That's right. That's right.

Q. And that you paid another cheque in the sum of €2,787 on the 28th October 1987 to Haughey Boland which you understood represented your contribution towards repaying the Revenue Commissioners who were owed monies from the company?

A. That is correct.

Q. Now I think you were shown a cheque dated the 20th October

1987 in the sum of €42,680 which was referred to in the Memorandum of Evidence of Ms. Sandra Kells?

A. That is correct.

Q. And I think you have informed the Tribunal that the circumstances in which this cheque was paid were as follows: The proceeds of the sale of the hotel premises in 1986 were, you believe, lodged to an account which had been opened in the name of the account in Bank of Ireland, Listowel by the late Mr. Grace, the company solicitor.

A. It's actually Ray Grace.

Q. But the company's solicitor. The cheque dated the 20th October 1987 was made payable to Guinness & Mahon and was drawn on the account opened by Mr. Grace in the name of the company in Bank of Ireland, Listowel?

A. That is correct, Sir.

Q. That you were one of the signatories on the cheque.

A. That is correct, Sir.

Q. The other signatory was Mr. John Byrne.

A. That is correct.

Q. Now I think you have informed the Tribunal that your recollection is that you were requested to draw the cheque by Mr. Grace in order to finalise matters with Guinness & Mahon, is that correct?

A. That is correct.

Q. I think you have informed the Tribunal that you gave the cheque to either Mr. Grace or Mr. Paul Carty?

A. That is correct. Sorry, Mr. Coughlan, the directors were

to pay €5,000 each, which you have referred to, to the creditors.

Q. Yes. This is on top of

A. On top of.

Q. I think you have informed the Tribunal that you were unaware as to what Guinness & Mahon did with the cheque when it received the cheque?

A. That is correct.

Q. But that you understand from Miss Kells' Memorandum of Evidence that the proceeds of the cheque were credited on the 23rd October 1987 to an account entitled Amiens SL No. 2 Account and an account number given?

A. That is correct, Sir.

Q. And I think you informed the Tribunal that you have no knowledge whatsoever about the account and was unaware as to how the cheque was dealt with once it was paid over?

A. That is correct, Sir.

Q. And that you left all matters concerning the finalisation of the company's affairs, including discharge of the Guinness & Mahon loan to Mr. Grace and Mr. Carty?

A. Yeah, that is correct, Sir.

Q. I think you informed the Tribunal you were very glad to be out of the business and it had cost you money and had seriously affected your health?

A. Yes, that is correct.

Q. Now, I think there were five other queries raised by the solicitor to the Tribunal on that occasion, isn't that

correct, which you deal with in the Supplemental

Memorandum?

A. That is correct, Sir.

Q. And the first one related to the security for the loan which was obtained by Central Tourist Holdings whereby it was backed by an offshore account, isn't that correct?

A. That is correct, Sir. I had no knowledge.

Q. Yes, and I think you have informed the Tribunal that you have had no knowledge either, direct or indirect, of the securing of the loan by Guinness & Mahon to Central Tourist Holdings by a backing deposit in Guinness & Mahon in the name of Guinness Mahon Cayman Trust or one of the other Guinness & Mahon offshore subsidiaries if that be the case?

A. That is correct, Sir.

Q. And I think you have informed the Tribunal that it is your belief that the security in respect of the Guinness & Mahon loan to the company was a guarantee from the directors of the company?

A. That is correct, Sir.

Q. And we will come to deal with the facility letter in a moment.

A. Right.

Q. And I think you have informed the Tribunal that you were not aware that any additional security was provided if that be the case?

A. That is true.

Q. And I think you have informed the Tribunal that you did not

have any discussion with Mr. Traynor, the auditors of the company, Mr. Byrne or any other directors of the company or with any person concerning the manner in which the loan was secured other than by way of the directors' personal guarantees?

A. That is correct, Sir.

Q. I think you have informed the Tribunal that apart from paying the sums towards the discharge of the creditors and towards the Revenue Commissioners and the signing of the cheque on the 20th October 1987 for the 47 odd thousand pounds, you had no further dealings with any other person regarding the manner in which the loan was discharged?

A. No, Sir.

Q. And you informed the Tribunal that the arrangements for the discharge of the loan and the finalisation of the company's affairs were dealt with mainly by Mr. Grace and Mr. Carty, is that correct?

A. That is correct, Sir.

Q. I think you have informed the Tribunal that you have no objection to the Tribunal making inquiries with Bank of Ireland, Listowel concerning the account owned by the company?

A. No.

Q. I think you have informed the Tribunal that you have no knowledge, either direct or indirect, of the repayment of the loan, that is the Central Tourist Holdings loan

A. Yeah.

Q. From funds transferred from Guinness Mahon Cayman Trust/College or Amiens Security Limited account?

A. No knowledge.

Q. And I think you have informed the Tribunal that you have no knowledge whatsoever, either direct or indirect, of records in Guinness & Mahon concerning the Central Tourist Holdings loan subsequent to the date on which the loan was repaid?

A. That is correct, Sir.

Q. In particular you have no knowledge of the opening of bank accounts, the posting of reverse transactions to those accounts and the creating of bank accounts all of which appeared to give the impression that the loans appeared to be outstanding?

A. No knowledge, Sir.

Q. And I think, Mr. Foley, in fairness, you continue to search to see if there's anything else which would be of assistance to the Tribunal and in fact through your solicitors, you have made available just two statements which show the state of the loan way back?

A. Yeah, I was going through an old county council file at the weekend and I just came up with

Q. And you immediately brought it to the attention of the Tribunal?

A. Correct.

Q. Now, if I could, Mr. Foley, at this stage perhaps go back to the initial involvement you had with Mr. Traynor.

A. Yes.

Q. You first encountered Mr. Traynor when he was an accountant with Haughey Boland, is that right?

A. That's right, Sir.

Q. He came to do the audits at the Brandon Hotel, is that correct?

A. It was in 1966 following the opening of the hotel.

Q. Yes.

A. I met him, I'd say he may have been only down that time for the opening of the hotel.

Q. You met him socially on that occasion?

A. Just happened, maybe not socially, I met him in the foyer, yes and he introduced himself to me.

Q. Yes. As being Des Traynor?

A. Yeah, and he was interested in how the ballroom was going. The ballroom was open since the previous August.

Q. Could I just ask you to speak a little slower, the stenographer has to get the information.

A. Sorry, my apologies.

Q. Did Mr. Traynor say who he was?

A. He did, he introduced himself. As far as I remember he said, "I am Des Traynor, Haughey Boland."

Q. I see.

A. Yeah.

Q. Now, at the time I think you were a rate collector, is that correct?

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

Q. But you were also getting involved in some business on your

own behalf?

A. That's right, as a booking agent.

Q. As a booking agent for dance bands for the Mount Brandon Hotel initially?

A. I had been involved previously with Kerry Basketball Board.

Q. Right. And in that regard, you have informed us how you would have reached an arrangement with the hotel and with the bands as to what commission would be paid to you?

A. Well actually I didn't have an arrangement with the bands, it was at their discretion. I did have an arrangement with the hotel.

Q. Yes. Now when did you next meet Mr. Traynor, can you remember?

A. I think it could be the following year I, or maybe late that year.

Q. Yes. And what were the circumstances whereby you met him?

A. Just happened to meet him and I going into the hotel and he was there in the foyer and I think he was talking about Kerry football at the time and eventually I missed him then for a period and some considerable time later then around '75 or '76 he made reference to me about my financial position.

Q. Yes?

A. So I didn't really he said, "I can get you a good arrangement with Guinness & Mahon if you have money to invest." That was around '75/'76.

Q. Yeah. When you say you missed him for sometime then, is it

that you didn't see him

A. I didn't see

Q. You didn't see him in the intervening years?

A. Oh I did yes. I met him, I couldn't be exact now, some years up to about the seventies now I met him and then there was a lapse, I'd say and '75 or '76, he was down, I don't know what he was down dealing with accounts or not but I happened to meet him in the hotel.

Q. Well can we just take it back so, you remember meeting him up to the end of the sixties, is that correct?

A. Oh at the end of the seventies.

Q. I beg your pardon.

A. At least up to '71 or '72 I think.

Q. So from about '66 to about '71 or '72, you would have encountered him once a year or twice a year?

A. Once or twice a year I'd say, you know?

Q. And in those years, apart from the occasion when he was attending the opening of the hotel, in what capacity was he attending at the hotel?

A. I understood in the early years anyway he was doing business with the hotel and he was also doing business with Kerry Group and I think there was another group he was interested in.

Q. When you say doing business?

A. Doing accounts.

Q. Doing accounts.

A. Yeah, I don't know what year it finished now to be honest.

Q. Yes. But in any event, from the early seventies there was a gap in the time, you didn't meet him for a number of years?

A. I didn't meet him then until about '75 or '76, yeah.

Q. And when you met him either in '75 or '76, what exactly well first of all, where did you meet him?

A. In the foyer of the hotel, when you go into the hotel, he was having a cup of tea.

Q. Very good.

A. He asked me to join him.

Q. Yes.

A. And I understood he said he was down for a meeting.

Q. Yes. And how did the question of your finances arise on that occasion? Who brought them up?

A. He actually took me by surprise. He says, "What is your financial position?" he says, "because I am now in a very good position to get a good rate through Guinness & Mahon for any money that you might wish to invest."

Q. I see. Now, can I take it when he suggested that to you that he could get you a good return, can we take it that you were not going through a bank up to that time?

A. I was not going through a bank?

Q. For the purpose of investing your money.

A. I had no intention of even investing at that stage. I had I was ploughing the money, the extra money outside my employment, all the rest of the money was through the bank but I was carrying that by way of drafts at that

stage.

Q. I want to get back to that. I take it you had a normal bank account for conducting your ordinary household affairs?

A. Correct, that's correct.

Q. And the monies that you were receiving for acting as a booking agent

A. That's right.

Q. You did not invest in a bank?

A. No, no, I did not, no.

Q. And what did you do with that money?

A. I got drafts from time to time with it.

Q. Very good.

A. Bank drafts.

Q. And did you keep those personally?

A. I did, yes.

Q. And was that for a period since about 1966 onwards?

A. I would say so, '66 onwards, yes.

Q. And then that had been going on for approximately 10 years, is that correct?

A. At least that, yeah, at least that.

Q. By the time you had this particular conversation.

A. That's right, yeah.

Q. And what Mr. Traynor specifically said to you, that if you had any money to investor, did he say

A. That's the way.

Q. Or did he say, "Do you have any money to invest?"?

A. "If you have any money to invest..."

Q. "I can get you a good rate in Guinness & Mahon." Well, could I ask you this, would Mr. Traynor have had any information available to him which might lead him to the knowledge that you were that you had an accumulation outside the bank?

A. I don't believe he would have any information, Mr. Coughlan.

Q. Could you tell us just in general terms when Mr. Traynor was conducting the accounts or audit work for the Brandon Hotel in the sixties, did he ever have occasion to inquire as to the arrangement you had with the hotel about payment?

A. No, he never asked me, Mr. Coughlan.

Q. Sorry?

A. He never asked me any questions about that.

Q. Well I take it that the arrangement with the hotel did not include the payment to you going through the hotel system?

A. Yeah, some of it went through the hotel system, œ480 went through the hotel system.

Q. And the balance?

A. And the balance of œ1,000 was paid to me in cash.

Q. Now by 1975 or 1976 Mr. Traynor was no longer doing the accounts.

A. No, I don't know that but he told me he'd been down for a meeting in the hotel. I don't know who he was having a meeting with.

Q. What involvement did he have in the hotel?

A. Outside of doing accounts, as in with Haughey Boland?

Q. Well at this meeting were you aware that Mr. Traynor was in fact the boss man in Guinness & Mahon at that time?

A. No, I was not, Sir.

Q. And apart from saying he could get you a good rate with Guinness & Mahon, did he offer any other words of advice that perhaps you should invest your money to get a rate?

A. No, no, just told me "Bear it in mind, just keep it..."

Q. To bear it in mind.

A. Yeah.

Q. Now, in 1977 I think you stood for the Dail?

A. That is correct.

Q. You were unsuccessful?

A. That's correct.

Q. And you had, as a result of your involvement in that election, monies you had received from members of the family and a smaller sum of money from outside sources

A. œ14,000 from the family and in excess of œ6,000 then.

Q. 6 or thereabouts?

A. Yeah.

Q. From outside sources and you can remember that?

A. I can distinctly.

Q. Can I take it you can distinctly remember meeting Mr. Traynor in either '75 or '76?

A. I can, yes.

Q. And the nature of the conversation?

A. I can yes.

Q. And you can distinctly remember the meetings you had with him back in 1966 and the subsequent

A. For at least three or four years running there I think.

Q. Now this particular money that you had accumulated around the time of the election, in what form was that money?

A. Oh it was in cash. I converted it into drafts.

Q. It was in cash, it wasn't in a bank?

A. Oh it wasn't in a bank, no.

Q. It was never put into a bank account of yours?

A. No, no.

Q. Or of somebody on your behalf?

A. No, no.

Q. And you turned that into drafts?

A. I did, yeah.

Q. Where?

A. I think the Bank of Ireland in Tralee. I think it was anyway the Bank of Ireland.

Q. Yeah. And was that into one draft or a number of drafts?

A. It would have been a few drafts I'd say.

Q. Could you tell me do you have to renew drafts or do drafts

A. I did renew them from time to time but I understand that I didn't have to but I did I think.

Q. I see. And how would you, how did you renew them?

A. I would go in and get an update on the draft.

Q. On the document you had or would you get a fresh draft?

A. The document I'd have and they'd give me a new draft.

Q. You'd hand in the draft you had and they'd give you a new draft?

A. That's right.

Q. Did you have to pay a fee for that?

A. No, I didn't have to pay a fee.

Q. Well take it that from the monies you received for acting as a booking agent and this particular money, did you keep getting new drafts as you got more cash?

A. When I got cash, I didn't replace all the drafts now but if I had a few thousand pounds, like, you know, I'd put it into a draft.

Q. And where did you keep the drafts?

A. I kept them in a cabinet, to be honest.

Q. In your house?

A. Yeah.

Q. Now between 1975 or '97 when you met Mr. Traynor, did you meet him around the time of the election?

A. No, I didn't meet him around the election.

Q. Did you meet him after the election?

A. No, but I phoned him in '79 and told him I wanted to meet him.

Q. You phoned Mr. Traynor?

A. Yeah, in 1979.

Q. Where did you phone him?

A. I took a chance in Guinness & Mahon and I got him and I tried Haughey Boland first but then I phoned Guinness & Mahon and I got in contact with him there.

Q. What did you say to him?

A. I told him I wanted to meet him, that I would have some money to invest and he fixed it up on the 5th October, as far as I can remember, 1979.

Q. You went up on the 5th October 1979?

A. 1979.

Q. And did you go to the premises of Guinness & Mahon then in College Green?

A. I did, or was it Dame Street?

Q. Dame Street.

A. I went in there and said I have an appointment with Mr. Traynor.

Q. Just take it slowly. You went into the banking hall, is that correct?

A. That's right.

Q. You spoke to somebody at a counter, is that correct?

A. A girl at the counter, yes, I told her I had an appointment with Mr. Des Traynor.

Q. Yes.

A. She told me hold on, she'd get him for me. So after about five or ten minutes, he came along and said we'd go up to a room upstairs which we did.

Q. He said "come after me."

A. He came down and we went up in the lift to some floor upstairs, I am not sure, the boardroom.

Q. And you went into a room, whatever the room was?

A. That's right, that's right and

Q. What happened there?

A. I told him I had €50,000 to invest and I'd be looking for the best rate possible so he said to me he had a good investment Klic Investments and that was it. He did say to me, "I will send you on the receipt" and I said, "No, I need a lodgment docket now" and I waited for about five or six minutes and I eventually got the two lodgments documents.

Q. From whom?

A. Got them from Des Traynor.

Q. Got them from Des Traynor?

A. He went downstairs, I think he brought Martin Keane into the conversation.

Q. Now, I just want to put up the two particular documents which you furnished to the Tribunal which you received on that occasion. One was for €30,000 and the other was €20,000?

A. That's right.

Q. And you say that Mr. Traynor on that occasion told you he had a good investment which was called Klic Investments?

A. Klic Investments, yes, I have no doubt about that.

Q. And you wanted a receipt in respect of it?

A. I did, yeah.

Q. And you say that the little, a little time later Mr. Traynor handed you these?

A. I think he brought Martin Keane into the room, as far as I can remember, and he told me to stay on there for a while.

First he said he'd send them on and I said I'd prefer to have them now leaving.

Q. Yes.

A. And he came back eventually with the two lodgment documents.

Q. Can I just ascertain this. Can I take it that it was your understanding and your intention when you handed the money to Mr. Traynor that it was for investment purposes, is that correct?

A. In Guinness & Mahon with an investment group.

Q. You were not opening a current account?

A. I was not opening a current account, no.

Q. And nobody discussed a current account?

A. Nobody discussed a current account with me.

Q. And the two documents you received are lodgment slips referable to a current account with no number on them, is that correct?

A. That is correct but they were receipts as far as I was concerned.

Q. I understand that, Mr. Foley.

A. Yeah.

Q. The money that you had when you went to see Mr. Traynor came from a number of sources, isn't that correct?

A. That's correct, yeah.

Q. You had never placed any of this money in a bank account?

A. No, no, Sir.

Q. You had never sought any return in respect of it?

A. No, no.

Q. And leave aside the money which you accumulated at the time of the election but in respect of the monies which you obtained acting as a booking agent

A. That's right.

Q. You say that £480 a month, is that correct?

A. That's right, yeah.

Q. Went through the books of the Brandon?

A. That would be the first arrangement I had.

Q. And £1,000 was paid in cash?

A. Cash, that's right.

Q. A month.

A. Yeah, that's right.

Q. And can I take it that when you say it was given to you in cash, you mean it did not go through the books of the Brandon?

A. I'll tell you the sequence of it. My arrangement originally was £480 a year and after the Christmas dancing of 1966, I went into William Clifford who was the director I was mainly dealing with and I explained to him it was taking a lot of time and I didn't think it was worth it and he asked me what were the bands worth to me for say for 1966? I told him between £900 and £950.

Q. Could I stop you for a moment to correct an impression which I am creating. It wasn't £1,000 a month, it was for the year.

A. That's correct.

Q. And the €480 was for the year?

A. That's correct, he said, "I will tell you what I'll do. I will give you €1,000 in cash a year" and he gave it to me from '66 onwards and that was it.

Q. Now

A. I might say, Mr. Coughlan, the first three years I think I was paid by cheque but after that I was paid by cash.

Q. And can we take it that you didn't make any returns in respect of that yourself?

A. No, I made no returns, no. I returned the €480.

Q. Yes. So that when you had accumulated, say the €30,000 which was part of the €50,000

A. That's right.

Q. You knew that you hadn't made any returns in respect of that?

A. That is correct. €23,000, was it, wasn't returned. About €7,000 had been equivalent to what was returned.

Q. What I am really trying to get at so is that that was probably the main reason, if not the only reason, you hadn't invested it in a bank account before?

A. That is true, Mr. Coughlan. That is true.

Q. And can I take it that at that time, I know you have come to deal with the Revenue now, but at that time, it wasn't your intention to deal with the Revenue in respect of that?

A. I think it was, it was my intention to deal eventually with the Revenue.

Q. To deal eventually?

A. Yeah, with the Revenue.

Q. But not to deal immediately?

A. Not to deal immediately.

Q. So that when you went to Mr. Traynor, can I take it that you knew that any monies you were giving him to look after for you should not show up in a bank account which would be referable to you.

A. No, that's not so. I wanted it he told me it was a Klic Investment company and it was, he said, it would be for a 10 year basis, I think he mentioned about a 10 year investment and I remember going back to him in, let me see, just about 12 years after that, like, you know, '91 I think it was, and I told him I'd be anxious to close the account and fix up my affairs with the Revenue and he said, " Look, you are going to lose a lot of money if you do that" so it was gone into another 10 year cycle which would come up in '99.

Q. I'd like to ask you about that because it's significant not just in your own circumstance but in relation to circumstance to advice Mr. Traynor may have given to people who did wish to rectify their affairs with the Revenue but that's something I will just come to in a moment if you will just bear with me. What I really want to ascertain from you is this, Mr. Foley. You had never put this money into a bank account?

A. No.

Q. Because if you put it into bank account it was capable of

being traced?

A. That's correct.

Q. When you recall dealing with Mr. Traynor you certainly didn't have any intention it could be traced, isn't that right?

A. That's possibility so, yes.

Q. And in 1979 €50,000 was a lot of money.

A. It was, yes.

Q. So that when you went to deal with Mr. Traynor, there was no question of it just appearing in a Guinness & Mahon account in the name of Denis Foley, isn't that right, there was no intention of that?

A. My point was going into Guinness & Mahon for an investment account in Klic Investments.

Q. I just want to be clear about one thing. It was never your intention it was going into Guinness & Mahon to be in the name of Denis Foley?

A. That's why I wanted the lodgment documents.

Q. But did you sign any documents to open an account in the name of Denis Foley?

A. No, he told me he would send on the details of the investment account.

Q. I understand that, Mr. Foley.

A. I signed no documentation.

Q. That's what I wanted to ascertain.

A. Yeah.

Q. But I think you had a familiarity, you were a businessman

after all.

A. That's correct, yeah.

Q. You had a familiarity with banks.

A. That's correct.

Q. And you knew the process of opening an account involved signing some documents?

A. That is correct.

Q. Like the rest of us you mightn't know exactly what documents to sign but you knew you had to sign some documents. Now you knew you weren't signing any documents in Guinness & Mahon, is that correct?

A. No, signed no documents.

Q. And it wasn't your intention to sign any document there either, is that correct?

A. Well I don't think it was to be honest.

Q. Now, when you say that he said to you he'd send on documents, I think in fairness to yourself, that relates to the time before you received those two particular documents showing œ50,000, isn't that correct?

A. No, it was at the, handing over the money to him, he'd send me on details and I stressed statements.

Q. I see. Sorry, I just want to be clear about the type of document we are talking about now. There was no question of sending on any documents for you to sign or fill in?

A. No. Statements actually.

Q. Statements. And whilst you had these two particular pieces of paper which were portions of lodgment slips referable to

a current account, you had no current account?

A. No, I had no current account.

Q. You didn't open any current account in Guinness & Mahon?

A. No, no.

Q. You received no cheque-book?

A. No.

Q. And you never asked for one?

A. No.

Q. And these two particular documents related to a sum of
€50,000, isn't that correct?

A. That's correct.

Q. They mention the name Foley on them.

A. That's correct.

Q. And that's all.

A. Yeah, that's correct. Actually I thought the original
documents referred to D Foley.

Q. That's what it refers to, Mr. Foley.

A. Yeah.

Q. Now on this occasion when Mr. Traynor said that he could
get you sorry, did he also say on this occasion he could
get you a good return?

A. He did say that, yes.

Q. A that he'd send on statements?

A. He would, yes.

Q. Did he say anything else to you?

A. No.

Q. Did he tell you you might be able to get a loan ever?

A. No, no.

Q. Are you sure about that?

A. Positive, yeah.

Q. And as far as you were concerned, the next thing that happened was that you weren't getting any statements?

A. That's correct.

Q. And then in 198

A. 2.

Q. 1982?

A. 1982.

Q. Sorry, could I ask you, between that time and the time you did receive statements, did you have any contact with Mr.

Traynor?

A. No, I had no contact.

Q. Now, you weren't getting statements?

A. That's true.

Q. £50,000 at the time was a huge sum of money.

A. That is true.

Q. Were you concerned about it?

A. I was satisfied once I held the lodgment documents.

Q. But you, I take it, when you were told that you'd get a good return

A. Yeah?

Q. You expected the £50,000 to grow?

A. I did, yeah, I did.

Q. And can I take it that whilst over a period of a few months and being involved as a businessman, as you were at the

time, that you mightn't have got around to making inquiries but can I take it that by the end of a year or so, you might have been interested to know whether your investment had grown?

A. Yeah. It didn't cross my mind at that stage because I was pretty busy but in '82 when I did get the statements, I did make contact with him because the tops were taken off the statement.

Q. Well, we will put the statements up.

A. Yeah. That's right.

Q. Yes.

A. They were actually blank statements and I did make contact with him then and I asked him what was the reason, you could see where they were cut off and he said to me, "When we post them out, that's for security reasons."

Q. I beg your pardon?

A. That's for security reasons. Cutting off the tops.

Q. Now, are you telling the Tribunal that you believed that when you received first of all you received the statements?

A. I did.

Q. You had no difficulty in accepting that they were your statements, did you, when you received them?

A. Well, when I got the statements, I phoned him about them. I said my name didn't appear on them, there were blanks and he said, "I have no doubt about it, they are your statements," he says, and I asked why were the cut off?

And he said, "When we post them out, it's for security reasons."

Q. I want to take this slowly, Mr. Foley. You made contact with Mr. Traynor because you weren't receiving statements?

A. I did, yeah.

Q. How did you make contact?

A. I phoned him. I eventually got him, I tried a few times before I got him.

Q. What did you say to him?

A. I said I'd been disappointed I wasn't getting statements and he said leave it to him and eventually I got these statements.

Q. How did you get them?

A. By post I got one, I think I got and I think I think I got the first one-off him and I disputed the fact then why the tops were taken off.

Q. Just take that slowly, Mr. Foley. You say that you contacted him by phone because you wanted statements?

A. Yeah, I think at that time I contacted him, I think it was, I am not sure now whether it was 42 Fitzwilliam Square or something like that.

Q. That was many, many years later.

A. No, I contacted I went and called him that time anyway about the account and that was in '91 I think or something.

Q. Very good. These particular statements are not referable to 1991, is that correct?

A. No, '82 I think they come to and I had phoned him before

that period of time.

Q. Before '82?

A. Yeah.

Q. Looking for statements. I want you to take it slowly so that you don't get confused in fairness to yourself. Now, you were not getting statements?

A. I was not getting statements.

Q. You contacted Mr. Traynor?

A. I did.

Q. Before you received these statements?

A. I did, yes.

Q. Did you receive these statements in 1982?

A. It must be around that time I received them, sometime I don't know the date, it was the correspondence sometime after '82, yeah.

Q. Whatever the period is showing on the statements.

A. That's right.

Q. Were showing the type of balance which was appropriate up to a time around the time you contacted him?

A. That's right, that's right.

Q. Now the balance which is showing on the account is as of December of '82, so can we take it that you must have contacted him sometime before that to ask him for statements in the first instance?

A. Correct, correct.

Q. And then you would have received them perhaps early in 1983?

A. Correct.

Q. Now, I just don't want you to confuse 42 Fitzwilliam Square and 1991.

A. That was later.

Q. Yes, of course. At this time Mr. Traynor was still in Guinness & Mahon, is that correct?

A. That's correct.

Q. And did you make telephone contact with him at Guinness & Mahon?

A. At Guinness & Mahon as far as I can remember because the next time I was looking for statements I made contact with Martin Keane.

Q. At Guinness & Mahon?

A. At Guinness & Mahon.

Q. I'll come to that.

A. Right, okay.

Q. In due course. Now, how did you receive the statements when you contacted him by telephone?

A. As far as I know they were posted out.

Q. They were posted to you?

A. Yeah.

Q. In an ordinary envelope?

A. In an ordinary envelope, yeah.

Q. Was there any letter with them?

A. No.

Q. They just

A. Sorry now, there was a note.

Q. A note.

A. I think a note and I think he had signed it, 'Des Traynor'.

Q. Yes.

A. I think it was a Guinness & Mahon slip or it had a heading, just a bear heading.

Q. A bear heading.

A. Showed that it was Guinness & Mahon, I think it was a fax, a bit of paper, like, it was a lodgment docket, 'Des Traynor'.

Q. And you received these statements with the tops cut off?

A. I did, yeah.

Q. Did you look at them?

A. I did, yeah.

Q. And what did you

A. To be honest, they didn't mean a whole lot to me because I couldn't get the original, I didn't get the statement for '79.

Q. Yes?

A. I was looking for something going back to '97 which would show where the lodgment was made.

Q. Yes? But if we go back to the statement with the yes?

So, what did you do when you received the statement?

A. I actually phoned him, I didn't get him straightaway but I eventually got him, I wanted to know why I didn't get full statements.

Q. That is going back to '79?

A. Yeah, going back to '79 and he said I wanted to know why

the tops were cut off, you know, I made reference to Klic Investments Limited and he told me it was for security reasons when they were being posted.

Q. Now, I think at the same time or around that time you were involved in the business of Central Tourist Holdings?

A. That's correct.

Q. Isn't that correct?

A. That's correct.

Q. And Central Tourist Holdings had a normal resident loan from Guinness & Mahon?

A. That is correct.

Q. And you were receiving statements in respect of that loan?

A. That's correct, yeah.

Q. And if I could just, as you yourself very kindly and fastidiously brought to the attention of the Tribunal, anything that you have come across, if I could just show a statement that you did receive in respect of Central Tourist Holdings' business, which is a standard Guinness & Mahon Bank statement with the letterhead in position, isn't that correct?

A. That's correct.

Q. And it shows the state of the loan at that time?

A. That's correct.

Q. And you were receiving that particular statement around the same time, is that correct?

A. Yeah, that's correct.

Q. Of course it's in Irish money.

A. That's right.

Q. Mr. Foley, may I ask you this ; I think this is the first occasion that you have informed the Tribunal that you raised a query with Mr. Traynor about the removal of the banner heads or the letter heads from the statements, isn't that correct?

A. I thought I did, to be honest.

Q. Mr. Foley

A. I accept that, Mr. Coughlan.

Q. This is the first time.

A. My apologies.

Q. Isn't it the first time?

A. Yeah.

Q. And not only did you submit a Memorandum of Information or Evidence to the Tribunal, you submitted a Supplemental Memorandum to the Tribunal dealing with matters which were inadvertently omitted but which had definitely been brought to the attention of the Tribunal previously and now for the first time you are informing the Tribunal that you contacted Mr. Traynor to question why the mastheads or the letterheads were deleted, isn't that correct? Are you sure, Mr. Foley?

A. I am sure, Mr. Coughlan, and my apologies.

Q. Could you listen to the question first of all.

A. Yes.

Q. Are you sure, Mr. Foley, that you contacted Mr. Traynor to ask him about that?

A. I certainly did, Sir.

Q. Very good. You say, again for the first time to the Tribunal, isn't that correct, that you were told that this was for security reasons?

A. That's right.

Q. In transmission to you. There was no difficulty in sending you statements relating to Guinness & Mahon ordinary bank business, isn't that correct?

A. That's correct.

Q. The statement of your affairs, which you say you verified in this conversation and did you accept that verification from Mr. Traynor?

A. I did, yeah.

Q. Not only show that the letterhead is being cut off, but also shows that there's no account number, isn't that correct?

A. That is correct, yeah.

Q. No name, is that right?

A. That's correct, Sir.

Q. No address?

A. No address, yeah.

Q. And did you have any doubt but that the balances were in sterling?

A. I don't know the balances were in sterling, yeah.

Q. You don't just know now, isn't that correct, Mr. Collery [sic]?

A. Yeah.

Q. You knew, you knew then.

A. Because 'Martin Keane' there

Q. No, we can go to the next document, which is you say a piece of paper which Mr. Traynor gave you this document?

A. Sterling.

Q. Which shows, you say, that Mr. Traynor gave you that, Klic Stg œ72,893 and was that soon after you had received the statements?

A. I wouldn't be sure of the actual date now, it was sometime prior to that, getting the information there from Martin Keane.

Q. Yes. So it was when Mr. Traynor was at Guinness & Mahon, is it?

A. I would think so.

Q. So it was before 1986?

A. Yeah.

Q. Now, when you received the statement with the letterhead cut off, and if you contacted Mr. Traynor and accepted his assurance that it was your statement, and that this was for security reasons, did you not consider this the most unusual form of banking?

A. I possibly did but at that stage when I saw it was sterling, I came to the conclusion that Klic Investments Limited was an offshore account and it was in sterling.

Q. Yes. But before we get to that, Mr. Foley, the fact that you would receive statements with the letterhead cut off in fact in fairness to you, so that the physical

document you actually received, you furnished them to the Tribunal, and perhaps you can just confirm that they are not just statements with the letterhead cut off, they are in fact photocopies of statements with the letterhead cut off, isn't that correct? (Documents handed to witness.)

A. That's right.

Q. Because the type of statement, if you just look at the one you furnished us from Guinness & Mahon, it's a completely different type of document altogether, the actual bank statement?

A. That's correct, yeah.

Q. Now, can there be any doubt in your mind, Mr. Foley, that at that time the whole purpose and manner of the operation of this particular transaction was to ensure that it could not be discovered?

A. I am not sure of that, Mr. Coughlan. You see the one with the Central Tourist Holdings was a resident call account.

Q. I know, the Central Tourist Holdings one is absolutely above board insofar as the account was being shown as a loan in Guinness & Mahon.

A. Yeah.

Q. I will come to deal with the security on it later but a normal bank statement is just issued, you can see it's a green flimsy type paper, looks at if it's generated in some sort of a computer printout, is that correct?

A. That's right.

Q. It's well put together, well presented type of document

that you'd expect from a bank. Now you were receiving those but at the same time you were receiving photocopies of statements from which the masthead, the letterhead was cut off?

A. That's right.

Q. Of an account in sterling.

A. Account in sterling, yeah.

Q. And wasn't it clear to you at that stage that the whole manner whereby this information was being conveyed was to ensure that it was not capable of being discovered.

A. Yeah, I would say that, yes.

Q. And of course that was the reason you had put it in to Mr. Traynor in the first instance, is that correct?

A. That is correct, that is correct.

Q. Now, did you receive any further statements in this form after this time from Mr. Traynor?

A. Well there was statements I received I handed them over to the Tribunal.

Q. Yes, but were they all from Mr. Traynor? And you did, you are absolutely right.

A. Yeah.

Q. Did you receive them from Mr. Traynor?

A. The only information I got after that was a phone call I made to Guinness & Mahon and I spoke to Martin Keane and I said, told him who I was and said I was interested in Klic Investments, wanted to know what my position was and he came back to me, he gave me the figure.

Q. Well after you made contact with Mr. Traynor, perhaps towards the end of 1972, and said you wanted to see how your investment was going in '82.

A. '82, yeah.

Q. Is it correct that he furnished to you with I think we have here five statements?

A. Yeah, I think that was it, Mr. Coughlan.

Q. Bringing it from the 19th August 1981 up to the end of December, I think of 1982, is that correct?

A. Yeah, that would be right.

Q. And you received those in an envelope?

A. I received them in an envelope, yeah.

Q. And did you, after that, receive any statements?

A. No.

Q. Now, if we go back to it because I have the originals and perhaps I should hand it to you (Document handed to witness) you have written on the first statement at the top, "œ50,000 Guinness & Mahon October 1979," isn't that correct?

A. That's correct.

Q. Is that written in a dark type of biro?

A. I would think so, yes.

Q. What other words on the document that you have are written with the same pen?

A. "In the name".

Q. "In this name," is it?

A. "Per 50,000."

Q. Yes. When did you put those words

A. It must have been sometime after because when I got that, I had "Klic Investments Limited, Martin Keane now left, see Padraig Collery Guinness & Mahon".

Q. Now I just want to be very clear because the public can't see the original that you have, the words "Klic Investments Limited, Martin Keane now left, see Padraig Collery, Guinness & Mahon Limited" are written in a light blue type

A. That's correct.

Q. Ink, isn't that correct, or felt pen or something of that nature, is that right?

A. Yeah, that's right, Sir, I am not sure when I put that on, I know it must have been sometime after that, I am not sure of the date.

Q. There are two different pens used.

A. There are, yeah.

Q. Can we take it they were put on at different times?

A. I would accept that.

Q. Now, the "€50,000 Guinness & Mahon October 1979 in this name, per," and "€50,000" at the bottom are all in the same pen, isn't that right?

A. That's correct, yeah.

Q. And all of the other words, "Klic Investments Limited, Martin Keane now left see Padraig Collery, Guinness & Mahon Limited" are in the same pen?

A. That's right.

Q. That is a light blue.

A. That's right.

Q. Do you remember when the two different pens were used?

A. I don't, Mr. Coughlan. I don't

Q. Do you have an idea?

A. No, I can't recollect.

Q. Well was it around the time that you received the statements?

A. I can't say to be honest. I am going back on memory now, I couldn't say.

Q. But you don't have a bad memory, Mr. Foley, isn't that correct?

A. Well it was very good.

Q. Mr. Foley

A. I must have put down "Klic Investments" there, "Limited, Martin Keane," I must have put, I am not sure to be honest now, I am only talking.

Q. Very good. Well let's take it slowly so. Let's take "Klic Investments Limited, Per Martin Keane."

A. Yeah.

Q. When do you think you put that on?

A. I couldn't be sure. I am on my oath here, I couldn't tell.

Q. I appreciate that but when do you think?

A. I couldn't say, I couldn't give you a definite date.

Q. Very good. Well let's start off at the top of the page so, "€50,000. Guinness & Mahon October 1979." When do you believe you put that on?

A. It looked to me I put that on when I got the statement because the statement started in '81 and I was looking for a statement in '79.

Q. Well I am asking you and I don't want you to commit yourself by saying it would look like. I want you to try to remember, to be fair to yourself, when would you have put the words "€50,000, Guinness & Mahon, October 1979" on it?

A. I couldn't say for definite, Mr. Coughlan, and as I say I am on my oath, I couldn't give you an actual date.

Q. And the other words written with the same pen are "In this name."

A. That's correct.

Q. "Per", isn't that right?

A. Yes, "Per Martin Keane" .

Q. Just "Per".

A. That's right.

Q. And the sum of €50,000 at the bottom.

A. That's right.

Q. They are all in the same pen?

A. They are, yeah.

Q. And we can take it that as two different pens were used, can we

A. You can, yeah.

Q. The words using a different pen were put on on a different occasion?

A. That's right.

Q. Would you accept that?

A. I would, yes.

Q. Can you remember when the words written in the light blue, that is "Klic Investments Limited, Martin Keane now left, see Pdraig Collery, Guinness & Mahon Limited", can you remember when they were put on?

A. I honestly can't, Mr. Coughlan. I just can't.

Q. Well can I perhaps approach it this way and it may assist your memory, Mr. Foley?

A. Yeah.

Q. You received the statements perhaps in early 1983, would that be correct?

A. Early '83, they were up to December '82.

Q. Yes. What did you do with them?

A. I kept them and

Q. Where did you keep them?

A. I kept them in a cabinet actually.

Q. In your house?

A. Yeah.

Q. Very good. Did they stay there?

A. They did, yeah.

Q. And can you remember when you looked at them again after you say that you had this discussion with Mr. Traynor, when did you look at them again?

A. I'd say there was possibly some considerable time, I wouldn't be sure.

Q. Well when you say considerable time, are you talking about

months, a year?

A. I remember sometime after that I phoned Guinness & Mahon looking for Des Traynor and he wasn't there and I got on to Martin Keane and I spoke to Martin Keane and I told him who I was and the company Klic Investments Limited, I wanted to know what the up to date position was, and

Q. You told you said to Mr. Martin Keane that you were in Klic Investments Limited?

A. That's right, that's right.

Q. Yes?

A. And I got a figure of €82,000 I think odd.

Q. And if we just show

A. That's the one there.

Q. Guinness & Mahon, position 3/3/1988, €82,688 and then there's written up over it, "Per Martin Keane", is that in your handwriting?

A. That's correct, yeah.

Q. And is that, can you confirm that that is your writing?
(Document handed to witness.)

A. That is my writing, yes.

Q. And that in a different pen again to the two pens which appears to have been used?

A. It possibly is, yes.

Q. And you see the writing "Klic 72,893 Stg"?

A. Yes.

Q. Up above.

A. That's right.

Q. On that, yes. Who gave you that?

A. Des Traynor, as far as I can recollect.

Q. Where did he give it to you?

A. I am not sure where to be honest.

Q. Do you think you could remember that?

A. I honestly Mr. Coughlan, as I say I am on my oath, I just can't make a guess at it.

Q. I know. Your best recollection will do, Mr. Foley.

A. I am not sure whether it was in his office in Fitzwilliam Square or not, I am just not sure.

Q. Don't commit yourself by saying that

A. I am not sure.

Q. Just doing a rough calculation on the balances

A. Yeah.

Q. It would perhaps have to have been in a period before Mr. Traynor left Guinness & Mahon?

A. Mmmm.

Q. Perhaps?

A. I am not sure. I want to be truthful and honest with you, Mr. Coughlan. I just don't know.

Q. Very good. Well can I ask you this

A. Yeah.

Q. Are you sure Des Traynor gave it to you?

A. I think I am, yeah.

Q. Do you remember Des Traynor actually handing it to you?

A. I don't really, no, to be honest.

Q. Could somebody else have given it to you?

A. Not to my knowledge. I dealt with Des Traynor the whole time, up to 1990, I think.

Q. Well you say that Mr. Traynor, Mr. Des Traynor gave you a piece of paper which seems to be torn off the bottom of a

A. That's right.

Q. A piece of notepaper or plain paper?

A. That's right.

Q. And that he had written on it, "Klic 72,800 odd Stg"?

A. Yeah.

Q. Well what was it supposed to represent to you?

A. You see, now in hindsight I realise there should have been a date on it and normally I don't know why I didn't put a date on it.

Q. But before you sorry, before you wrote on it

A. Yeah.

Q. You have informed the Tribunal that you received this piece of paper with the words "Klic" and the amount in sterling written on it and you believe from Mr. Traynor, is that correct?

A. From Mr. Traynor as far as I can recollect, yeah.

Q. So it wasn't a document you were creating, it was a something you added to?

A. It was part of the documentation I submitted to the Tribunal.

Q. I understand that.

A. Yeah.

Q. Now, can I take it that your writing could not have been put on at the same time as the other writing on it because we are now talking about an increase in funds up to 1998

A. '88.

Q. '88 of €82,000?

A. That's correct.

Q. So there's no question of you dating a document you received from Mr. Traynor. He is creating the document.

A. The date is on it from Martin Keane, that was up to the 3/3/88 and that's my writing, that was the information I got from Martin Keane.

Q. Mmmm. What I am asking about is receiving this document, you say, from Mr. Traynor.

A. Yeah.

Q. It must have meant something.

A. It did, yeah.

Q. There must have been a discussion?

A. With Mr. Traynor?

Q. Yes.

A. As far as I can remember, I asked him for the position and he gave that slip of paper, I am almost certain it was Mr. Traynor but I couldn't give you a date when I got it.

Q. Could you tell us where you got it?

A. I must have got it in Dublin, from him.

Q. In Guinness & Mahon?

A. You see that's what I am not sure now to be honest with you, Mr. Coughlan, but I had to get it from him, otherwise

I wouldn't know and I had it in with all the statements.

Q. Well the sum appears to be a sum which would be the state of the balance on the account at a time when Mr. Traynor was in Guinness & Mahon and we know from Mr. Collery that all the documents relating to these accounts were kept in Guinness & Mahon prior to Mr. Traynor leaving. You don't seem to have a recollection that you met him in Guinness & Mahon. Can I ask you

A. I don't really, no.

Q. Can I ask you this, Mr. Foley. Did you ever meet Mr. Traynor anywhere else in Dublin other than at Guinness & Mahon?

A. No. The only place oh Fitzwilliam Square, I called to his office.

Q. That was at a later time.

A. I later time, yeah.

Q. You have a recollection of meeting Mr. Traynor and him giving you the document?

A. I have, yeah.

Q. And in general, a brief discussion about what it meant, isn't that right?

A. That's right, yeah.

Q. You don't and you are being careful because you are under oath, you say

A. I accept that.

Q. you don't recollect meeting him in Guinness & Mahon?

A. I don't, no I just can't recollect when I got that

statement from him.

Q. So the reason I am now asking you is if you are being so careful and you don't recollect meeting him in Guinness & Mahon, where else did you ever meet Mr. Traynor in Dublin?

A. I didn't meet him any place else in Dublin, I met him in Tralee, I met him nowhere else in Dublin outside of his office and that was much later.

Q. Did you receive this in Tralee?

A. I am on my oath now, Mr. Coughlan, I couldn't be sure, no. I want to be straight about the whole thing. I just can't recollect. It was part of the documentation I gave in to the Tribunal as I had them, they were all attached together and I gave the whole lot to my solicitor and I asked him to send them on to the Tribunal.

Q. I know that, Mr. Foley. I am asking you to test your memory as to where you received this particular document from Mr. Traynor?

A. I

Q. Is it more than likely you received it from him in Guinness & Mahon?

A. I wouldn't be sure, Mr. Coughlan, to be honest, I just wouldn't be sure, to be honest with you.

Q. Can I ask you this, when you met Mr. Traynor, could you throw your mind back to this, was the piece of paper yours?

A. No, it was his. I wouldn't have that, no.

Q. Yes. Can you remember if you were sitting at a table?

A. If I could think now, Mr. Coughlan, I would tell you but I

am honest in saying that I have no recollection of it and it was, as I said, it was part of the documentation which I had together with the statements I got

Q. Yes, I know that.

A. Yeah.

Q. Did you see Mr. Traynor write the words?

A. I couldn't even tell you that at this stage.

Q. Do you know when Mr. Traynor gave you the document, whether he had any other documents in his possession which he referred to to create this particular document?

A. I can't even remember the document to be honest, getting the document from Mr. Traynor. I did get it because he'd be the only one I'd be dealing with outside of Martin Keane.

Q. Well, is it possible you didn't get it from Mr. Traynor?

A. The only other person then would be Martin Keane, they were the two people I was dealing with. I just don't know.

CHAIRMAN: We're right on four o'clock, it's probably an appropriate time for us to break now. Is 10:30 all right in the morning?

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 4TH FEBRUARY 2000 AT 10:30AM.