

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 11TH FEBRUARY

2000 AT 10:30AM:

CHAIRMAN: Good morning. Mr. Healy?

MR. HEALY: Yes, Sir. Ms. Sandra Kells.

SANDRA KELLS, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HEALY:

CHAIRMAN: Good morning Ms. Kells, thanks again.

Q. MR. HEALY: Thank you, Ms. Kells. Now the evidence you will be giving today just as on other occasions is in connection with documents provided by Guinness & Mahon, in this case, documents involving Mr. Peter Sutherland and involving at least, containing references to an offshore account.

Now what I propose to do is, as on other occasions when you gave evidence is to take you through a memorandum of your evidence and to refer to the documents as we go along one by one.

A. Yes, that's fine.

Q. You say in your Memorandum of Evidence, "I have been requested by the Tribunal to give evidence in relation to a bridging loan advanced by the bank to Mr. Peter Sutherland in 1976 and the manner in which Mr. Sutherland's bridging loan account operated. Mr. Sutherland's dealings with the banks were mainly handled by the late Mr. Ru Leonard who at

the time was head of the bank's Accounts Department.

A. Yes.

Q. You say that "It appears from the bank's records that on the 10th June 1976, Mr. Sutherland telephoned Mr. Ru Leonard, who was then head of accounts in Guinness & Mahon, and indicated that he had purchased a property in Blackrock for the sum of €37,000. That whilst it was his intention to secure long-term finance in the order of €20,000, he was requesting bridging finance with an immediate requirement of €5,000 to cover the deposit and that his own house was on the market.

A. Yes.

Q. And the first document which I want you to look at which is on the overhead projector is an internal memorandum which seems to be dated the 10th June, that will appear from the bottom of the document.

A. Yes.

Q. It has the initials, TRL, which I think stands for Mr. Ru Leonard?

A. That's right.

Q. The memorandum on the top of the document shows from Mr. Ru Leonard to Mr., is that Maurice E O'Kelly?

A. That's correct.

Q. Who was then one of the joint managing directors of the bank?

A. Yes.

Q. And there's a copy to Mr. P O'Dwyer who was I think the

loans officer of the bank?

A. That's correct.

Q. So that whilst Mr. Leonard was not the person with specific responsibility in the context of the making of loans, he was nevertheless the person who, as it were, was the first contact with Mr. Sutherland and it was because he was not involved in the granting of loans on a day-to-day basis that he was memorandising Mr. O'Kelly and copying to Mr. O'Dwyer.

A. That's correct, yes.

Q. What he says is, "Peter phoned this afternoon and advised me that at auction yesterday he was successful in buying a property in Blackrock for a consideration of €37,000. The property is a five bedroomed/four reception type house and it is Peter's intention to obtain long-term finance, probably €20,000, from the Irish Permanent Building Society through his solicitor, Patrick J. Kevans & Company, 66 Dartmouth Square.

His present house at 131 Foxrock Park went on the market today and is expected to realise €20,000. It is unencumbered.

Peter's request was for bridging finance with an immediate requirement of €5,000 deposit which is today being paid by his solicitor. I indicated to him that I felt the bank would be happy to accommodate him, (particularly in the knowledge of his other assets with us which he referred to

briefly) and undertook to revert to him tomorrow if possible providing I had had an opportunity of discussing the proposition with you.

At my request, Peter will expedite his application with the Building Society and also arrange for the necessary undertakings from his solicitors who are holding the title deeds of 131 Foxrock Park, if we are agreeable to providing the facilities requested."

Now, what was being requested therefore was the type of short-term finance that most people intend to go buy a house usually require from a bank until such time as they have completed their dealings with the Building Society who would normally be providing long-term finance?

A. That is correct, yes.

Q. And bridging finance is usually for, well nowadays it's usually for a short period of time but in the seventies, it was for no more than a month or a few months, people tried to keep it to a minimum.

A. Yes.

Q. In the ordinary way what was envisaged was finance over a period of months, even in those days in the seventies when loans from building societies took longer to get than today, isn't that correct?

A. That's correct, yes.

Q. And the information that would have been necessary to enable the bank to decide on whether or not to grant this

application was contained in the memorandum, there was a description of the property, a description of the fact that clearly there would be €20,000 available from the sale of Mr. Sutherland's existing property to discharge some of the bridging finance and that it was his intention to obtain long-term finance presumably by way of mortgage from the Irish Permanent Building Society?

A. That is what was envisaged, yes.

Q. And of course at that time Guinness & Mahon had no association with the Irish Permanent Building Society.

It's purely coincidental you happened to be owned by the plc as it now is. Now you go on to refer to the memorandum and with reference to one aspect of it you say that there is no record of any deposit account in the name of Mr. Sutherland with the bank in 1976, nor is there any record of the bank holding any other assets in Mr. Sutherland's name.

A. Yes, from our trawl through, you will see a reference in Mr. Leonard's memo, "particularly in the knowledge of the other assets with us which he referred to briefly", we have examined our files and we can find no other assets under Mr. Sutherland's name at that period in time.

Q. You go on to say that it appears from the bank's records, document number 2, which I will put on the overhead projector in a moment, the bank's credit committee agreed to provide the facility and the records include a loan decision memorandum dated 11th June 1976, signed by Mr.

Michael Pender and recording the committee's decision to grant a bridging facility to Mr. Sutherland in the amount of €37,000 to be reviewed on the 19th December 1976 and subject to a solicitor's undertaking to hold the deeds to the property purchased to the order of the bank and to lodge with the bank the proceeds of the sale of Mr. Sutherland's existing property in due course the rate of interest applicable to the bridging loan appears to have been 3 percent above the bank's base rate.

A. Yes.

Q. And the Loan Decision Memorandum which is on the overhead projector appears to be, the Loan Decision Memorandum is dated the 11th June 1976, isn't that right?

A. That's correct, yes.

Q. It refers to the purpose of the loan and the term and source of repayments.

A. Yes.

Q. Describes it as being a facility for six months to be repaid after €20,000 from the sale of Foxrock Park and the balance by way of a mortgage from the Irish Permanent. It gives the rate and the security as described as being a solicitor's undertaking to hold deeds of 25 Sydney Avenue to the order of the bank when completed and in addition, a solicitor's undertaking to lodge the proceeds of sale of the Foxrock Park property in due course.

A. Yes.

Q. As and when it was sold. The review date then is given as

the 11th December 1976 reflecting the six month period of the loan.

A. Yes.

Q. Now the next document on the overhead projector is document number 3 in your statement, a letter of the 11th June 1976 from Mr. Sutherland's solicitors containing an undertaking to hold the title deeds of the Blackrock property in trust for the bank pending the discharge of the undertaking?

A. Yes.

Q. The next document that you refer to in your statement, document number 4, is dated the 14th June of 1976 and it's the facility letter from the bank to Mr. Sutherland recording the bank's agreement to grant the loan and referring to the terms and conditions subject to which it was being made.

It says; "Dear Sir, we refer to recent discussions with our Mr. Leonard and further to your telephone conversation last Friday with Mr. O'Dwyer, we have pleasure in confirming that we are prepared to make available to you bridging finance subject to the following terms and conditions:"

So it refers to the meeting of which we have the memorandum from Mr. Leonard. So it appears and it would also appear there was a telephone conversation with Mr. O'Dwyer who was the loans officer and presumably the person by whom the letter is signed, well it's not in fact but the person by whom the application was being presumably processed?

A. Yes, exactly.

Q. And the facility letter essentially reflects the Loan Decision Memorandum.

A. Yes.

Q. It refers to the purpose of the loan, the term until the 11th December 1976 and on the second page, refers to the security being the undertaking to hold the title deeds of the property being purchased and to lodge the proceeds of the property being sold.

A. Yes.

Q. To defray some of the indebtedness?

A. Mm-hmm.

Q. You then go on to refer to document number 5 which is a statement of the loan account from which it appears the loan was drawn down in two tranches. That document is now on the overhead projector, it's headed, "Statement Resident Loan, Peter Sutherland," the date I think is June 11th 1976 which is presumably the date the account was opened?

A. Yes.

Q. The first debit is described as being a cheque in favour of P. J. Kevans & Company, those were the solicitors retained by Mr. Sutherland in connection with the purchase and it was presumably through that firm that the deposit had been paid and therefore it was to that firm the first drawdown of the loan, the £5,000 deposit was paid.

A. Yes.

Q. The next major drawdown was the £32,060.98 drawn down in



October of 1976, I think on the 7th October?

A. Yes.

Q. That was presumably to close the sale of the property?

A. The purchase.

Q. The purchase of the property, I beg your pardon and then soon afterwards, in fact in November of 1976, there was a lodgment of almost €20,000 which presumably reflects the proceeds of sale of Mr. Sutherland's existing property?

A. Yes.

Q. So that by December of 1976, the loan was down to €18,816?

A. Yes, that's correct.

Q. Now you go on then to refer to document number 6. Before I put it on the overhead projector, in your statement you say from the original loan decision memorandum, it appears the facility was to be reviewed on the 11th December 1976 and that's clear from two of the documents we have already seen on the overhead projector. On the 7th January 1977, it appears Mr. Pat O'Dwyer, who was the bank's loan officer, forwarded to Mr. Ru Leonard a memorandum in relation to the loan indicating that the loan matured on the 11th December 1976 and asking him to confirm whether the bank had any instructions to extend the loan if required and also to confirm that the position was suitably secured."

Now, what we have on the overhead projector is a fairly standard form of internal memorandum with a space for the name of the sender and a space for the name of the recipient. It's a memorandum to Mr. Ru Leonard, Mr. TR

Leonard from Mr. Pat O'Dwyer. Underneath is the subject and under that is the date, 7th January 1977 and the message to Mr. Leonard from Mr. O'Dwyer is as follows:

"Loan approx €18,000" which reflects the December balance that we saw a moment ago. It says, "Ru, the above loan matured on the 11th December 1976. Please let me have instructions re extension if required and confirm that the position is "suitably secured". I am anxious to keep my records straight.

Signed Pat."

Now at that stage, presumably this loan would have come up in whatever system Mr. O'Dwyer had for drawing things to his attention, he'd have checked what loans were due to mature on a daily basis and this loan had matured in December and he wanted to know is the long-term finance being put in place or is there going to have to be extension of the bridging facility?

A. Yes.

Q. And he says, "Confirm that the position is suitably secured," I don't know whether that's an indication there was a conversation between Mr. Leonard and Mr. O'Dwyer. Mr. O'Dwyer is available and he will be giving evidence in due course, though I am not sure if he can be expected to remember all of this but Mr. Leonard is deceased.

A. That is correct, yes.

Q. In any case, he received a reply as follows: "Pat, there

is approximately €12,000 on DA," - meaning deposit account  
- "at present but I think you will find that you have a  
solicitor's undertaking as this was a normal bridging  
situation."

So, Mr. Leonard is replying indicating that the bank has a  
solicitor's undertaking to rely on but also pointing out  
that there was approximately €12,000 on deposit.

Now, presumably the reference to the €12,000 on deposit is  
in response to the query as to whether the position is  
suitably secured. Would that seem reasonable?

A. It appears to be, yes.

Q. And we know from your evidence and from the evidence of  
other witnesses, that the expression 'suitably secured' was  
used to describe a situation in which borrowing from the  
bank was secured by or backed by an offshore deposit.

A. Yes.

Q. And in the ordinary way in the normal I better not use  
the normal but in the ordinary way where that expression  
was used, there was, in general, no other visible  
documentation supporting the backing deposit, isn't that  
right?

A. Generally there wasn't, no, there was just a deposit from  
the offshore subsidiary.

Q. Yes, but no other physical documentation, no letters of  
hypothecation and no other, how shall I put it, ostensible  
reference in the documentation on a particular file showing

the existence of a backing deposit?

A. No, there wasn't, no.

Q. Now Mr. Leonard, at this time, fulfilled a function subsequently filled by Padraig Collery in relation to some of the administration of offshore accounts, isn't that right?

A. Yes.

Q. And Mr. O'Dwyer would have had no role in the administration or in the recording of entries on offshore accounts, is that right?

A. My understanding is he wouldn't have, no.

Q. So to get information about any such matter, he'd have had to rely on Mr. Leonard?

A. That's correct.

Q. Or subsequently, as time went on, on Mr. Collery when Mr. Collery took over that role?

A. Yes.

Q. You already indicated there was no deposit account in Mr. Sutherland's name in the bank at this time?

A. Not that we can identify.

Q. But the file of documents from which this information has come does contain a one page statement of a deposit account in the name of Guinness Mahon Channel Islands "P3".

A. That's correct.

Q. I want you to identify that statement for the moment and I will take it off the overhead projector but you can see it's described as 'statement' and you can see the

identification of the client at the top left-hand corner,

Guinness Mahon Channel Islands and no other name other than a coded number in quotation marks?

A. Yes.

Q. Now if we could just have the memorandum back for a moment again. Now you notice that in the reply or on the reply side of the internal memorandum and above the word 'reply', in a circle is the letter P3 although not in quotation marks. In any case, that P3 would seem to be connected with the other document which was found on the file, isn't that right?

A. It appears to be a cross reference to Channel Islands deposit.

Q. Now if we go to the Channel Islands deposit, we see that as of December 31st 1976, the deposit stood at  $\text{€}12,296.71$ .

Sorry,  $12,298.71$ .

A. Yes.

Q. It had been the account appears to have been opened some time in April of 1976?

A. Yes.

Q. With a lodgment of some  $\text{€}8,000$  odd. There was a subsequent lodgment of  $\text{€}5,000$  odd in September of 1976 and the balance, as I said, was  $\text{€}12,000$  odd by December.

A. Yes.

Q. Now that  $\text{€}12,000$  odd again appears to be consistent with the reference in Mr. Leonard's response to Mr. O'Dwyer when he says, "There is approximately  $\text{€}12,000$  on deposit."

A. Yes.

Q. As I said, it's not in Mr. Sutherland's name but it is the balance, the approximate balance on an account, a statement for which was found in this particular file?

A. Yes.

Q. And as of the date of the response of Mr. Leonard to Mr. O'Dwyer, which must have been sometime after the 7th January 1977, that figure would be correct at approximately 12,000 approximately from the statement.

A. It appears from the statement, yes, that is correct.

Q. You go on to say in your statement, it appears on the 27th January 1977, Mr. Leonard wrote to Mr. Sutherland referring to a recent visit and indicating that he felt that it would be important for Mr. Sutherland to call to see him to discuss his financial affairs and he suggested that beforehand, Mr. Sutherland should arrange to see Mr. Don Reid." Now that letter is on the overhead projector.

A. Yes.

Q. It says, "Dear Peter, I refer to your recent visit" so there must have been some deal between Mr. Sutherland and Mr. Leonard or it appears in any case there must have been a dealing between them, some meeting "and I think it would now be important for you to call to see me to discuss your financial affairs. Perhaps you could arrange to see Don Reid beforehand and I would be happy to accompany you to that meeting if you wish me to."

I want you to pass on just a moment, Ms. Kells, to

documents 12A and 12B in your statement. I think as the Tribunal would describe the documents as 12A and 12B. 12A is a document of the 7th April and 12B, which may or may not be a related document, contains a reference to Mr. Sutherland?

A. Yes.

Q. Document 12A of the 7th April 1977, it says, "I attach a schedule showing loans falling due for repayment review during May 1977." And then document 12B contains, as I said, a schedule, it's obviously a much longer document than the single page that you have appended to your statement as that page is described as 'Continuation Sheet Number 5'.

A. Yes.

Q. But if you look at the document, it refers to a balance on Mr. Sutherland's account of £18,816.86 and it gives a maturity date 11th December 1976. Now, do you remember when we put up one of your documents earlier which showed the state of the account as of December of 1976, you can put it on the projector now in a minute. Document 5, the balance as you can see is £18,816 and the pence appears to have been wiped off in the photocopying and that's described as the December balance.

A. Yes.

Q. I want to ask you whether you'd agree with me it would appear therefore that the document I am now holding, document number 12, must have been created around that time

and not in fact in April, in other words, because the balance shown on that document is the €18,816, that it probably refers to the review that Mr. O'Dwyer was conducting in the beginning of 1977 when he sent a memorandum to Mr. Leonard seeking information from Mr. Leonard concerning Mr. Sutherland's future plans in relation to the loan, was it going to be extended and so forth?

A. Okay.

Q. And would I be right in thinking Mr. O'Dwyer would have checked the balance obviously on the account and if he wrote in €18,816.86, then that would appear to reflect a check that he carried out in December and not in April?

A. Well he could have carried out the check in April because there may have been no interest applied to it from the 31st December 1976. I mean, in May, okay, there was interest applied to June and September so one would, interest would have been applied in March. There may not have been for some reason just not documented on the file whilst initially it could have referred to the balance as of the end of December, it may still have been the balance at the end of May because the position had not been regularised.

Q. I understand that. That's quite possible but I think as a result of further documents that were made payable by Guinness & Mahon, a missing page of this statement has come to hand, I am not sure whether you have had an opportunity of seeing it before you gave evidence but I think the



Building Society or the bank's solicitors would have seen it but what it does appear to show is that interest was added in March.

A. Yes, I agree, and the balance changes to €19,000.

Q. And the balance changes.

A. Yes, I agree with you, the balance as at 31st December.

Q. And that because interest was added, that would seem to indicate that the page in question, continuation sheet number 5, probably relates to the review which Mr. O'Dwyer would have conducted at Christmas and which would have prompted the memoranda that we have mentioned a moment ago?

A. Yes, yes.

Q. Now if we could go back to that document, document number 12B, if you could pull it a little to the left so that all the legend is visible, it says "Suitably secured situation will exist within the next day or so. I propose to extend for a period of one year when this happens."

So this review is presumably Mr. O'Dwyer's report to the directors of the bank as to what he feels should or should not be done in relation to any indebtedness outstanding on the bank's books and which was maturing and due for review at the relevant time, is that correct?

A. That's correct.

Q. And he is saying "a suitably secured situation will exist within the next day or so," not that it did exist but that it would exist.

A. Yes.

Q. And I am suggesting to you that that seems to be consistent with the query that was raised in the memorandum to Mr. Leonard and which Mr. Leonard responded to by saying that there was £12,000 on deposit.

A. Yes, yes.

Q. Now, in the ordinary sequence, the last document that we were at was the letter of the 27th January, 1977 from Mr. Leonard to Mr. Sutherland asking him to come in to discuss his affairs.

A. Yes, that is correct.

Q. Allied to that is another document of the same date, document number 9, in which Mr. Leonard, writing to Mr. O'Dwyer says, "I refer to your recent memorandum re Peter's loan of £18,816.86" which again is the December balance "and attached for your information copy letter I have today sent. There is at present a deposit of £12,000 odd and depending on the outcome of the proposed meeting with Mr. Don Reid, the deposit will be increased to cover the borrowings or alternatively, long-term finance which Peter has arranged in respect of his house purchase will be taken up and used to eliminate the loan."

So it would appear from this Mr. Leonard was under the impression Mr. Sutherland had actually arranged the long-term finance but had yet to draw it down.

A. Yes.

Q. "You should at present be holding an undertaking in respect

of these funds but in any event, this client is undoubtedly for the present exposure."

A. Yes.

Q. Now I should say that the documents that have been made available to the Tribunal by Mr. Sutherland and by the bank which he obtained from the bank or which in some cases he had the bank send on the Tribunal contain everything in the file but the file doesn't appear to contain memoranda of some of the meetings that Mr. Ru Leonard mentions in his correspondence.

A. That's correct, yes.

Q. The next document is a document of the 12th April of 1977.

And it's a letter from Mr. Leonard to Mr. Sutherland referring to a meeting on the previous Thursday indicating that a sum of £2,897.10 was the amount involved relative to the matters discussed at the meeting and confirming Mr. Leonard's understanding that Mr. Sutherland was intending to arrange long-term finance which would be used to discharge his bridging finance with the bank. The letter also confirmed that the balance on Mr. Sutherland's bridging loan as at 31st March 1977 was £19,543.25.

It says, "Dear Peter, just a note to advise £2,897.150 was the amount involved relative to our discussion last Thursday. I understand that you are now arranging a long-term finance in respect of your recent house purchase which sum will be used to repay your bridging finance. The balance on this account as at 31st March 1977 is £19,543.20

debit. I would like also to take this opportunity to thank you for an enjoyable lunch."

That would seem to suggest there had been a lunch meeting on the Thursday prior to the writing of the letter.

A. That's right, yes.

Q. The next document keeps him abreast of documents by attaching a copy and indicating he expected the amount then outstanding to be cleared in the next few weeks and then he went on to say, "Hypothecated funds at present total in excess of œ15,000."

Now if I could just ask you for a moment to look at the overall situation obtaining at this time. Originally the proposal from Mr. Leonard to the bank was for bringing finance, bridging finance for six months to be cleared by long-term finance arranged with Irish Permanent Building Society?

A. Yes.

Q. By December there was no long-term finance in place.

A. Mm-hmm.

Q. Now, Guinness & Mahon were not in the habit of providing, I take it, long-term house finance.

A. Not mortgage finance, no.

Q. It was essentially a commercial bank.

A. Merchant banking, yes.

Q. And where you have borrowing going on for longer than was originally envisaged, it then had to be put on some sort of

normal merchant banking basis?

A. Yes.

Q. But it wasn't normal for a merchant bank to allow long-term bridging finance on the security of real property, was it?

A. Well it wouldn't be normal to have long-term bridging finance, no.

Q. So there must have been some discussion between Mr. O'Dwyer and Mr. Leonard around Christmas of '76 or the new year of '77 as to how this arrangement was going to be extended for longer than had originally been envisaged?

A. It would appear so, yes.

Q. And we know Mr. Leonard had said there's security there, there's undertaking, this man is undoubted for the exposure and in addition there's a deposit account?

A. Yes.

Q. And we saw Mr. O'Dwyer described it and I hasten to add it was Mr. O'Dwyer described it as a suitably secured situation.

A. Yes.

Q. When Mr. Leonard is writing to Mr. O'Dwyer on this occasion, he uses the expression "hypothecated funds at present total in excess of £15,000," in other words, he is saying the sum of £15,000 was effectively pledged?

A. As security.

Q. As security.

A. Yes.

Q. Now the reference to hypothecated funds in this letter is

quite an open one, there's no coding used.

A. No.

Q. The expression 'suitably secured' is not used, is that right?

A. No.

Q. And am I right in thinking that the use of ordinary banking security language to describe a pledging of this kind is not normally associated with the type of suitably secured backing that we saw a moment ago?

A. No, it's not. 'Suitably secured' was separate.

Q. I think you were giving evidence the other day in a different context where you mention there's nothing unusual about back-to-back borrowing?

A. Mm-hmm.

Q. There's no reason why anyone shouldn't back borrowing with a cash backed security, whether that security is in the bank or another bank that provides a guarantee or whatever?

A. Yes.

Q. But that you would expect documentation or at least you'd expect some normal references to have been made to it in the course of the bank's internal

A. Internal or external, yes.

Q. documents. And a pledging of funds in a bank in this way would be described as hypothecated funds or pledged funds, it's where the bank has, if you like, a right to

A. Yes.

Q. to grab money.

A. To set it off against the liability.

Q. And reading this document, somebody who knew nothing about suitably secured would see that there was a back-to-back or a pledged

A. Pledged funds.

Q. Pledged funds to support the borrowing?

A. Yes.

Q. Can you throw any light on the reference to the figure of €2,897.10?

A. No, I don't know what that refers to.

Q. If I could just for a moment put up the statement of the Guinness Mahon Channel Islands P3 account. Now, that's the only document that the bank or Mr. Sutherland has been able to provide the Tribunal with in relation to the account described on this statement so the Tribunal knows nothing further about what happened to the statement or to the funds after that date so far as the records of the bank go. But if you add the sum of €2,897.10 to the balance on the account in December, you get a figure of approximately €15,000?

A. Yes.

Q. I am sure you will be quicker at the maths than I am, it's €15,195.81.

A. Okay.

Q. Which is a sum in excess of €15,000.

A. Yes.

Q. Now obviously you can confirm that my arithmetic is correct

but can you throw any further light on it? What I am suggesting and I am merely speculating I suppose really, but there may be some connection between the reference to the €15,000 and the sum of €2,897.10.

A. If the sum of €12,897.10 is added to the P3 deposit account to give a balance of €15,000

Q. Yes.

A. It seems reasonable. And the next document that you refer to is document number 13, which is a document of the 7th June generated from the bank's loans officer or generated by the bank's loans officer who was again wondering what's happening to the outstanding balance on the loan account. He says, "Re Peter Sutherland, loan €19,543.20.

Ru, you will recall that it was agreed we should extend the above facility to the 30th June. If you wish, should I take any action in relation to obtaining payment?"

Following that the next document seems to be a response from Mr. Leonard to Mr. O'Dwyer dated the 23rd June in which Mr. Leonard says, "Re Mr. Peter Sutherland. Just a note to confirm that I have made contact with the above and advised him that I wanted to see him urgently with a view to regularising his position with us. He confirmed that he would make contact with Don Reid and revert to us."

Now the next document is simply a file note. It's described as coming from the loan file of Mr. Sutherland and it appears to record a discussion Mr. O'Dwyer had with



Mr. Ru Leonard. It says, "Following discussions with TRL, it has been agreed to extend the above facility on a "suitably secured" basis to mature on the 30th June 1978. Interest on the loan has been fixed at 13 percent and no facility letter has been issued."

That's Mr. O'Dwyer's note to himself obviously.

A. Yes, for the file.

Q. And we know that the loan did continue in any case.

A. Yes.

Q. Isn't that right?

A. Yes.

Q. And I think there is a document then, the next document, document number 16, again presumably from the loan file which appears to reflect in some way what's contained on Mr. O'Dwyer's own note to his own file in that it's dated September '77, the balance is the same balance as is mentioned in Mr. O'Dwyer's loan file. The purpose of the loan is described at this time as a personal loan. Is there any significance in the fact that it's described as a personal loan at this stage?

A. It's moved from bridging status to a personal loan.

Q. Yes. It's extended beyond what you would normally envisage in the case of a bridging

A. Bridging facility, yes.

Q. A source of repayments or the terms and source of repayments is the next item. It says, "Extension for one

year required, rate 13 percent fixed, drawdown already taken up to facilitate the purchases of the property." The security is described as "suitably secured" and the review date is given as June of the following year.

A. Yes.

Q. Again it says no letter of extension issued which seems to be consistent with what's contained in Mr. O'Dwyer's own memorandum to himself.

A. Yes.

Q. The next document is a loan decision memorandum of May of 1978 and presumably this reflects the review date contained in the last loan decision memorandum which was June of 1978, so it was anticipating a review.

A. Yes.

Q. And the balance is described as €19,083.71. Again, the purpose is described as a personal loan and extension was now being required for a further period to the 13th June 1979 and the security is described as "suitably secured".

A. Yes.

Q. Now, both in this memorandum and indeed in every internal document from April '77 onwards, the only reference to security is the hypothecated funds on Mr. Ru Leonard's side of the file and he was the person dealing with security and Mr. O'Dwyer's side, the expression "suitably secured" is used but there appears to be no further reference at least on any of these documents to any other security mentioned in the facility letter.

A. No, there's no reference. There is reference to other security

Q. There is further on but up to this time, during this period in any case, that focus appears to have

A. Changed.

Q. changed, isn't that is right?

A. Yes, that's correct.

Q. The next document, document number 18 appears to record a June 1979 meeting of the credit committee where it was decided to extend the loan for a further period of one year, interest remaining unchanged at 13 percent fixed, no formal letter of extension granted and no mention at this point, no mention at this point of security one way or another.

A. No.

Q. The balance of the loan was £17,591 sterling but we were in the sterling area at that time, isn't that right?

A. That's correct.

Q. Not for very long more, but all loans, all the currency was sterling.

A. It made no difference, yes, there was parity.

Q. Now, judging from the fact that the balance was £17,591, there appears to be some payments off the loan, we will go over those later but you recall the earlier balance went up as far as £19,000 odd?

A. Yes.

Q. The next document is document number 19. Again it appears

to be a minute of a loan decision memorandum or some similar document, it's not absolutely clear but in content, it's similar to the Loan Decision Memoranda that we have seen already, isn't that right?

A. Absolutely, yes.

Q. The amount is £18,000 sterling. In fact I am not sure if it could have been sterling well of course it was sterling at that point, yes. Personal loan is the purpose, we can jump down to the security, it's described as "stock exchange securities to be lodged if requested".

A. Yes.

Q. That was, as far as I can see, the 29th June of 1978?

A. 1979.

Q. I beg your pardon, 1979.

A. Yes.

Q. Now, document number 20 is a document which is probably earlier in date from the document that I have just

A. spoken of.

Q. spoken of, yes, in that it's signed what looks like Maurice O'Kelly, is that right?

A. Yes.

Q. It's dated, looks like July of 1978 and the terms appears to be until June of 1979 and the figure appears to be consistent with earlier higher balance we referred to in an earlier document but again the security is described as "suitably secured" and there's no reference to any other security.

A. No, there isn't.

Q. Document number 21 appears to close off the dealings, it's a letter from the bank under Mr. O'Dwyer's reference, although it's signed or at least presumably was typed or signed by a Miss M Kavanagh but the reference is POD. It's "re Mr. Sutherland. Dear Sir, we acknowledge receipt of the title deeds of the above property and confirm your undertaking dated 6th November 1976 has now been discharged."

Now it appears that the loan in fact was repaid some time in 1980, isn't that right?

A. That's right, yes.

Q. Do you have the book, the red file of documents, Ms. Kells?

A. Yes, I have.

Q. If you look to the last document.

A. Yes.

Q. At this stage the currency is Irish pounds because Ireland entered, isn't that right, in 1979?

A. Yes.

Q. On the 18th June of 1980, there's a legend to repay loan and a reference to a final balance, credited to the account of €6,000 odd, I can't quite make it out but it reduces the overall balance to zero.

A. Yes.

Q. Just as a matter of interest, in May of that year, there had been a further credit of €9,000 to the loan reducing the balance from €15,000 odd

A. A credit of €10,000.

Q. Did I say €5,000?

A. 9.

Q. There appeared to have been further credits to the loan account in August of 1979 of €4,500. There's an intervening document which needn't concern us, it seems to involve the changeover from sterling to Irish currency.

A. Yes.

Q. I think there were some further credits to the account as well and on the 27th October, there was a credit of 1978, there was a credit of €3,000

CHAIRMAN: I suppose that's hardly an issue it's clear it was discharged in full.

MR. HEALY: It's simply to indicate that eventually as the records show, it was treated as personal loan as ultimately discharged without the need for any long-term finance.

A. Yes.

Q. Thanks very much, Ms. Kells.

MR. QUINN: I have no questions.

CHAIRMAN: Mr. Strahan?

MR. STRAHAN: No questions.

CHAIRMAN: Thank you very much indeed, Ms. Kells.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Peter Sutherland.

MR. PETER SUTHERLAND, HAVING BEEN SWORN, WAS EXAMINED AS  
FOLLOWS BY MR. HEALY:

CHAIRMAN: Thank you for your attendance, Mr. Sutherland.

Please sit down.

A. Thank you.

Q. MR. HEALY: Thank you, Mr. Sutherland. Now, you have provided the Tribunal with a Memorandum of Evidence dealing with some of the matters that, dealing with all of the matters that were mentioned in the course of Ms. Kells' evidence and dealing with a number of matters that arise from documentation that you made available to the Tribunal. I suppose I should say at the outset that the Tribunal's attention was first drawn to all of these documents as a result of a request to Guinness & Mahon for any documentation concerning or connected with, however remotely, any form of back-to-back borrowing. As a result of that request, this loan file came to the attention of the Tribunal and I think that since then, through your solicitors, you have provided the Tribunal with all of this documentation or you have directed the bank to provide them with it, is that right?

A. That's correct.

Q. And I think you have also, where there were gaps in the file or gaps in recollection or information as a result of

the lapse of time, you have also endeavoured to obtain documentation from other people, to some extent from relatives of yours, which is something I'll come it in a moment and you have had your solicitor travel, I think to the Channel Islands and elsewhere, to try to obtain documentation, is that right?

A. That's correct.

Q. And I think in addition to the material that has been provided in connection with your own evidence, the information that you have provided has been of assistance to the Tribunal in other respects in understanding the way in which this bank appears to have operated and in the way in which some of the offshore activities of the bank appear to have been carried out in the 1970s, isn't that right?

What I envisage doing is going through the memorandum of your evidence or read through it and ask you simply to confirm it and then I may go through some of the documents to ask you to deal with outstanding matters in connection with them, if that's agreeable to you. Do you have a copy of your memorandum?

A. I do.

Q. You say that you are a businessman and that formerly you held the office of Attorney General of Ireland in the Governments of Dr. Garret Fitzgerald from 1981/1982 and 1982/1984. You say in or about June of 1976 you contacted Mr. Ru Leonard of Guinness & Mahon indicating that you had purchased a property at 25 Sydney Avenue, Blackrock for the



sum of €37,000.

You say that whilst it was your intention to obtain long-term finance in the order of €20,000, your request to Guinness & Mahon was to obtain bridging finance with an initial requirement of €5,000 for the deposit. "My own house at Foxrock Park was on the market and it was expected to realise in the order of €20,000.

As this was 24 years ago I do not recall precisely my conversations with Mr. Leonard. However I do recall that he indicated to me that he was not personally in a position to sanction such a facility but he felt that the bank would be prepared to accommodate me. He agreed that having discussed the matter with the bank, he would revert to me as soon as possible," that's correct, isn't it?

A. That is correct, yes.

Q. "I had no previous banking relationship with Guinness & Mahon and my contact with the bank arose in a professional capacity in that I had represented the bank in a series of court cases. Mr. Leonard was responsible for the running of these cases within the bank and I'd had very regular contact with him over the previous two years or so.

The Tribunal has provided me with a copy of a memorandum dated the 10th June 1976 which I understand was from Mr. Leonard to Mr. Maurice O'Kelly who was a director of the bank."

What I should say of course that documentation was made available by you to the bank in the first instance but it was sent back to you to ask for your comments and that resulted in this memorandum?

A. That's correct.

Q. "There's a reference in the memorandum to other assets held by me with the bank. I have no knowledge of any assets held by me with the bank at the time and I understand that the bank itself has no record of any accounts in my name or assets held on my behalf.

I received a facility letter from the bank dated 14th June 1976 confirming that the bank was agreeable to providing me with a bridging loan for €37,000 to be discharged out of the proceeds of sale of my own property at Foxrock Park and from long-term finance which I intended to put in place.

The security for the loan was an undertaking from my solicitors, PJ Kevans & Company, 66 Dartmouth Square, Dublin 6. I understand that such undertaking was given to the bank by letter of the 11th June 1976.

Mr. Kevans has informed me there was nothing in this transaction and the security provided on the two properties was more than adequate to secure the loan" and I hasten to add, Mr. Sutherland, I don't think there's anything unusual in it and you were looking for finance in the ordinary way, your solicitor provided an undertaking that he'd hold the title deeds of the property you were buying to secure the

borrowing from the bank. Indeed I understand such a form of undertaking is habitually relied upon by banks for the granting of bridging loans.

"Following the sale of my house at Foxrock Park, the net proceeds of sale amounting to €19,550 were lodged with Guinness & Mahon thereby reducing the amount outstanding on the bridging loan to €19,550."

I wonder is there a mistake in those figures? In any case, we know the loan was reduced by €20,000 and it was some €38,000, it must have been brought down to €18,000?

A. Yes.

Q. We have seen the figures and I don't think there's anything to quibble about, "Due to a number of factors but mainly to the fact I had been less than attentive to my own financial affairs, I did not put long-term finance into place until 1980 and in the intervening period the bank agreed to extend the facility from year to year at a fixed rate of interest and subject to the solicitor's undertaking which had been furnished on the 11th June 1976. To my knowledge this was the full extent of the security held by the bank for my loan. If the bank was relying on any other security, I was not aware of this nor had I any knowledge of it until the Tribunal brought to my attention certain internal Guinness & Mahon documents.

The Tribunal has provided me with a number of internal memoranda and credit committee loan memoranda in which my

loan is described as "suitably secured", I had been informed by the Tribunal that this was an expression used by Guinness & Mahon to signify that a loan was backed by a deposit in the bank in the name of Guinness Mahon Cayman Trust or one of the bank's Channel Islands subsidiaries.

The documents in question were never at any time provided to me until they were produced in the context of this Tribunal and accordingly I was not aware of their contents.

In relation to such banking references, I should say I had no notion of how the bank managed its affairs nor of the designations it used in reference to different accounts," that's correct, isn't it?

A. That is correct.

Q. "The Tribunal has also provided me with a copy of internal memorandum dated 7th January 1977 from Mr. Pat O'Dwyer, who I understand was the bank's loan officer, to Mr. Leonard.

In his memorandum, Mr. O'Dwyer questioned the position of my loan and asked Mr. Leonard to confirm that the position was suitably secured. Mr. O'Dwyer appears to have responded to the effect that the bank had a solicitor's undertaking and that my loan was a normal bridging situation. He also referred to a £12,000 deposit and there appears to be a notation at the time, at the top right hand of the memorandum to P3.

I understand from the Tribunal that my own loan file includes page 1 of a statement of account to Guinness Mahon Channel Islands, P3 and I have been provided with a copy of that statement. It appears as of the 31th December 1976, there was a sum of œ12,298.71 standing to the credit of the account."

And again, in case it's not clear from the statement and to be fair to you, Mr. Sutherland, I should say that all of the responses you make to these documents are based on queries addressed to you by the Tribunal but all other documents were made available by your solicitor to the Tribunal in the first instance?

A. That's correct.

Q. "While I wish to make it clear I have no knowledge at all of this account or how it came to be associated with my bridging loan within the bank, I can only speculate that it must have been connected with funds held in a trust established by my father-in-law who is now 89 years of age and resides in Spain.

In the mid 1970s my father-in-law discussed with me the possibility of establishing a trust for members of his family. as I had been working closely with Mr. Ru Leonard in my professional capacity I mentioned this to him and he indicated that Guinness & Mahon might be in a position to assist my father-in-law. I believe that Guinness & Mahon sought the assistance of Mr. Don Reid who was then the taxation partner in Stokes Kennedy Crowley and that in due

course a trust was established. I recall that the relevant documents were dispatched by Guinness & Mahon to my father-in-law in Spain and they were executed by him and returned to Guinness & Mahon.

I can also recall he signed a letter of wishes in English and that this was also returned to him by Guinness & Mahon. I distinctly recall seeing a copy of letter of wishes in the presence of Mr. Don Reid but I cannot specifically recall seeing or dealing in any way with any of the other documents. It was my understanding at the time that the trust was established in the Channel Islands. In an effort to assist the Tribunal with its inquiries, I requested the Spanish lawyer of my father-in-law and his family to provide the Tribunal with copies of any documents which they hold regarding their family trust. I understand that the Tribunal has been provided with a copy of a discretionary settlement dated 8th January 1980 between John Andrew Furze and Guinness Mahon Cayman Trust Limited and a letter of wishes from Mr. Furze to Guinness Mahon Cayman Trust dated 8th November 1982. This is not the letter of wishes which was signed by my father-in-law in the mid 1970s but I believe it contained the same requirements as the original letter of wishes.

I understand that Mr. Don Reid has confirmed to the Tribunal that he recalls being requested to advise

professionally in relation to the establishment of the trust. I understand that he recalls suggesting that a discretionary settlement route was the most suitable and that he recommended that the settlement should be located offshore in a low tax jurisdiction.

In a further effort to assist the Tribunal, my solicitor Mr. Bryan Strahan of Gerrard Scallan O'Brien, Solicitors, has, with the consent of the family in Spain, sought to obtain records or documents from Guinness Mahon Guernsey.

I understand that he made contact with Mr. Brian Ellis who was formerly a director of Guinness Mahon Guernsey and was informed that any records which had been created or maintained by Guinness Mahon Guernsey or any agents on their behalf relating to trusts or accounts established in the 1970s, were no longer in existence and had been destroyed some considerable period of time ago.

Despite the inquiries which I have made, I am not in a position to indicate whether account Guinness Mahon Cayman Channel Islands P3 represented funds held in the trust. If they did, I can confirm that I had no interest in the funds, I had no control of them, I had no detailed knowledge of the manner in which they were held and I was not a beneficiary of the trust.

With regard to my bridging loan account as indicated, I was not informed by Mr. Leonard or by any other Guinness &

Mahon official, nor did I have any knowledge that Guinness & Mahon were relying on any security other than the solicitor's undertaking provided by Patrick J Kevan & Company. It appears from the documents provided by the Tribunal that I received a letter from Mr. Leonard dated 27th January 1977 asking me to call to see him to discuss my financial affairs and suggesting that I might arrange to see Mr. Reid beforehand and that he would be happy to accompany me to such a meeting.

I do not recall the said correspondence but it seems clear that Mr. Leonard was pressing for the loan to be sorted out since it had originally been taken out as a bridging loan.

I simply do not recall meeting with Mr. Reid at this time.

In any event, I would have had no reason to discuss the issue of the bridging loan with him since he was not involved in any way in the matter of the loan. The only issue with which Mr. Reid was involved was the setting up of the trust on behalf of my father-in-law.

The loan file also includes a letter of the 12th April '77 from Mr. Leonard advising me a sum of œ2,897.10 was the amount involved relative to a discussion that we had on the previous Thursday. I have no idea what this figure referred to. I believe that Mr. Leonard was anxious to have the loan paid off or at least to have the loan reduced. I believe that I may have felt under pressure to pay off the loan. I noted the reference to hypothecated



funds but I consider the use of such a term as totally inappropriate in the case of my bridging loan arrangements.

The Tribunal has also provided me with a copy of a memorandum of the 23rd June 1977 from Mr. Leonard to Mr. O'Dwyer in which Mr. Leonard confirmed that he had made contact with me and indicated he wished to see me urgently and that I confirmed that I would contact Mr. Reid and revert to him.

At this time it would appear interest on the loan was building up and it appears I had acted on the matter since the April correspondence. It appears from the records while I did not clear the loan, I did however make some payments over the following two months. I don't recall meeting Mr. Reid at this time. As already indicated the balance of the loan was discharged in May and June 1980 out of the proceeds of long-term finance which I had arranged. I also note that by letter of the 24th September 1980, the bank confirmed to Mr. Kevans that his undertaking with the bank in respect of the loan were discharged. I believe that this is consistent with the nature of the loan and the form of the security provided.

I wish to reiterate that Guinness & Mahon relied as security on a backing deposit connected with monies held in the trust, this was done without any knowledge or consent.

At no time was I made aware of such security until the

Tribunal brought to my attention the bank's internal documents. I had no interest in the monies held on the trust nor was I beneficiary of the trust. I have not at any time placed any of my funds with Guinness Mahon Cayman Trust or with any other offshore subsidiaries of Guinness & Mahon."

I just want to go through some of the documents we mentioned a moment ago and to mention one or two other documents, the documents provided by you, Mr. Sutherland, in connection with the trust set up for your father-in-law. The first document is document number 1 that I put on the overhead projector sometime ago and it simply records a meeting you had with Mr. Ru Leonard. You said you met him in a you came across him in a professional capacity working for the bank over the previous two years.

A. Yes, I had been I had been involved in a series of building contract cases where they had repossessed property for some reason and it had gone on for quite a long time, there were a whole series of cases and I was regularly in the bank and he was the official charged with responsibility for that and that was the first time I met him and it was in that context that I continued meeting him at that time.

Q. Now, his memorandum I think is something which you can agree in most respects in that it records the intention you

had to take out a loan to pay for a property which you had bought at auction the day before, something like that, is that right?

A. That appears to be the case.

Q. And the amount is correct, it's œ37,000 and you were going to try to obtain long-term finance of about œ20,000 because you thought you'd get œ20,000 for the sale of your own house.

A. That's right.

Q. You thought you'd get half the price and borrow the other half?

A. Yes, on the security of the two houses, in effect.

Q. Yes. Your initial request was for œ5,000 to pay for the deposit which had already been presumably paid to the solicitor for the vendor?

A. That appears to be the case.

Q. And then Mr. Leonard went on to describe how he had indicated to you that he felt "the bank would be happy to accommodate you particularly in the knowledge of his other assets with us which he referred to briefly." I gather that you are certain that you had no other assets?

A. Absolutely not.

Q. Is it possible that you may have described your other assets, not necessarily your other assets with the bank?

A. To be honest with you I haven't the remotest idea. I have no recollection at all of any of the meetings in detail. I don't even remember them actually taking place but I can

only speculate to the context of what I remember of the events at the time. I don't know what that was referring to.

Q. Just to clarify, there was no account, as you say yourself, in your own name?

A. That's right.

Q. You had no funds held in any other name for your benefit in the bank?

A. Absolutely not, as far as I can recall.

Q. Document number 2 simply records the Loan Decision Memorandum, it's not a document you would have seen until the file was made available to Guinness & Mahon and it refers to the security as the solicitor's undertaking to hold the deeds of the property you were purchasing and to lodge the proceeds of the property you were selling. And what was envisaged was a bridging facility for six months, from the middle of 1976 until the end of that year. Which would again to refer to briefly simply contains your solicitor's undertaking.

The next document is the Guinness & Mahon file copy of a letter that was sent to you recording the terms of the loan, the condition which it was granted and providing for repayment not later than the 11th December of 1987 on the security of the two undertakings that we mentioned a moment ago.

The next document is document number 5 and it's the

statement or the first page of the statement of the loan account from the date the £5,000 was debited to the account down to December 1976 and presumably the reason it's on the file, when I say the reason it's on the loan file, there would always have been a copy of the bank statement kept elsewhere but the reason it's on the loan file is because the loan matured in December of 1976 and therefore the matter came up for review around that time and that shows that the full amount of the purchase price in or about £37,000 had been drawn down and that indeed by that time, approximately just over half of the in or about half of the borrowing had been repaid out of the proceeds of sale of your own property.

A. That is correct.

Q. In accordance with the undertaking given by your solicitors.

A. That's correct.

Q. So that the balance with accrued interest stood at £18,816. Now I don't know, Sir, whether you intend to rise at 12:30 or I am looking at a different clock.

Computers aren't always right.

CHAIRMAN: Certainly press on for the time being, Mr. Healy.

Q. MR. HEALY: Yes. The next document I want to refer you to, Mr. Sutherland, is document number 8, which is a letter from Mr. Leonard to you dated 27th January of 1977. It's

document number 8.

A. Yes.

Q. This says, "Dear Peter I refer to your recent visit and think it would now be important for you to call to see me to discuss your financial affairs. Perhaps you could also arrange to see Don Reid beforehand and I would be happy to accompany you to that meeting if you wish me to."

Now judging from the letter, there must have been some prior contact with you and Mr. Leonard in that he refers to a recent visit and that would seem consistent with the terms and conditions under which the loan was originally granted giving you up until December to pay it and then he says, "Perhaps you'd arrange to see Don Reid beforehand and I'd be happy to accompany you to that meeting if you wish me to."

Now, I want to refer to a number of other references to Mr. Reid and to this period in connection with the file but before doing so, I think it might be useful if you were to indicate, without referring to other documentation which we will come to later, what your involvement was with Mr. Reid at this time or prior to this time, if any?

A. My involvement with Mr. Reid at this time and it was an involvement which was initiated by the bank, was related to the fact that I had had a conversation at some stage, I have no idea at what stage precisely in the sequence of events here, with Ru Leonard about the wish of my wife's

family to set up, in fact it wasn't initially to set up a trust, it was just to discuss how they might deal with their affairs in terms of a settlement for the family and at that time, the bank suggested that a discussion which they initiated, as I recall it, with Mr. Don Reid, who had been advising the bank or was known to the bank, I don't know whether Stokes Kennedy Crowley were their accountants or not.

Q. I can help you there, Mr. Reid has provided a statement which I think you have seen Mr. Reid has indicated he had advised the bank in a general way about potential trust strategies and he was someone who was therefore known to the bank as a person with some expertise in this particular field.

A. It was in that context that Mr. Reid discussed with me, in the presence I am sure but I can't remember the meeting, of Ru Leonard this issue of setting up a trust and there were a number of different aspects to this, including the absence of a double taxation treaty with Ireland at that time, the whole issue of when tax would be paid and whether disbursements were on a low tax environment and so on, a whole series of issues, the details of which I can't remember at all now and wasn't familiar with this particular area at the time either, I should tell you, and as a result of that, I had contact with Mr. Don Reid at this time in regard to this particular issue of the trust.

I don't remember any of the correspondence, specific

correspondence or indeed any of the meetings referred to in the correspondence at all. It's so long ago that I don't simply remember them but I do remember the broad outlines of those discussions, the fact that a trust was created, the trust documents were sent to Spain, I can't remember who sent them to Spain. They were executed, brought back and at least in one respect, I remember specifically seeing the documentation which was what seemed to me to be the essential element of the trust which was the letter of wishes of the settlor and that's as much as I remember about it. The letter of wishes was the settlor's expression of intent in regard to the disposal of the trust fund. So I would have had meetings with Don Reid or a meeting, I am sure meetings at that time and this would have been discussed.

Q. He was not at that time your professional accountancy or tax advisor?

A. Absolutely not.

Q. Did you have a subsequent association with him as an advisor to you?

A. I think in the eighties I did and it was initiated really out of the contact.

Q. That you had with him

A. That I had with him in this context.

Q. So that at this time and I don't think we need to go into all this file but this file does show contact with your own professional accountancy and tax advisor sending them the



usual information concerning your bank balances and so forth.

A. Yes.

Q. It was not Mr. Reid.

A. No.

Q. But you are certain that your own personal professional involvement with him as an advisor did not arise until the

A. That is correct.

Q. until the eighties. But in the course of a meeting which presumably took place, I am not expecting you to remember it, if Mr. Leonard referred to Mr. Reid, wouldn't it seem to follow that he had some impression that Mr. Reid had been mentioned at that meeting, not as your professional advisor, I am not suggesting that now, he might have been mentioned in his contacts earlier in connection with you or your wife's family?

A. That certainly would seem to be the implication but I have no recollection of the facts.

Q. Now I want now for a minute to refer to a number of other documents which you will have seen me refer in the course of the evidence of Ms. Kells and in particular, document number 12B.

A. Yes.

Q. And you'll recall that I put it to Ms. Kells and I certainly had the impression, we know it refers to Mr. Sutherland and I had the impression and I think she agrees

that that document appears to have come into existence  
sometime after the balance on your loan account had reached  
œ18,816.86?

A. Mm-hmm.

Q. And then the legend underneath that reference to your  
account on this document seems to be a review document, is  
that as follows: "Suitably secured situation will exist  
within the next day or say. I propose to extend for a  
period of one year when this happens." And this is a  
proposition being put by the loans officer to his  
superiors. You understand from contact that you have had  
with the Tribunal and with some of the evidence, the  
expression "suitably secured" is a formula or designation  
used to describe back-to-back type arrangements and  
Mr. O'Dwyer, to judge from the legend now, is under the  
impression that he is going to receive some confirmation  
about some backing being in place. You agree that's what  
the file appears to show?

A. Yes.

Q. And if I can then refer you to document number 6 in which  
Mr. O'Dwyer, as far as we can see, is the author of the  
review document I had on the overhead projector a moment  
ago, is sending a memorandum to Mr. Ru Leonard who is  
responsible as the contact person for your loan within the  
bank in which he is querying the fact that the review date  
has passed and he is wondering whether an extension is  
required and he is also seeking confirmation that the

position is suitably secured which appears to be consistent with the question he raised in the review document, is that right, and the response from Mr. Leonard is that "there is approximately €12,000 on deposit at present but I think you will find that you will have a solicitor's undertaking that this was a normal bridging situation" which it was, a normal bridging situation supported by the undertaking but there is this reference to a deposit account and as you have stated in your own statement, a reference to P3 and the existence on the file of this statement from Guinness Mahon Channel Islands.

Now I think as you have stated, you knew nothing about Guinness Mahon Channel Islands but if you look at the statement or if you could just have it on the overhead projector for a minute, it commenced in April of 1976.

A. Yes.

Q. Which is of course some months before you put in your application to Guinness & Mahon for bridging finance. Can I ask you whether in fact the settlement which your father-in-law put in place was in 1976?

A. I have I mean it was in or around that time and I certainly, on reading through the papers, can understand the association that it can be drawn from the word "suitably secured" and so on on this trust. I don't I have no recollection of the precise date and I can't get it from anybody else a precise date but I am sure it was at

that time. I mean the whole thing to me is surprising because the security for the borrowing was a house worth €37,000 plus a house worth, as it transpired, I think €19,600 for a loan of €37,000, to put it bluntly but it is quite clear from the documentation that there is

Q. There was adequate real security to cover the borrowing?

A. Absolutely, adequate real security but there is also, from the points that you make, a suggestion of a reference to an account which I can only assume to be and I can't remember whether it was ever referred to at the time, the account which was set up as a trust. It could have been referred to at the time, I can't I have been helped by my father-in-law at various stages and I have no doubt if I had asked him, he would have been helpful in this case but nobody has a recollection of that being the case. That's as much as I can say about it. I am sorry, I probably have jumped ahead of the question.

Q. No, it's quite all right. While I do understand what you say concerning the security there was for this borrowing, you do accept that Guinness & Mahon was not in the business of making loans for house purchases not in the house purchase business. You do accept that, you do understand?

A. Well, I am I absolutely take your word for that and they were an investment bank, I don't know exactly what the nature of their business. In fact, I rather doubt at the time that I approached them that I knew that they didn't do this type of business in the ordinary course. I mean, I

wouldn't have been clear about it then.

Q. But looking at it from the internal perspective for a moment, the man who had made the loan made it on a bridging finance basis and as is invariably the case with bridging finance, it is a temporary facility until the borrower puts something more permanent in place, either borrowing from another institution or standard mortgage borrowing. From an internal perspective, they had a new situation at the end of 1976 in that there was no long-term finance in place.

A. Yes.

Q. Your dealings, in any case, with Mr. Leonard commenced with your professional relationship with him?

A. Yes.

Q. Followed by the fact that you drew to his attention your father-in-law's desire to make a settlement for his family?

A. Yes.

Q. Which was followed by some advice he gave you, the fact that he put you in touch with Mr. Reid and as a result of some advice given by Mr. Reid, a particular strategy was put in place, an offshore strategy, offshore to Spain that is, in a low tax jurisdiction, the details of which you knew nothing more about other than you saw some documents executed to bring about that situation, is that right?

A. That's correct. Except in so far as you refer to the fact that you implied that Mr. Reid was acting for me. He never acted for me.

Q. No

A. Sorry, he was

Q. Your connection with him was in relation to that?

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

Q. So from Ru Leonard's standpoint, your connection with Mr. Reid couldn't have been in relation to your own financial affairs, i.e. your own taxation, your own accounts. His only knowledge of any connection between you and Mr. Reid was in connection with the trust?

A. Absolutely correct.

Q. And while we don't know the precise date, it would appear that you had been involved with the bank for some years professionally the P3 account of which we have a statement appears to have been opened sometime in 1976, some months in advance of your deciding to look for bridging finance, and a matter only arises again as a document on your loan file. Now, if I could refer you now to document number 9, this is the internal memorandum from Mr. Leonard to Mr. O'Dwyer which is related to the letter we mentioned a moment ago where he discussed the meeting he had with you and asked you to come to see him and he says, "I refer to your recent memorandum" and that appears to be a reference to the memorandum in which Mr. O'Dwyer is raising queries "and attached for your information copy letter I have to today sent. There is at present a deposit of €12,000 odd and depending on the outcome of the proposed meeting with Don Reid, the deposit will be increased to

cover the borrowings or alternatively long-term finance which Peter has arranged in respect of his house purchase and will be taken up and used to eliminate the loan.

You should at present be holding an undertaking in respect of these funds but in any event, this client is undoubtedly for the present exposure."

Again all I want to refer you to is the reference to Mr. Reid is not in connection with your own financial or fiscal affairs but in connection with the deposit of £12,000 and while you may not remember everything about the deals, would you agree with me that the mention of Don Reid is something which is at least consistent with his earlier involvement in advising in connection with the trust?

A. That certainly seems to be the case. But I don't actually recall it.

Q. Now document number 10 is dated April of 1977 and refers to a period when the balance of your account had reached £19,000 odd as of March of 1977, obviously with the addition of interest which was going on quarterly?

A. Yes.

Q. Have you got that document?

A. Yes, I have.

Q. And this contains the reference to the sum of £2,897.10 as the amount involved relative to our discussion last Thursday. I understand that you are now arranging long-term finance in respect of your recent house

purchase. No doubt you have met Mr. Leonard and as in the case of most people dealing with their bank manager, you say, "I am arranging to have it done, I will have it done and I will have long-term finance in place" and he is simply recording that and then he is recording this reference to this strange sum of money. I will say it's strange because it's a precise sum of money and you know nothing about it.

A. I have absolutely no recollection of what that relates to and if I did, I would only be speculating.

Q. You were, I take it, in the room a moment ago you heard my

A. Yes.

Q. suggestion that that sum added to the balance on the P3 account of €12,000 brought it up to €15,000 and is it, it is at least possible, is it not, that Mr. Leonard may have said to you, you need to put more money or somebody will need to put more money in to secure your borrowing, is that possible? Is that right?

A. That's right and it could be related to the trust, it could be related to the trust and that could be the explanation for the figure and the situation. I just personally don't remember it but the facts as suggested by you are certainly consistent with that.

Q. The next document I am going to refer to, document number 11 in which in a note, Mr. Sutherland, or in a note, Mr. Leonard refers as he did in writing to Mr. O'Dwyer on the



occasion of your January meeting, "I attach a copy of a letter sent today to Mr. Sutherland which is explanatory. I expect the account to be cleared in the next few weeks. Hypothecated funds at present total in excess of £12,000."

Now I draw your attention to the expression 'hypothecated funds'. You know you say it's not a word you'd use to associate with any funds that you had but I am simply drawing to your attention, as I drew to the attention of Ms. Kells, that Mr. Leonard is referring to what would appear to be here a normal back-to-back situation, i.e. one that is transparent on the front of the file. As a person with knowledge of banking, you will know that what he is simply saying is that the sum of £15,000 is pledged to support this borrowing.

A. Yes.

Q. And if an arrangement had been put in place which involved your father-in-law simply allowing the trust or the trustees presumably at the request of your father-in-law allowing the trust fund to be used to support bridging finance, then that is an expression that would have been used?

A. That's right, could have been used certainly and it's consistent with it. I don't think I would have known what hypothecated meant at the time.

Q. I am sure you have had an opportunity to learn since. The next document is again an internal memorandum, it's

document number it's document number 13 is in fact the next document in terms of time, or the next relevant document and it's simply an internal memorandum from Mr. O'Dwyer to Mr. Leonard to know what he should do in relation to the loan.

Mr. Leonard replies indicating that he has made contact with you and that he has advised you that he wished to see you urgently and again he says he confirmed, meaning that you confirmed you'd made contact with Don Reid and revert to us. Again all I suggest at this point is that Mr. Leonard was still under the impression or an impression that he recorded in his own private internal memoranda and in letters to you that Mr. Reid was involved or at least was a person who might be involved or might be of assistance, is that right?

A. Which would suggest to my mind a connection with the trust.

Q. Yes. Now, the next four or five documents were drawn to the attention of the last witness, Ms. Kells, and to your attention because we needn't go into all of them in detail, I have already put them on the overhead projector because they all refer to the progress of the loan, I think the balance goes up and down because at that stage you obviously decided you might reduce it in some way or might use some other funding to reduce it but it is described as various at the various points at which decisions are made to extend it for another six months or another year. It is described on Mr. O'Dwyer's side of the file, I hasten

to add, which is the loans officer file, as being suitably secured, not on Mr. Leonard's side of the file. Mr. Leonard was the person who would actually have known about offshore funds and he described it, as I mentioned earlier, in transparent terms from the point of view of the Tribunal, something unusual. On Mr. O'Dwyer's side then, it's described as 'suitably secured' and that's presumably consistent with Mr. Leonard having indicated to him as we saw in December and January of 1976, 1977, that there was a backing in place?

A. That's correct.

Q. Now eventually the loan was paid off, the undertaking of your solicitor was discharged and the outstanding balance on the account was reduced to zero.

A. May I make one point in regard to the time?

Q. Yes of course.

A. There was a long time lapse before I got the loan from the Irish Permanent that assisted me ultimately in the purchase of the house. That was simply as a result of dilatoriness on my part.

Q. I accept that. Inertia on the face of the bank?

A. I was and I was under pressure at various times to secure the borrowing from a Building Society. I think I had been helped

Q. Sorry?

A. I had been helped in various ways at that time by my family. It may well have been there was a discussion in

the early days about, in '76, about the fact that my father-in-law was there in the background or whatever, or the family rather, the family rather than my father-in-law and that may have been the reason for the various references, I certainly am not trying to deny that.

Q. It was certainly clear there were references in any case, a reference to Mr. Reid appears to be a reference to your father-in-law if I can put it that way, that's the only connection he would have had in Mr. Leonard's mind to link him to you because he wasn't your own financial adviser?

A. That's right.

Q. Thanks very much, Mr. Sutherland.

MR. QUINN: I have no questions.

CHAIRMAN: Anything, Mr. Strahan?

MR. STRAHAN: No thanks, Sir.

CHAIRMAN: Thank you.

A. Thank you.

THE WITNESS THEN WITHDREW.

CHAIRMAN: It's just gone half past. Mr. Reid will be a little time more.

Mr. Reid, it won't pose particular difficulties if we defer your evidence until after lunch?

MR. REID: No, Sir.

CHAIRMAN: Very good, ten to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:50PM:

MR. HEALY: Mr. Don Reid, Sir.

DON REID, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR.

HEALY:

CHAIRMAN: Thanks for your attendance, Mr. Reid, please sit down.

MR. HEALY: Thank you Mr. Reid. Mr. Reid, in an earlier incarnation, I think that you were a tax partner and a tax expert or maybe modesty prevents you from acknowledging that you were a person with considerable expertise in taxation in Stokes Kennedy Crowley and in whatever subsequent incarnation there was of that firm during the seventies and the eighties, isn't that right?

A. That's right.

Q. You have in fact provided the Tribunal with assistance both in connection with the evidence which was given this morning by Ms. Kells and by Mr. Peter Sutherland but also in connection with your involvement with Guinness & Mahon as an adviser and also in connection with your understanding of the tax climate that prevailed in this country in the seventies and the eighties, isn't that so?

A. Yes.

Q. You have given assistance on evidence you may be giving on three different bases; on the the one hand in connection with this matter of fact of the evidence, secondly in connection with fact evidence involving the advices you may or may not have given to Guinness & Mahon in connection with tax strategies in the seventies and eighties and thirdly, perhaps depending on decisions of the Sole Member, evidence of a general nature concerning the tax climate.

A. Yes, that's right.

Q. Now, on this occasion your evidence is being given in connection with the inquiries the Tribunal is conducting with reference to Term of Reference (c) of the Terms of Reference under which the Tribunal is obliged to inquire into payments from the accounts mentioned in Term of Reference (b). The accounts to which reference is made in Term of Reference (c) as far as the Tribunal is concerned are the Ansbacher accounts referred to in Term of Reference (b). And the Tribunal is interested in payments from those accounts and payment is defined in the Terms of Reference as including a benefit in kind. And it's in the context of a benefit in kind by way of a backing or security provided or apparently provided for borrowing by Mr. Sutherland in Guinness & Mahon that your evidence is being given today, isn't that right?

A. That's right.

Q. Now, you provided the Tribunal with a Memorandum of Evidence and I propose to take you through you that

firstly. Do you have a copy of it?

A. Yes, I do.

Q. You say "I was not consulted nor did I advise either party in relation to the bridging loan advanced by Guinness & Mahon to Mr. Sutherland in 1976. I have no knowledge, direct or indirect, concerning the terms on which the loan was made other than the knowledge that the loan was made and was repaid with interest."

Now, that statement was made in response to a general query from the Tribunal, which was followed by a number of other queries concerning the documents which I have referred to already and which were referred to in evidence this morning.

A. Yes.

Q. You were asked for to make a statement or give an indication to the Tribunal of your knowledge, direct or indirect, of the manner in which the loan in question was secured and, in particular, the apparent securing of the loan by hypothecated funds held by Guinness & Mahon which appear to have been held in an account of Guinness Mahon Channel Islands P3 and your response is "I have no knowledge regarding the security provided for the loan and, in particular, I have no knowledge of any hypothecation other than documentation shown to me by the Tribunal team. In fact, I did not become aware that there was any question of hypothecation until the matter was brought to

my attention arising out of the Tribunal's inquiries."

Query 3 was whether you met with Mr. Sutherland and/or Mr. Ru Leonard of Guinness & Mahon regarding Mr. Sutherland's bridging facility. You say "That at no time did I ever meet with Mr. Leonard concerning Mr. Sutherland's affairs nor did I ever meet Messrs Leonard and Sutherland together. I have read the copy memorandum from Mr. Leonard to Mr. O'Dwyer but I am certain such meeting never took place."

I think in fairness to both Mr. Leonard and Mr. O'Dwyer, in view of Mr. Leonard's the fact that Mr. Leonard is deceased, I don't think the memorandum purports to be a memorandum of a meeting having taken place but indicates if a meeting were to take place, he would be happy to accompany Mr. Sutherland to any such meeting with you?

A. That's right.

Q. I think what you are saying, whereas that may have been the intention from Mr. Leonard's memorandum, no such meeting with Mr. Sutherland, Mr. Leonard and you did take place?

A. Ever.

Q. Ever. You were asked whether you attended a meeting or spoke to Mr. Sutherland regarding Mr. Sutherland's bridging loan or after the 7th June and if so, the purpose of any such meeting or discussion, details of the matters discussed and so forth. And your response is "I have no recollection of any meeting or discussion with



Mr. Sutherland concerning the bridging loan on or after the 7th June 1977. I have no occasion to take any action in relation to the matter nor in retrospect can I conceive of any advice that that might have been expected of me other than perhaps advice in relation to the tax deductibility of interest on the bridging loan, if paid in one sum.

However, I have no recollection whatever of the matter being raised with me. It should also be noted that I did not commence to act for Mr. Sutherland in any capacity until the late 1980s. Furthermore, from such inquiries as I had been able to make, it appears that there is nothing in the relevant papers to suggest that I provided any advice or that I, in fact, met with either Mr. Sutherland or Mr. Leonard on or after the 27th January 1977 or advised in any way in connection with the loan."

You are then asked for your knowledge, direct or indirect, of your involvement in a discretionary trust established by or on behalf of Mr. Cabria, the father-in-law of Mr. Sutherland and we will refer to documents in connection with that trust in a moment.

You say "I have no direct involvement in the actual formation of the discretionary trust. I believe my advice was sought by Mr. Leonard many years ago on behalf of the bank as to the nature of the arrangement that might best suit the needs of the family in question. I did, I believe, agree with or recommend the use of a discretionary

settlement and that it should be located in a low tax offshore jurisdiction. My understanding was that Spain did not have a discretionary trust regime and location in this country might give rise to double taxation", meaning location in Ireland might give rise to double taxation "as there was no suitable arrangement between the two countries at the time for the relief of double taxation."

No double taxation treaty, in other words.

A. That's right.

Q. "Hence my advice was that the low or nil tax jurisdiction should be selected so that taxation on the trust would be neutral, leaving the question of liability, if any, on distributions to be dealt with by the recipients in due course." Presumably, according to the tax regime in which they were resident or situate at the time of the distributions.

You say "I have no recollection of seeing the trust deed but I did advise the bank of the need to get a clear statement of the settlor's wishes so as to enable them to ensure compliance with his intentions, especially in a case where there might be a language difficulty. I believe that I did see such a letter which, although informal, seemed to be clear enough. I have recently seen a copy of a letter signed by the late Mr. Furze dated 8th November 1982, and while I cannot say with certainty that it is identical, I do believe that it is to the same effect as

the original."

Then you were asked as to whether you had any knowledge, direct or indirect, or involvement in the movement of funds held under the trust from the Channel Islands to Guinness Mahon Cayman Trust. And you say "I have had no knowledge or involvement concerning the movement of funds from the Channel Islands to Guinness Mahon Cayman Trust or of the reasons for such transfer."

Now, in paragraph 4 of your memorandum, you state that you did not commence to act for Mr. Sutherland land in any capacity until the late 1980s. And I think that's consistent with the evidence he gave this morning that from some time in the late 1980s, you acted for him as a tax adviser, is that right?

A. Yes, for about four or five years, I think.

Q. And prior to that, he had other accountants acting for him?

A. That's right.

Q. In connection with his own tax and financial affairs?

A. That's right.

Q. Your involvement or your connection with the family of Mr. Sutherland arose, I take it, out of your involvement with Guinness & Mahon and a connection between Mr. Sutherland and Mr. Ru Leonard?

A. That's right.

Q. Mr. Sutherland has informed the Tribunal that because of his professional dealings with Mr. Leonard and unconnected

with any loan that he might want from the bank, in other words, in advance of his taking out any loan, he queried or raised with Mr. Leonard how his father-in-law, who was a Spanish national, might settle some fund that he had or that he might acquire. And arising out of that conversation or some similar conversation, he was put in touch with you. Would that be right?

A. No, not quite.

Q. I see.

A. Mr. Leonard came to see me. I did not see Mr. Sutherland but I knew Mr. Sutherland was involved, that it was his family, but I saw Mr. Leonard on his own.

Q. And Mr. Leonard would have contacted you because of your prior association with Guinness & Mahon?

A. That's right, yes.

Q. As a tax adviser?

A. Yes.

Q. As a tax adviser in a general way, is that right?

A. Yes.

Q. But would I be right in thinking that you were involved as a tax adviser giving advice for the benefit of clients of Guinness & Mahon?

A. Not really, not really.

Q. I see.

A. Not really mainly the bank's own affairs, but there would be occasions, like when take a very simple example if there was a borrower from the bank and they

were writing off debt or something like that, that you get involved that way. But not that my services were made available by the bank to their clients.

Q. We know that the bank involved itself in setting up offshore subsidiaries and that those offshore subsidiaries became involved in trust business?

A. Yes.

Q. Would you have advised the bank in a general way as to how they might approach the setting up of trusts for the purpose of servicing that business?

A. No.

Q. Were you in any way involved, therefore, in advising the bank as to what advice it might give or guidance it might give its customers in setting up trusts?

A. In a case like the present one, you would get queries from time to time, sometimes on a named basis, sometimes on a no-name basis, where they'd be checking really what they were doing from the tax aspects but it wouldn't be a major part of the relationship with the bank. Like most of the work I did for the bank was their local Irish problems, but it wouldn't be unusual either that you'd get a query relating to a particular client.

Q. In any case, Mr. Leonard certainly felt that you were the individual to whom he should consult or to whom he should refer a query of this kind?

A. I don't think it came in the form of a very simple query. I think there was a proposal from the bank and it was a bit

complicated but using an Irish resident trust to hold an offshore company or something like that, and I said there was no point in that, go for the simple one but it was in that context rather than coming in saying "What do we do for this client?"

Q. I understand. So the bank had a proposal for setting up a trust to answer what they perceived to be the needs of Mr. Cabria, who was Mr. Sutherland's father-in-law. They, use the expression, ran it past you to see what your view was and you suggested "Well, I don't think you should go that way, you should go this way or go another route"?

A. Yes.

Q. And from the limited documentation available, it would seem that at least the bank went the route of setting up a trust in the Channel Islands?

A. That's right.

Q. And as you say, the strategy of using a Channel Island trust, meaning I take it a nil tax or low tax jurisdiction was one you would have recommended?

A. Yes.

Q. In the circumstances you have described in your statement?

A. In the circumstances, yes.

Q. Can you explain to the Tribunal why it is that you would remember a dealing with Mr. Leonard such a long time ago concerning what was, after all, but one of presumably innumerable queries you received from time to time from the bank?

A. No, I had very few dealings with Mr. Leonard over the years and I believe that was the first and I think the next time I dealt with him was actually when he was leaving Guinness & Mahon. I don't think I dealt with him much in between at all.

Q. What is it is there something about this transaction that caused it to stay in your mind?

A. Well the fact that it was a Spanish client, and that kind of like, I didn't act for many Spanish clients in my time.

Q. I see.

A. Sorry, I do have a good memory as well.

Q. What I do want to do at this point, Mr. Reid, is to introduce a document with which I think you are familiar, consisting of an English translation of a declaration by a Mr. Francisco Javier Cabria Varcancel who is a son of Mr. Paulino Cabria, Mr. Sutherland's father-in-law by whom this trust was set up. So that we are both on the same wavelength as far as the facts we are were considering. You were furnished with a copy of this. The Tribunal obtained it from Mr. Sutherland's solicitors.

A. I don't think so. I don't think I have seen it before.

Q. I see. In any case, it came into the possession of the Tribunal in connection with some of the documents that I want to refer to in a moment and it would make little or no sense to refer to those documents other than in the context of this document.

Now, what I have put on the overhead projector, Sir, is the translation, the English translation of a document, the original of which is in Spanish and which is declared as I understand it by the declarant, Mr. Francisco Javier Cabria Varcancel, in accordance with Spanish legal procedures.

This gentleman is not a compellable witness as he is a foreign national, but at the request of Mr. Sutherland, he has provided the Tribunal with this document.

He declares as follows:

"That I am the son of Mr. Cabria and Mrs. Cabria, married to the first one." That unusual syntax is apparently a direct translation of the Spanish.

"My father is now over ninety years of age and therefore he is no longer taking care of his own business affairs.

My parents live close to my address so I keep permanent contact with them and, in fact, I have direct knowledge of all of their affairs.

That I know that during the seventies, my father established a trust with funds belonging to him with the purpose of benefiting the whole of the members of his family.

That I know that at the time of the creation of the trust, he sought legal advice and help in this matter from his son-in-law, Mr. Peter Sutherland, and as a result, it was



suggested that the trust be set up arranged through a bank in Dublin.

That I remember having seen my father sign at the time documents relating to the trust and I confirm to the best of my knowledge, not only the trust, but also the funds deposited in it remained under my father's control until the funds were fully distributed.

Lastly, that I can confirm also that no amount from the funds of the trust has been distributed to anybody who was not a member of the Cabria family and that I myself, in fact, have been a substantial beneficiary of the funds of such trust."

Now, it would appear that the trust to which Senor Cabria is referring to here is presumably the trust in connection with your advice or your guidance was sought?

A. Yes.

Q. In the 1970s. And as we know at that time, Guinness & Mahon were in the business, at least, of setting up trusts or recommending the setting up of trusts involving some of their offshore subsidiaries.

A. Yes, and some of their Irish ones as well.

Q. And some of their Irish subsidiaries as well, yes. And as the evidence to date has suggested, a trust was set up or rather an account was in Guinness & Mahon in the name of an account entitled Channel Islands or Guinness Mahon Channel

Islands P3 and that account found its way or an account statement found its way into Mr. Sutherland's loan file and that in addition, the account appears to have been set up in 1976.

A. So I believe, yeah.

Q. Now, I want to refer to just two other documents before I go back to the narrative. Firstly, a document described as a discretionary settlement dated 8th January of 1980.

A. Yes.

Q. Entitled "Discretionary settlement, John Andrew Furze, Guinness Mahon Cayman Trust Limited, original trustee".

That document, together with a related letter of wishes came to the attention of the Tribunal or was brought to the attention of the Tribunal by Mr. Sutherland, through his solicitors and from the fact that it appears to have been brought to Mr. Sutherland's attention by his Spanish in-laws, having examined their own papers. And it may be, although this is not clear and may require some further clarification, that they obtained some of the documentation from Ansbacher in the Cayman Islands, though that is not entirely clear but it seems to follow from some of the documents and from some of the fax numbers on the documents.

In any case, in summary, it would appear that the discretionary trust and the letter of wishes are related and the letter of wishes refers to the family of Paulino Cabria who is the gentleman referred to in the declaration

of Senor Javier Cabria I mentioned a moment ago.

Now, if I could just put up the first page firstly of the discretionary trust, not the covering page, but the first page. Now, this trust deed is described and an indenture made the 8th day of January 1980. And it is therefore a document which presumably wasn't in existence in 1976 but it's made between John Furze of Georgetown, Grand Cayman and Guinness Mahon Cayman Trust and we needn't go into the details of it but it's an extensive document setting out the terms of the trust and describing the persons benefiting from the trust as being those described in the second schedule to the trust.

The persons described in the second schedule to the trust, if we can pass to that page please, it's the third last page of the document, are the undermentioned individuals and such members of the undermentioned classes as are respectively, for the time being, in existence. And the first class is the Cayman Islands branch of the British Red Cross Society or in the event that there is no branch in the Cayman Island, the head office of the said society in the United States of America.

Secondly, any person who has contributed not less than ten pounds to the Cayman Red Cross.

Thirdly, any wife, husband, widow, widower or child or other issue of any of the beneficiaries.

Fourthly, the adopted or legitimated child and so forth.

Fifthly, any person who shall not become or been a domestic servant of any of the beneficiaries.

Sixthly, any director or employee of any company of which the trust fund includes 75 percent of the issued share capital but shall nevertheless not include a settlor, any trustee or any spouse of any trustee."

Now, by that time of course the settlor was Mr. John A.

Furze and the trustee was Guinness Mahon Cayman Trust, so they were excluded from the trust.

Now, the letter of wishes which appears to be related to the trust is addressed by John A. Furze to Guinness Mahon Cayman Trust. Now, it's dated 1982 and appears to have come into existence some time after the trust, the original trust document or trust deed set up the trust, isn't that right?

A. Yes.

Q. Now, these are not the documents that you recall seeing at the time any trust was set up for the Cabria family, isn't that right?

A. No.

Q. What you do recall seeing is a letter of wishes which was in similar terms to the letter of wishes in this case, isn't that right?

A. Yeah, probably without the last paragraph of that letter of wishes.

Q. I see.

A. The one where he declares it to be irrevocable.

Q. Now, in the ordinary way where a settlor sets up a discretionary trust, and you can correct me if this is your impression Mr. Reid, he will frequently and perhaps almost invariably include with the document setting up the trust a letter of wishes giving the trustees guidance as to how, he, the settlor believes they should exercise their discretion in making appointments or distributions under the trust, isn't that right?

A. Yeah, particularly where the trustee is a stranger from the settlor.

Q. And where

A. Or a professional trustee or that.

Q. Where, for example, a bank is appointed as a trustee

A. Yes.

Q. the bank or the trustee department of the bank, especially, even where the class is narrow, whether it's narrow or wide, the bank will not be familiar with the relationships between the settlor and the person he intends to benefit or the class of individual he wishes to benefit?

A. That's right.

Q. And will rely on, and are entitled as a matter of law to rely on, without necessarily slavishly following any guidance provided by the settlor, isn't that right?

A. That's as I understand it, yeah.

Q. And while we may discuss the manner in which some of the trusts set up involving Guinness Mahon Cayman Trust were operated, for the moment I am only concerned with the fact that in this case, the document dated 8th November 1982 is similar to a document which you would have seen in, in the 1970s at whatever time connected with the setting up of the Cabria trust.

A. Yes.

Q. And if we could just look at this document, it says "As settlor of the discretionary trust established by me on the 8th day of January 1908, I would wish my trustees to hold the trust fund primarily for the benefit of" then he names I think in fact, Mr. Paulino Cabria who is the person who originally would have set up the trust Mr. Cabria's wife, his family and to make distributions to them of capital which may be required by them from time to time. I would, however, expect the trustees not to make any distributions without first taking the advice of Senor Paulino Cabria or following his death, his wife. In the event of deaths of both Senor Cabria and his wife, I would expect you to hold the trust funds for the benefit of their children and to use your own discretion as to the amount to be distributed to each and the timing of such distributions."

And I think, am I right in saying that your recollection is the type of directions that you recall being given at the

time?

A. Yes.

Q. Now, you did not play a role in setting up the trust.

Your role was merely to give guidance as to perhaps the choosing of a trust strategy and the location of the trust?

A. Yes.

Q. But you did, I think, you may have indicated that care should be taken in the preparation of the letter of the wishes, is that right?

A. That's right.

Q. And it was because of your having perhaps expressed the view that care should be taken in setting up the letter of wishes, that it may have been brought to your attention, is that right?

A. That's right, but one invariably did say to people to be careful about the letter of wishes anyway, even if there weren't foreign people involved.

Q. I understand that, but I am simply trying to canvass the issue as to how it would have come to your attention. Why would the letter of wishes be brought to your attention for to you to see? It would have been presumably because you were only giving advice that care should be taken in the preparation or care of it?

A. That's right.

Q. If a letter of wishes was drawn up at that time in relation to a trust in the Channel Islands as you had counselled, then presumably the trustee would have been in the Channel

Islands and not in Guinness Mahon Cayman Trust.

A. That's right.

Q. And so assuming that this, as would now seem to be the case, judging from the information that the Cabria family have managed to obtain for the Tribunal, if this is the same trust, then the trust and the trust funds must have been moved from the Channel Islands to the Cayman Islands jurisdiction at some point in time?

A. That does seem to be so.

Q. And that would probably account for the fact that the settlor under the trust has now changed, isn't that right?

A. That's right.

Q. And can you from your, or with your expertise in, as a tax expert and in giving advice in relation to strategies like this indicate how that might have been done, whether properly or not or correctly or not?

A. I actually have no idea why a new trust deed wouldn't have been drawn up. I would have thought that the same effect could have been achieved by simply appointing Guinness Mahon Cayman Trust as trustee of the first trust. But there might be some question in Cayman law or something like that that I don't know about. But generally you could change residence of trustees by transferring what you call the forum of administration and generally that involved the appointment of different trustees.

Q. There would be no need in such a case to have a new trust deed at all?



A. No.

Q. That is something that we may wish to canvass in the context of the more general evidence you may be giving at a later stage.

Q. Now, the trustees of trust funds have a power to use or apply those trust funds in any way that they may deem fit, provided that they do not act outside the limitations of the powers conferred on them under the trust deed, isn't that right?

A. Yeah, that's right.

Q. Now, I am not anxious to canvass at this stage whatever powers the trustees had under the trust deed, I am more concerned with what may have happened, rather than with what the trustees may have had power to do. Just as I am not terribly concerned at this point with how the trust or why a new trust deed was made in 1980 and why new trustees were simply not appointed. That, as you say, may have something to do with Cayman law or indeed the practices adopted by Mr. Furze.

A. Something I can't really help on anyway.

Q. But going back to the 1970s and the late 1970s when this loan was taken out in any case, I now want to refer to one or two of the documents you have already mentioned in the course of the questions put to Mr. Sutherland and Ms.

Kells. I think you have been referred to a number of these documents already, isn't that right?

A. That's right.

Q. They are the documents in which your name is mentioned.

Now apart from the documents to which you have been specifically referred, you will recall I think you were here during some of the evidence this morning in the course of which the Guinness Mahon Channel Islands P3 account was identified as having been on the loan file of Mr.

Sutherland in Guinness & Mahon.

A. Yes.

Q. And in which the balance on that loan at in or around £12,000 was the same sum as the sum mentioned by the late Mr. Ru Leonard in describing an account which he felt might be relied on to secure or which he seems to have felt might be relied on to secure the extension of Mr.

Sutherland's borrowings. Not the granting of any permission or any facility in the first instance but merely the extension of the facility from December of 1976 or January of 1977. And I think you will agree that there seems to be at least something consistent between the amount referred to in the statement and the amount referred to in the memorandum.

A. Yeah.

Q. And you will recall that that memorandum came into existence in or around the same time as Mr. O'Dwyer, the loans officer, was raising a query and informing his superiors that it seemed that the borrowing in question might become "suitably secured" within a short period of time.

A. Yes.

Q. Now, around this time, there is a memorandum, document number 9, on the file in which you will see on the screen next to you if you don't have a copy of it. Mr. Leonard says "There is at present a deposit of approximately 12,000-odd and depending on the outcome of the proposed meeting with Don Reid, a deposit will be increased to cover the borrowings or alternatively long-term finance which Peter has arranged in respect of his house purchase will be taken up and used to eliminate the loan."

Now, the reference to your name is mirrored in a letter of the same date from Mr. Leonard to Mr. Sutherland in which he says "I refer to your recent visit and think it would now be important for you to call to see me to discuss your financial affairs. Perhaps you could arrange to see Mr. Don Reid beforehand and I will be happy to accompany you to that meeting if you wish me to."

Now Mr. Leonard, certainly in writing that letter, appears to have the impression that he had discussed something with Mr. Sutherland which resulted in your name coming up. If your name came up in the course of that discussion, it couldn't have come up in the context of Mr. Sutherland's own affairs because you weren't involved with his affairs and if it came up at all, the only common feature, if you like, that would unify your name or link your name, Mr. Sutherland's name and Mr. Leonard is the fact that you were

involved, however peripherally, in advising in or giving some counsel in connection with the setting up of the Cabria trust.

A. I imagine that's right, unless it was a very generalised query in which they wouldn't arrange a joint meeting anyway

Q. I know what you say and I understand what you are saying that you never met Mr.

A. That's right.

Q. Mr. Leonard and Mr. Sutherland together or you never met Mr. Leonard in connection with Mr. Sutherland.

A. That's right.

Q. But at least in Mr. Leonard's find, the matter is mentioned in his memorandum, also in his letter, and it can only have made sense in the context of some discussion he had with Mr. Sutherland and Mr. Sutherland agrees it's possible that that discussion was a reference to you and that a reference to you for short would mean a reference to his father-in-law.

A. Yes.

Q. Now, do you recall any discussion, and I don't mean confined to a meeting, but any discussion at all with Mr. Sutherland, even a phone call, saying "Look, do you knowing something about this?" Or "Who should I contact or what should I do?"

A. No, and I can't even conceive of the circumstances why somebody would ring and ask me. If they were going to do

something like that and they were consulting me, it would have to be on a technical tax basis, not even on a trust basis. And I can't see what that question might have been.

Q. I understand that, but is it not at least possible that Mr.

A. I am sure it's possible. It's a long time ago, my memory isn't that good.

Q. I am just asking you to canvass for a moment the possibility that Mr. Leonard might have said "Look, can you talk to Mr. Don Reid about it?" Mr. Sutherland may have rung you and said "Look, I can't do anything about this, contact your father-in-law", something like that.

A. Yes.

Q. But Mr. Leonard may have been under the impression Mr. Reid is the man who knows about these things. He is the tax expert or whatever.

A. Yeah.

Q. Now once again the reason that I am drawing these documents to your attention is to refer in particular to document number 11, and you will see that in that document, there is a reference to to hypothecated funds totalling some œ15,000, or in fact totalling in excess of œ15,000. What attracted the attention of the Tribunal in that document is the use of the expression "hypothecated funds". It's not that that word doesn't mean anything different from "suitably secured", but it's a normal and quite

transparent reference to what would be a perfectly ordinary banking arrangement using other funds to back borrowing. And as you know I think from the fact that the Tribunal has sought your assistance in connection with some taxation matters in the past, that is not an expression that the Tribunal normally associates with a back-to-back arrangement a covert back-to-back arrangements in Guinness & Mahon, isn't that right?

A. That's right.

Q. Now, there is a further reference to your name in document number 14, a memorandum of the 23rd June 1997 in which once again, Mr. Reid or I beg your pardon, the late Mr. Leonard refers to you by name. He says "Just a note to confirm that I have made contact with Mr. Peter Sutherland and advised him that I want to see him urgently with a view to regularising his position. He confirmed that he would make contact with Don Reid and revert to us."

All I am suggesting is that once again, not once or twice, I think this is a third time, Mr. Leonard appears to have been under the impression that his dealings with Mr. Sutherland in any case involved some promise by Mr. Sutherland that he'd make some contact with you.

A. Yeah. At something like six-monthly intervals or something like that, yeah.

Q. Each of these intervals more or less coinciding with the need to extend his borrowing?

A. Yes.

Q. I think if you had been asked a question of the following variety, could the trustees, under this trust, properly provide backing security for my borrowing, you would probably have asked to see the trust, wouldn't you?

A. I would, yes, and the letter of wishes.

Q. And the letter of wishes?

A. Yes.

Q. But at least the trust deed, more than anything else, isn't that right?

A. Yes indeed.

Q. Whether they should or would exercise their discretion in one way is one matter, whether they could lawfully do so is another matter.

A. That's right.

Q. And if you had been asked to examine the trust deed, do you think that's something that would have, you would have remembered or prompted some written advice from you?

A. Indeed it would, yeah. I think it would have invoked a fee.

Q. It might even have invoked a fee, of course. And there was no such fee and there was no such written advice and you don't recall and you probably would recall if you had read a trust deed for that purpose?

A. That's right, I would.

Q. But if you had been asked merely, as I indicated a moment ago, whether this could be done, would I be right in

thinking that your answer would be yes, it could be done if the trustees had the power to do it or some such answer?

A. If I was asked it in a very generalised way, if I was referred to the particular, I think I would have been very hesitant.

Q. If you had been referred to the particular, you would have been hesitant without seeing the particular document?

A. That's right, I would.

Q. Or is it possible that you might have said yes, it is possible, provided the trustees can do it and you must contact them.

A. Yes, yeah.

Q. What is clear is that in this case, in any event and that may not be a question to which you can give a very useful answer, is that the borrowing was extended from time to time?

A. Yes.

Q. On a basis which the loans officer certainly thought it was backed by a security?

A. Yes.

Q. And as a matter of reality, as a matter of fact, isn't it the case that trustees would have the actual power, by that I mean that they'd have the capacity or the, on the ground, the actual power to move trust funds where they saw fit or whatever purpose, whether they were lawfully entitled to do so is another matter?

A. Yeah, yes, they would.



Q. Thanks very much, Mr. Reid.

MR. CONNOLLY: I'd like to reserve my position to when Mr. Reid comes back at a later stage.

CHAIRMAN: We have indicated, Mr. Connolly, he is likely to be returning. I agree that's probably the preferable approach. Mr. Strahan, anything arises?

MR. STRAHAN: No.

CHAIRMAN: Thanks indeed for your assistance, Mr. Reid.

THE WITNESS THEN WITHDREW.

MR. HEALY: That's the last of the today's witnesses, we proceeded rather more quickly than we anticipated, and so in view of the fact that, I suppose the past week or so, the Tribunal has accumulated some additional documentation which is material and germane to the matters which was envisaged would be taken up early next week, on foot of documentation which has already been sent to affected parties, it seems that this new material should now be incorporated in that evidence and this will take some time so I am not sure, subject to what you think, Sir, that it would be appropriate to start on Tuesday or Wednesday. It may take some time to assemble all of this material and give notice to the relevant parties.

CHAIRMAN: Yes

MR. HEALY: This additional material which has only come to our attention this week.

CHAIRMAN: I'd prefer we didn't lose momentum. I fully understand that, Mr. Healy. Can we safely commit ourselves and I know it to be the case that considerable further work has to be done in this regard, would it perhaps suffice if I were to fix, barring some unexpected contingency, Thursday next for the resumption of evidence which will allow the couple of extra days for people to be notified and further meetings and memoranda to be prepared.

MR. HEALY: I think so.

CHAIRMAN: Very good. Well Thursday, barring any indication to the contrary, at half past ten.

THE TRIBUNAL THEN ADJOURNED UNTIL THURSDAY, 17TH FEBRUARY 2000, AT 10:30AM.