

THE HEARING RESUMED ON THE 17TH OF FEBRUARY, 2000, AS

FOLLOWS:

CHAIRMAN: Good morning everyone. Mr. Coughlan.

MR. COUGHLAN: May it please you Sir. Miss Kells,  
please.

SANDRA KELLS HAVING BEEN PREVIOUSLY SWORN RETURNS TO THE  
WITNESS-BOX AND IS EXAMINED BY MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Thank you Miss Kells.

A. Thank you.

MR. COUGHLAN: I perhaps should say at the outset Sir,  
that in this phase of evidence before the Tribunal, there  
will be matters raised arising from the reports prepared by  
the Central Bank over the years in respect of the matters  
under inquiry by this Tribunal, when they conducted  
inspections at Guinness and Mahon.

I will not be making any reference in the evidence which  
Miss Kells is about to give, but some further witnesses may  
be asked to deal with certain matters in due course, and I  
should indicate that there will be a more detailed outline  
statement made sometime next week concerning the Central  
Bank and its inspections at Guinness and Mahon.

And it should be borne in mind of course, that the reports  
prepared by the Central Bank had to remain confidential, by

reason of statute. But that will be dealt with in more detail next week, Sir.

Q. I think Miss Kells, you have been asked to consider matters which were raised by the Tribunal and those matters were the general operation of the Ansbacher (Cayman) Limited accounts with the bank. That is with Guinness and Mahon; isn't that correct?

A. Yes.

Q. And you were asked to deal with details of the balances held in the accounts from 1974 to date?

A. Yes.

Q. Isn't that correct? And you were also asked to deal with details of how the loans, which were known as "back-to-back" operated and the meaning of the expression "suitably secured" or "considered secured"; isn't that correct?

A. Yes.

Q. Or "considered adequate". And I think the final matter which the Tribunal has asked you to consider in this phase, was loans to Pruna & Associates; isn't that correct?

A. Yes.

Q. And I think in that regard your Memorandum of Evidence first of all deals with a brief history of Ansbacher and other relevant subsidiaries of the bank, that is Guinness and Mahon?

A. Yes.

Q. And I think in your memorandum under the headings:

"Ansbacher (Cayman) Limited" you have informed the Tribunal, that in 1969 Guinness and Mahon Limited which you will call "Dublin" for the rest of the evidence this morning?

A. Um hum.

Q. Formed a small investment company in the Cayman Islands; is that correct?

A. Yes.

Q. In October 1969 Mr. John Guinness, a then Director of "Dublin" was approached by a Mr. John Collins, manager of the Bank of Nova Scotia to know if "Dublin" would be interested in financing the purchase of some land in Cayman; is that correct?

A. Yes.

Q. This was done, and it was the start of "Dublin's" involvement in Cayman; is that correct?

A. That is correct, yes.

Q. Now, I think in February of 1971 "Dublin" formed Guinness Mahon Cayman Trust as a bank with a "B" license; is that correct?

A. Yes.

Q. The issued capital was £10,000; is that correct?

A. Yes.

Q. The company was managed for "Dublin" by the bank of Nova Scotia with John Collins and John Furze, two Bank of Nova Scotia officials responsible; is that correct?

A. Yes.

Q. The operation of the Cayman companies account with "Dublin" was discussed by Mr. Guinness, Mr. Traynor and other officials in "Dublin"; is that correct?

A. Yes.

Q. And this is reflected in a minute of the Banking Committee meeting held on the 19th of November, 1971?

A. Yes.

Q. I think we have that particular minute; isn't that correct? I think if we just move it along without - present at the meeting were Mr. Guinness, Mr. Watson, if we move along to the appropriate?

A. Second page, the next page.

Q. The next page please.

A. Yes.

Q. And I think under the heading: "Guinness Mahon company Account Documentation"?

A. "Cayman" yes.

Q. Sorry "Cayman"?

A. Yes.

Q. Mr. JHG. Who is that?

A. John Guinness.

Q. Mr. John Guinness asked DW, who is that, I think we know from the minute?

A. Mr. Watson.

Q. Mr. Watson. "To arrange a meeting between JDT" that is Mr. Traynor; is that correct?

A. Yes.

Q. Mr. JHG, that is Mr. Guinness?

A. Yes.

Q. CD and DW. DW is Mr. Watson; is that correct?

A. Mr. Watson, yes.

Q. Do you know who "CD" is?

A. I am afraid I don't.

Q. "To examine the present position"?

A. Yes.

Q. And I think on the 4th of March 1971 an instruction was given to all departments of the bank that no new current accounts or loan accounts could be opened without prior Board approval; is that correct?

A. Yes. It is actually dated the 9th of March.

Q. I beg your pardon, the 9th of March?

A. Yes.

Q. It is very difficult to read. It is very feint, can you perhaps read it for us?

A. Okay. It is to Mr. Watson and TRL to all departments. I cannot read the heading, but the body of the document is:

"The system by which new accounts are opened has now been revised and a new form "authorisation to open new accounts" has been prepared to facilitate the new procedure. It is of paramount importance that all relevant information is inserted in sections A to F of this form when an account is being opened.

New current accounts and loan accounts must have the prior

approval of the Board before they are opened. The allocation of numbers for these and all other new accounts will in future be done by Mr. Leonard in the Accounts Department. The production of a duly authorised and fully completed new account form is a prerequisite to a number being allocated.

It is regretted that vouchers passed not conforming to the above will have been returned to the originators without being processed, thereby causing unnecessary work, particularly in the Cash Department".

Q. It is signed. TRL/EW" that is Mr. Leonard?

A. Yes.

Q. Now, I think there was a change in the Sterling area in June of 1972; is that correct?

A. That's correct, yes.

Q. The effect of the change was that transfer of monies to Cayman required Exchange Control consent; isn't that correct?

A. Yes.

Q. It was no longer one of the schedule territories?

A. Correct, yes.

Q. With a change in the Sterling area in June 1972, "Dublin" recognised that very little new business would flow from Ireland; is that correct?

A. That's correct, yes.

Q. So in July 1973 it decided to open fully in Cayman and seek

a new "A" license; is that correct?

A. That's correct, yes.

Q. John Collins and John Furze joined Cayman from the Bank of Nova Scotia in November 1973; is that correct?

A. Yes.

Q. Cayman became authorised dealers with a full "A" Bank and Trust Company License on the 1st of January, 1974?

A. Yes.

Q. Is that correct?

A. Yes.

Q. A category "A" license allowed a bank to carry on business with residents and non residents of the Cayman Islands; is that correct?

A. That's correct, yes.

Q. A category "B" license which was the license which had been previously held for the main part, restricted a holder to transactions with non residents within the Cayman Island; is that correct?

A. That's correct, yes.

Q. Now, I think you have informed the Tribunal that Cayman placed monies on deposit with "Dublin"; is that correct?

A. Yes, it did.

Q. These were placed in sundry sub accounts which were general accounts through which monies moved; is that correct?

A. That's right, yes.

Q. And other accounts in the name of "Cayman" but which were designated by codes, numbers, or initials, and/or in the

name of different entities; is that correct?

A. Yes.

Q. Now, when you make reference to sundry sub accounts as being general accounts, do you just give us a outline of what is meant by that?

A. Okay. Well it is from our investigations conducted on your behalf, it appears that this account, there would be many clients' monies put into this account and it wasn't specifically designated to any one particular client and there would be numerous client transactions going across these accounts as opposed to, you made reference to other accounts being designated by codes and numbers and initials. They seemed to be allocated to particular clients.

Q. Yes. So I just, so that the sundry sub account was a pooled account?

A. Yes.

Q. Which contained the monies of or the funds of many clients perhaps?

A. Yes.

Q. And various transactions took place?

A. Through these

Q. Through that pooled accounts?

A. Receipts and payments, yes.

Q. Receipts and payments. And there were also in existence accounts, Cayman accounts which had particular designations either by number or code or letter; is that correct?



A. Yes, that's correct.

Q. Which seem to reflect, seemed to reflect

A. Particular clients.

Q. Particular clients; and were there receipts and payments in respect of those as well?

A. Yes. Not as many as were done on other accounts.

Q. Yes. I think you are able to give examples of these type of accounts; isn't that correct?

A. Yes. Yes.

Q. And I think Guinness Mahon Trust A/E I think?

A. Um hum.

Q. This was a deposit account and it had \$134,533.15 credited as of the 16th of June 1976?

A. Yes.

Q. I think we don't have that particular account statement?

A. No, we don't.

Q. But you have informed the Tribunal that the Irish customer of Cayman had placed monies on deposit with Cayman, also had companies in the Channel Islands named Bella Investments Limited and Reshank Investments Limited?

A. Redshank.

Q. Redshank?

A. Yes.

Q. I beg your pardon, Redshank?

A. Redshank Investments.

Q. And the A/E account was used subsequently as security for a loan to an Irish incorporated company which was owned by

the Irish resident; is that correct?

A. Yes, that is correct.

Q. So if I could just go over that again slowly. There was almost \$135,000 in a Guinness Mahon Cayman Trust account which was designated A/E; is that correct?

A. That's correct, yes.

Q. This money had been placed on deposit by Cayman in the first instance?

A. With "Dublin".

Q. With "Dublin"?

A. Yes.

Q. And it represented the funds of an individual depositor?

A. Of an Irish resident.

Q. Of an Irish resident?

A. Yes.

Q. And there were in existence in the Channel Islands, two companies named Bella Investments Limited and Redshank Investments Limited; is that correct?

A. Yes. Yes.

Q. And this particular A/E account of almost \$135,000 was used subsequently to secure a loan to an Irish incorporated company which was owned by the Irish resident?

A. Yes.

Q. I think there was also an A/A26 account; is that correct?

A. Yes.

Q. Yes. And that this account was in Australian Dollars and large sums of money moved through this account from the

mid-1980's onwards?

A. Yes.

Q. They are two examples of designated

A. Yes.

Q. accounts as opposed to being in the pooled?

A. Absolutely.

Q. Accounts.

A. Yes, yes.

Q. Now, I think you have been able to inform the Tribunal that a deposit opened in 1975 by Cayman was designated as a "G" deposit?

A. Yes.

Q. And that this deposit was used as security for a back-to-back loan to a company "Gombrette"; is that correct?

A. Yes.

Q. Gombrette Limited, which was incorporated in the Channel Islands; is that correct?

A. That's correct, yes.

Q. Now, you turn to deal with the Channel Island operations?

A. Okay.

Q. And I think you have informed the Tribunal that with the shrinking of the Sterling area in June of 1972, Cayman became unavailable for use by residents of the scheduled territories?

A. Unless they got

Q. Unless they got Exchange Control approval?

A. Yes.

Q. But that to meet this position, Guinness Mahon (Jersey Trust Limited) was formed in November 1972 to provide an alternative off-shore trust service; is that correct?

A. Yes, that is correct.

Q. I think you have been able to inform the Tribunal that it was a wholly-owned subsidiary of "Dublin"; is that correct?

A. Yes.

Q. But that two of its directors were Mr. John Collins and Mr. John Furze of Cayman; is that correct?

A. Yes, yes.

Q. Now, I think that you have informed the Tribunal that in the summer of 1973 it was decided that Guinness and Mahon Group should have a bank in Guernsey; is that correct?

A. That's correct, yes.

Q. And that Guinness Mahon (Channel Islands) was incorporated in February 1974 as a wholly-owned subsidiary of "Dublin" and subsequently obtained a banking license; is that correct?

A. Yes, yes.

Q. But that due to the down turn in the economic situation it was decided to let the license lapse?

A. Yes, that is correct.

Q. Now, I think from your inquiries that you are able to inform the Tribunal that as a result of the decision to introduce a wide range of capital taxes in Ireland, the need for a separate trust company in Guernsey was

recognised and College Trustees Limited was formed as a wholly-owned subsidiary of Guinness Mahon (Channel Islands) early in 1975; is that correct?

A. Yes. Yes.

Q. And that Mr. John Collins of Cayman was a director of College Trustees Limited?

A. He was, yes.

Q. I think with the change in the economic situation it was considered to be appropriate for the Group to have a bank in Guernsey; is that correct?

A. Yes, that's correct.

Q. And that in February of 1977 Guinness Mahon (Guernsey) Limited was incorporated as a wholly-owned subsidiary of Guinness and Mahon Limited, that is the London bank?

A. Yes.

Q. And a banking license was obtained; is that correct?

A. Yes.

Q. And you say then in summary, "Dublin" had two wholly owned subsidiaries in the Channel Islands. Guinness Mahon Jersey Trust in Jersey, and Guinness Mahon Channel Islands in Guernsey; with College Trustees Limited in Guernsey being a wholly-owned subsidiary of Guinness Mahon (Channel Islands)?

A. Yes.

Q. And that Guinness Mahon (Channel Islands) was since the late seventies or early 1980's a non-trading company; is that correct?

A. Yes. Yes.

Q. I think you have informed the Tribunal that "Cayman" was a subsidiary of "Dublin", as were Guinness Mahon (Jersey Trust Limited), and College Trustees Limited?

A. Yes.

Q. Is that correct?

A. Yes.

Q. But all three seemed to have at least a common director or some common directors; is that correct?

A. Yes, that's correct. Mr. Collins.

Q. Mr. Collins?

A. Yes.

Q. Now, before I deal with the rest, I think it is important to just go back over something here. Up to 1979 the Channel Islands were scheduled territories; isn't that correct?

A. Yes.

Q. As far as we were concerned we were within the Sterling area?

A. Yes, that's correct.

Q. Now, I think that you have informed the Tribunal that Irish residents, if they were placing money off-shore, may have placed it with College Trustees in Guernsey or with Cayman?

A. Yes.

Q. Up to 1979 in respect of the Channel Islands or Guernsey, there was no need for Exchange Control approval; isn't that right?

A. No, not in not until mid-'79.

Q. Mid-'79?

A. Yes, Exchange Control.

Q. That was not the case with Cayman of course?

A. No, '72.

Q. Yes. I think you have informed the Tribunal that the day-to-day running of College Trustees was provided by a company called Sovereign Trustees Limited; is that correct?

A. Yes. Yes.

Q. The directors of College Trustees Limited included a Mr. John Lipscombe and a Mr. Brian Ellis; is that correct?

A. Yes.

Q. And they were also directors of Sovereign Trustees Limited?

A. Yes.

Q. I think if I just pause there for a moment. Sovereign Trustees Limited was a company of a Mr. John Lipscombe in real terms?

A. Sorry, it was owned by Mr. Lipscombe.

Q. Yes?

A. Yes.

Q. And College Trustees Limited didn't have any individual employees of its own, as far as can be ascertained?

A. No, it used

Q. It used the services of Mr. Lipscombe company, Sovereign Trustees Limited; isn't that correct?

A. Yes. I am not quite sure of the ownership of Sovereign Trustees, but I know Mr. Lipscombe worked in Sovereign

Trustees, yes.

Q. Yes and Mr. Lipscombe, who was Sovereign Trustees Limited, was also a director of College Trustees Limited?

A. That's correct, yes.

Q. As was Mr. Collins, of course, from Cayman?

A. Yes, Mr. Collins was a director of College.

Q. Of College Trustees?

A. Yes.

Q. Now, I think College Trustees was sold to Credit Suisse in the late 1980's; is that correct?

A. Yes, that's correct.

Q. And you have informed the Tribunal that monies could pass between College Trustees Limited and Cayman; is that correct?

A. That's correct, yes.

Q. Cayman had accounts with Guinness and Mahon, Guinness Mahon Company (London); is that correct?

A. It had, yes.

Q. College Trustees - Sorry, College Trustees could have placed monies in Cayman accounts via Guinness Mahon (Guernsey) which had a banking license and had accounts with Guinness Mahon Company limited (London)?

A. Yes.

Q. Now, I think that is not the easiest to follow. So could you just elaborate on that a little bit, please?

A. Okay. College Trustees was based in Guernsey and at this stage the Group also had Guinness Mahon Guernsey which was



a bank in Guernsey. Within the group there was Guinness

Mahon Cayman Trust which was based in Cayman.

Q. Yes?

A. Then the head company of the Group was GM Co. in London.

So if the "College" wanted to transfer monies to Cayman, on

behalf of clients, they could do this through going into

the Guernsey bank, requesting the money to be transferred

through the London bank to Cayman.

Q. Yes?

A. That is basically the structure.

Q. Yes, just so there is a complete understanding. And you go

on now no deal with Cayman having deposits in Dublin.

Cayman also had deposits in London; isn't that right?

A. Yes, that's correct.

Q. Far more substantial than the deposits in Dublin?

A. Yes, it had.

Q. Now, dealing with Ansbacher Cayman. I think you have been

able to inform the Tribunal that Cayman had on deposit with

Dublin, on certain dates, the following sums; and if I just

- I think we have prepared a table of them?

A. Yes.

Q. And I think as of the end of November, 1978, there was on

deposit in Dublin - and these are Sterling amounts of

course - £4,834,269; isn't that correct?

A. Yes.

Q. On the 31st of December, 1978, that had reduced down to

£4,493,397; isn't that correct?

A. Yes.

Q. On the 31st of January 1979, there was just over œ4,500,000 on deposit?

A. Um hum.

Q. In February, at the end of February of 1979, again just around 4 million, isn't that right, œ4,500,000?

A. Yes.

Q. Then on, at the end of June of 1979 there was œ4,812,438 on deposit. On the 31st of August, 1979, there was œ6,498,101 on deposit. On the 30th of September 1979 there was œ6,880,600 on deposit. On the 31st of October, 1979, there was œ6,896,908 on deposit. That is on the 31st of December 1979, there was œ7,424,612 on deposit. On the 30th of April of 1981 there was œ9,396,537 on deposit. On the 30th of April of 1982 there was œ26,980,217 on deposit. On the 31st of October of 1984 there was œ25,154,068 on deposit; is that correct?

A. Yes, that's correct.

Q. Now, I think you are able to inform the Tribunal, that "Dublin" is not aware why there was a significant increase in deposits with Dublin between 1981 and 1982, save that a substantial number of deposits were opened at that time by Cayman, regarding College Trustees Limited?

A. Yes.

Q. I think these accounts, this is the Cayman College accounts were in Sterling, US Dollars, Deutschemarks and Yen; is that correct?

A. Yes, client accounts.

Q. And I think you have been able to extract an example of the type of accounts which were opened and the figures under which we are going to deal with now, is the highest balance of the account at any one time; is that correct?

A. Of these

Q. At that particular time?

A. Yes.

Q. And they then have August 1981, College C/V Deutschemarks 620,000. That is a designated account?

A. That's correct.

Q. It is not in a pooled account?

A. No.

Q. So - just sorry, Miss Kells. Now I think in September, 1981, College B/T Deutschemarks 2.8 million?

A. Yes.

Q. June 1981: College A/E \$18,000. June 1981: College A/2 Deutschemarks 570,000. June 1981: College A/K5 Deutschemarks 2.5 million. June 1981: College Z1 Deutschemarks 357,000. June 1981: College Z3 Deutschemarks 795,000. March 1981: College 12 \$1,009,000 US. October 1981: College Sterling 1.3 million. June 1981: College/College B/G \$25,000. April 1982: College - Y, Seattle Securities \$1 million. June 1981: College J \$1.5 million.

A. Yes.

Q. Now, I think they whilst they have a specific code or coded

by way of letter, they were all Guinness Mahon Cayman Trust  
re College?

A. That is correct, yes.

Q. Now, I think you have informed the Tribunal that Cayman  
funds were held in a large number of different accounts; is  
that correct?

A. That's right.

Q. There were, however, a number of Sterling sub accounts?

A. That's correct.

Q. Is that correct?

A. Yes.

Q. And that one such account was "602" account of which you  
have given a lot of evidence about previously; isn't that  
correct?

A. Yes. Yes.

Q. Another was the 297 account through which monies would pass  
on their way to other Cayman accounts, or were repatriated  
to Cayman via the Nostro Account that Dublin had with  
Guinness Mahon Company Limited in London; is that correct?

A. That's correct, yes.

Q. I think there was also a sundry sub account: Cayman re  
College; and these appear to have been used to discharge  
fees to College Trustees and various expenses occurred with  
regard to a number of the trusts and companies established  
in Cayman, Jersey or Guernsey.

A. Yes.

Q. Now, I think dealing with the role of the Guinness Company

in London which was the parent of Dublin; isn't that correct?

A. Yes.

Q. And Cayman was the wholly-owned subsidiary of Dublin at this particular time?

A. At this point, yes.

Q. Yes. Now you have informed the Tribunal that at all relevant times London was the parent of Dublin?

A. That is correct.

Q. Dublin reported weekly on credit issues to London; is that correct?

A. Yes.

Q. From September 1989, Dublin could approve loans up to €100,000 in relation to property backed loans and up to a quarter of million pounds in relation to non property backed loans; is that correct?

A. Yes.

Q. After every Executive Director's meeting which dealt with credit applications Dublin would report to an official of London; is that correct?

A. That's right, yes.

Q. This official, based in London, was also a director of the Dublin bank; is that correct?

A. Yes.

Q. The report would contain details of the loans approved which met the criteria, that is €100,000 in respect of property backed loans and a quarter of a million in respect

of non property backed loans; is that correct?

A. Yes.

Q. I think the report was in a set format and you have furnished some copies, is that correct, to the Tribunal, of the format?

A. Not attached in the Book of Evidence. I think I have, but it is not attached in the Book of Evidence.

Q. I am going to ask you something anyway which isn't contained in your memorandum at the moment, just because of the structure. I think you have informed the Tribunal that the official in London knew the operation of the Cayman system, as he himself had a Cayman Trust account; is that correct?

A. Yes.

Q. I think you have informed the Tribunal that Cayman also had deposits with London; is that correct?

A. Yes.

Q. And was that post the end of September 1983; sorry, post the end of September 1984, London owned Cayman through a wholly-owned subsidiary?

A. It did, yes.

Q. Is that right?

A. It did, yes.

Q. And I think you are able to inform the Tribunal that Cayman had monies on deposit with London in various categories of accounts; is that correct?

A. Yes.

Q. But London supplied a number of directors over the years to the Board of Dublin?

A. It did, yes.

Q. And that from the books and records of Dublin, it is clear in a number of cases that Irish incorporated companies borrowed monies from London?

A. Yes, they did.

Q. And that these were secured by deposits placed by Cayman with Dublin?

A. Yes.

Q. And that there are also examples in the books and records of where English entities borrowed from London, secured by a guarantee from Dublin?

A. That's correct, yes.

Q. But that the real security were deposits by Cayman with London?

A. Yes.

Q. And that in one of these cases Mr. Desmond Traynor, in June 1984, stated that Dublin guaranteed the facility and was charging five percent for the guarantee?

A. Charging half a percent.

Q. 0.5 percent as a guarantee?

A. Yes.

Q. And that he said that the guarantee was for cosmetic purposes?

A. Yes.

Q. It is a very poor photocopy and I think it is Mr. Traynor,

JDT to POD; isn't that correct?

A. Yes.

Q. And POD of the loans

A. Registrar.

Q. officer or manager. It is dated the 11th of June, 1984.

And I have not

A. Shown the name.

Q. I have not shown the name for the moment. And it reads

"GM Company have given facilities of one million pounds"

is that correct?

A. One million Sterling.

Q. "To the above, as per facility letter attached hereto. A

monthly deposit of one million pounds Sterling has been

made with GM Co. interest is charged and allowed each six

months and payment made.

G&M has guaranteed the facility and is charging half a

percent for the guarantee. The guarantee is for cosmetic

purposes"?

A. Yes.

Q. So just in respect of that particular transaction, and I

just don't know if you can be of any assistance to the

Tribunal as of the moment, as to the size of the deposits

Cayman had in London at this time. But they were very

substantial deposits, weren't they?

A. Yes, they were very definitely. I mean we know I think

from recollection of reading records, I mean it is not

definite, they would certainly have been in the order of 70



million

Q. Now, I think in this particular transaction which has been described here, the company is a UK incorporated company I think; is that correct?

A. Yes.

Q. London is lending a million pounds; isn't that correct?

A. To the client.

Q. To the company. It is being backed by a million pounds in London; isn't that correct?

A. A million pound deposit placed by Dublin as security.

Q. As security?

A. For the loan.

Q. For the loan. And Mr. Traynor is saying "we are getting a half a percent for this but the guarantee is purely for, the guarantee also, there is a guarantee which is for cosmetic purposes"; isn't that correct?

A. Yes.

CHAIRMAN: Would the meaning of that, I suppose has to be, I suppose, that the bank was not at risk even if the debtor defaulted because the real security would be the backing deposit?

A. That's correct, yes.

CHAIRMAN: But does it appear from the, your examination of the accounts, that money was taken on foot of the percentage charged?

A. Oh, yes. Yes, the fee for the guarantee.

CHAIRMAN: Yes.

A. Yes, yes, that that would be taken, yes.

Q. MR. COUGHLAN: Now, I think you deal with the role that Mr. Traynor - and with the role of Mr. Traynor. I think you have been able to inform the Tribunal that Mr. Traynor was appointed a Director of Dublin in 1969 and remained a Director until the 3rd of May, 1986; is that correct?

A. That's correct, yes.

Q. And it is Dublin's understanding that Mr. Traynor left as a result of a large commercial loan which went wrong?

A. A number of difficult loan situations were arising.

Q. And just to be clear about that, that was a normal commercial loan that Guinness and Mahon itself, Guinness and Mahon itself were engaged in?

A. Yes, it was nothing related to the Tribunal's terms.

Q. Now, I think you have informed the Tribunal that Mr. Traynor's role, besides being an Executive Director of Dublin, was Chairman of Cayman; and you say one of Cayman's representatives in Ireland; is that correct?

A. Yes.

Q. That from the mid 1970's Mr. Traynor utilised a number of accounts with Dublin to facilitate the operations of Cayman and the other subsidiaries in the Channel Islands; is that correct?

A. That's correct, yes.

Q. In 1976 he opened accounts with Dublin in the names of

Amiens Investments Limited, Amiens Securities limited,  
Desmond Traynor "S" account, and Desmond Traynor "SS"  
account?

A. Yes.

Q. Is that correct?

A. Yes.

Q. These accounts allowed Irish residents to give money to Mr.  
Traynor which was then lodged to the accounts?

A. Yes.

Q. Is that correct?

A. Yes.

Q. That is in Irish money?

A. That is correct, yes.

Q. The accounts of the people who gave him the money, is that  
correct, would be credited?

A. Yes.

Q. With the lodgement in Cayman or in the Channel Islands  
under the memorandum accounts system maintained by Mr.  
Collery; is that right?

A. Yes.

Q. Mr. Traynor then paid out of these accounts to other Irish  
residents, monies, when they requested them?

A. Yes.

Q. It is the "switch" Mr. Collery has described to us; is that  
correct?

A. Essentially, yes.

Q. Mr. Traynor was given Irish money by Irish residents?

A. Yes.

Q. He put it in to the various Amiens and Traynor accounts?

A. Yes.

Q. When another Irish resident who had Sterling abroad required Irish money, Mr. Traynor paid him out of these Amiens and Traynor accounts; isn't that correct?

A. That's correct, yes.

Q. And he used their off-shore Sterling to be credited to the accounts of the people who had given him the Irish money?

A. That's correct, yes. The two in

Q. Yes, thereby attempting to get around the Exchange Control

.

A. The Exchange Control

Q. requirements?

A. Yes, yes.

Q. Now, I think you have been able to inform the Tribunal, that not only would accounts be credited in Channel Islands and Cayman under the bureau system, but that accounts would be debited with the withdrawals in Cayman or the Channel Islands under the memorandum account system maintained by Mr. Collery?

A. Yes, yes.

Q. And I think you have informed the Tribunal that the net effect of these accounts was that Irish residents could deposit or withdraw Irish pounds in Dublin and have the benefit of interest on the said monies without requiring Exchange Control clearance or bringing the fact of the

existence of the monies to the attention of the Revenue

Commissioners?

A. Yes, that is correct.

Q. That is the monies off-shore?

A. That's correct.

Q. Which purported

A. The transfer monies.

Q. Which purported to be off-shore monies?

A. Yes.

Q. Now, I think you have informed the Tribunal that in late 1979, Mr. Traynor opened a special account in his name and it was this account which was used for the payment to Allied Irish Banks of €750,000 in the months of January and February, 1980; is that correct?

A. Yes, that's correct.

Q. And you have informed the Tribunal that the Amiens accounts continued to operate until early 1990?

A. Yes.

Q. And at that stage Mr. Traynor utilised a company which had been incorporated approximately 14 years earlier, and that was called Kentford Securities Limited; is that correct?

A. That's correct, yes.

Q. But it had, in fact, not traded or it was now used to replace the Amiens accounts?

A. That's correct, yes.

Q. Now, the Amiens and Kentford accounts that you are referring to here?

A. Um hum.

Q. Are accounts which you have previously given evidence in respect of; isn't that correct?

A. Yes, yes, not always the Amiens accounts.

Q. Yes, but that they covered the accounts out of which the monies were paid in the first instance to Haughey Boland to meet Mr. Haughey's expenses?

A. Expenses, yes.

Q. And accounts out of which subsequently payments were made to Mr. Stakelum, although you weren't involved at that stage?

A. Yes.

Q. I think you have informed the Tribunal that Dublin has now located various memoranda from Mr. Collery to Mr. Traynor for 1982 which give clear indications of how the memorandum system operated; is that correct?

A. That's correct, yes.

Q. And you draw attention to a memorandum of the 15th of July of 1982, that Guinness Mahon Cayman Trust deposit A/B5 was debited œ2,450 and Amiens was credited with œ3,000 and that there would be, there was a note debiting the GMCT S with Sterling œ399.54 regarding Canadian \$500 to CJH"; is that correct?

A. That's correct, yes.

Q. I think this is a memorandum, it is to Mr. Traynor it is from Mr. Collery dated the 15th of July, 1982, it reads: "The 3rd of August, 1982 value today. I will pass

the following entries. Debit GMCT A/B5 Sterling œ2,415, credit Amiens SL œ3,000 Irish"; is that correct?

A. That's correct.

Q. Now, that of course would have involved a foreign exchange transaction?

A. In Guinness and Mahon.

Q. In Guinness and Mahon; is that correct?

A. That's correct.

Q. And then GMCT S is being debited with Sterling œ966 and Amiens SL is being credited with œ1,200 Irish; isn't that correct?

A. Yes.

Q. And the memorandum goes on to read "I will also be debiting GMCT S with Sterling œ399.54 re Canadian \$500 to CJH.

Please advise if you want me to recover in the normal way.

DPC"?

A. Yes.

Q. Now, the "S Accounts" referred to at two places on that memorandum, are they the same "S" account?

A. One would assume that they are, yes.

Q. Yes. But you showed this as a clear example of monies being debited or moved out of the Cayman accounts, being brought into Irish money through the Amiens accounts; isn't that correct?

A. That's correct, yes.

Q. Now, I think you have a memorandum dated the 3rd of August 1982 which shows that Mr. Collery debited on the memorandum

accounts a number of Cayman coded accounts and credited Amiens with four entries and Amiens Investments with one; is that correct?

A. That's correct, yes.

Q. And again if we just look at that. It is to Mr. Traynor from Mr. Collery. And he refers to Mr. Traynor's recent memorandum and says that:

"I have passed the following entries. Debited GMCT A/A10 Sterling œ3,230, credited Amiens œ4,000 Irish. GMCT B/K debit the Sterling œ161.50 credited Amiens œ200 Irish. GMCT A/A10 debited Sterling œ2,422.50 credited Amiens SL œ3,000. GMCT S Sterling debited œ807.50 credited Amiens SL œ1,000. GMCT A/A4 Sterling debited œ120.32. Amiens Investments Limited credited œ149" and it is DPC; is that correct?

A. Yes.

Q. Now, you also have a memorandum dated the 1st of December, 1982, showing Mr. Collery has debited the Irish resident account with œ5,934.84 and credited GMCT sundries sub account with Sterling œ5,000; is that correct?

A. That's correct, yes.

Q. This is a memorandum from Mr. Collery to Mr. Traynor, and he says "I have debited?

A. "Named account".

Q. "Named account with œ5,934.84 and credited GMCT sundry sub account with œ5,000 Sterling"?

A. Yes.



Q. "I trust you will advise John of this payment. DPC"?

A. That's correct.

CHAIRMAN: Does that seem likely to be Mr. Collins?

A. Yes. Or Mr. Furze, actually.

Q. Yes. Oh, the John would be Mr. Furze?

A. Yes.

Q. That is showing the transaction going on the opposite way to the ones dealt with in the previous memoranda; isn't that correct?

A. That's right, yes.

Q. This is money moving out of Ireland into the Cayman?

A. Into Cayman.

Q. Into Cayman?

A. Yes.

Q. And I think these examples, you have carried out more extensive examination obviously, but these reflect the nature of the memorandum accounts which were kept by Mr. Traynor and Mr. Collery; isn't that correct?

A. That's correct, yes.

Q. And they are referred to in the internal audit report prepared by Mr. Barrett Thaacker of London's Internal Audit Department in February, 1989; is that correct?

A. Yes. Yes.

Q. And Mr. Thaacker's report came as a result of an interview that he had with Mr. Collery?

A. Correct.

Q. Now, if I could just refer to a portion of that internal audit report?

A. Sure.

Q. And it is on the final conclusions and recommendations. Page five. Pages five and six. And I think it deals with Ansbacher Limited, Grand Cayman.

"Ansbacher Limited, a company based in Grand Cayman has deposited by way of call and fixed deposits amounts equivalent to Irish €38 million with the bank" and they are referred to as "Ansbacher Deposits".

These deposits equate to funds lodged on off-shore call and fixed deposit accounts with Ansbacher Limited customer deposits by Dublin based customers"; is that correct?

A. Yes.

Q. "The ledger account records of the customer deposits are maintained by the bank on a bureau system which shares the same hardware as but which is totally independent of the IBIS"?

A. 38.

Q. "IBIS 38 system of GM Dublin. Thus the Ansbacher Deposits held on the bank's computer system are represented by the customer deposits held on the bureau system.

The bureau system is operated and controlled solely on behalf of Ansbacher by the associated director operations, DPC, and no other senior official of the bank has access to that system. Customer names are not held on the system,

but each deposit is identified by a code. We understand

that DPC is aware of their names".

That reference is to Mr. Collery; isn't that right?

A. Yes.

Q. "DPC deals direct with the customers and/or their agents.

He negotiates call/fix deposit interest rates with them.

He also negotiates on behalf of Ansbacher Limited with G&M

dealers, rates payable on the Ansbacher Deposits ensuring

that the total interest received by Ansbacher Limited

agrees with the total interest paid on the customer

deposits. If the totals do not agree, adjusting entries

are passed in the banks books by DPC. We understand that

Ansbacher Limited is remunerated by way of a fee of one 8th

of one percent per annum calculated on the total deposit,

although we have not seen any legal documentation to this

effect".

Then this portion of the audit internal audit report

continues: "DPC also receives and processes the payment

instructions in respect of customers deposits. The

payments are in fact made from the Ansbacher Deposits held

in the bank books. The corresponding bookkeeping entries

debiting customer's accounts which are technically

off-shore are then made on the bureau system, thus

maintaining the equation of Ansbacher Deposits with the

customers deposits"?

A. Yes.

Q. "In practice, but not officially, therefore, DPC acts as a Dublin based agent of Ansbacher Limited insofar as the management of customers and Ansbacher Deposits is concerned, although he is employed full-time by the bank. All transactions relating to these deposits are initiated and processed by DPC. In addition to negotiating with both parties to the transactions, he raises accounting entries and prepares input vouchers, deal slips etc. for both parties G&M and the customers of Ansbacher Limited. There is no internal check on his activity. "

"It should also be noted that standard controls generally applicable within the bank to call and fix deposits are not applied to Ansbacher deposits. For example, with respect to money market deals done with Ansbacher Limited, DPC not the dealer, completes the deal slips. No counter party confirmations are received, and the bank's outgoing confirmations are sent not to Ansbacher Limited but to DPC.

As mentioned above, DPC together with certain agents of the customers, negotiate not only interest payable on the customer's deposits but also interest payable on the Ansbacher Deposits. This together with the ability to initiate and process payment instructions on the Ansbacher Deposits, with no effective internal check constitutes a serious control weakness.

For example, interest rate negotiations could easily be

manipulated so as to create a surplus of interest credited to Ansbacher call deposit accounts over the average interest payable on the corresponding customer call deposit accounts.

As the function of maintenance and operation of the deposits is vested in one person only the service may be easily misappropriated without detection because the equation of balances on customers deposits with the Ansbacher deposit will be maintained.

It should be pointed out that we have neither detected or have any reason to believe that there has been any irregularity with respect with the Ansbacher deposits.

However, as the customer deposit constitutes records of Ansbacher Limited and not of G&M Limited, they have not been subject to our review. We have also not received" sorry "we have not reviewed the procedures involved in opening of new customer deposits, if any new deposits are indeed taken. Further we have not seen any mandates from, for the operation of the Ansbacher Deposits and customer deposits".

And then an opinion is expressed: "In our opinion lack of internal control over this activity, coupled with the fact that the Ansbacher Deposits constitute nearly 35 percent of the bank's liabilities expose the bank to serious risk of loss and embarrassment. These risks together with the

legal position of the bank, vis-a-vis the maintenance of off-shore customer deposits, by a bank employee, and on the bank's premises, need to be evaluated by the Board. In the meantime, the following measures should be taken in order to safeguard the interests of the bank:

(1) The site of the bureau system, including the Ansbacher stationery, documents and vouchers relating to the customer deposits should be relocated elsewhere away from the bank's premises. When this has been accomplished, it should be ensured that the bank's computer hardware is not linked to any terminal outside the bank's premises unless duly authorised by a Managing Director.

(2) Ideally no bank employee should be involved in the management and maintenance of the customer deposits. If however, this is not practical, then the employee involved in managing and maintaining the customers deposits and hence acting on behalf of Ansbacher Limited should not be the same as those acting for G&M and managing and maintaining the Ansbacher Deposits. The former should ensure that the customers are aware of their relationship with Ansbacher Limited, Grand Cayman.

(3) The bank should obtain from Ansbacher Limited a mandate specifying authorised signatories empowered to issue payment instructions on the Ansbacher Deposits.

(4) Standard controls applicable generally to call deposits

and fixed deposits should also be applied to the Ansbacher Deposits unless the exceptions are duly authorised by a Managing Director. The dealings between Ansbacher Limited and G&M should be seen to be on an arms length basis.

(5) Statements of account relating to Ansbacher deposit should be sent to Ansbacher Limited on a monthly basis, and not to JDT"; is that correct?

A. I think

CHAIRMAN: It is on the manuscript

Q. MR. COUGHLAN: I beg your pardon. "To the extent that Ansbacher deposits form securities steps should be taken to account separately for these deposits so as not to weaken the existing quality of the security".

I think that is the portion of the internal audit report which dealt with the Ansbacher Deposits; is that correct?

A. Yes, that's correct.

Q. Yes, there is a document which might be easier to deal with it now. It might be easier to deal with it now, it is when the bureau system in its computer form, I think commenced and it is a letter from Mr. Furze, Guinness Mahon Cayman Trust Limited, dated the 1st of February, 1978, (document handed to witness). It is addressed to Guinness Mahon Limited, 17 College Green, Dublin.

And it reads: "Dear Sirs, in view of the recent installation of your computer system on behalf of a number

of our accounts, we would like to you provide computer accounting services for these accounts which would be maintained in our name.

We would only request that you provide such a service on the basis that all information provided by us remains our sole property as also been all information stored within the computer programme, needless to say we would also require your written assurances that neither the programme information stored, nor the accounting records themselves, are made available to any third parties such as auditors, bank inspectors etc..

In the event that you are able to provide such a service, and give us the assurances required above, perhaps you would kindly advise us of the proposed change for the charges for this service. Yours faithfully for Guinness Mahon (Cayman Trust Limited), John Furze Director".

Now, at the time that this letter came from Guinness Mahon (Cayman Trust Limited) Mr. Traynor was the Chief Executive of Dublin; is that correct?

A. That's correct.

Q. And he was a Director and at that time I think Chairman of Guinness Mahon (Cayman Trust Limited)?

A. I believe so, yes.

Q. Now, I think you then go on in your memorandum to give a further example of how Amiens Securities Limited accounts were used; isn't that correct?



A. That's correct, yes.

Q. And you say that on the 20th of November, 1986, Irish residents transferred from their account in Dublin €30,278.32 to Amiens Securities Limited No. 2 account, number 10407006; is that correct?

A. That's correct, yes.

Q. And on the same day €28,764.40 was debited from the 602 account, is that correct?

A. The sundry sub account.

Q. That is the sundry sub account which is a pooled account of Cayman?

A. Yes.

Q. And this was converted into Irish pounds and lodged to a new Cayman Irish pound account; is that correct?

A. That's correct, yes.

Q. And that the net effect of the transaction was that the two Irish residents had transferred €30,278.32 to Cayman?

A. That's correct.

Q. Now I think you have been able to inform the Tribunal that in February 1989; this is the audit report that we have just referred to; that there were deposits in Dublin equivalent to €38 million; isn't that correct?

A. Yes.

Q. And that these monies were subsequently gradually withdrawn and that the majority of the deposits went to Irish Intercontinental Bank, as far as you know; is that correct?

A. That's correct, yes.

Q. And you have informed the Tribunal that from the available books and records it appears that in the years ending the 31st of March 1975 to the 30th of September 1984, the following profits were made by Cayman and that all of these figures are in Sterling; is that correct?

A. That's correct, yes.

Q. In 1974 there was £242,890. 1975: £125,926. 1976: £157,636. 1977: £179,989. 1978: £87,424. 1979: £226,405. 1980: £504,695. 1981: £482,810. 1982: £764,653 and in 1984 there were profits of £1,835,338; is that correct?

A. Yes, that's correct, yes.

Q. On the 29th of September, 1984, Cayman was sold by Dublin to Guinness Mahon (Overseas Investment Limited) a wholly-owned subsidiary of London?

A. That's correct.

Q. And that in 1987 Cayman was sold to Henry Ansbacher and a management consortium which included the late Mr. Traynor; is that correct?

A. Yes, yes.

Q. And I think in June, 1987, the late Mr. Traynor informed Dublin that Dublin would be losing substantial deposits; is that correct?

A. That's correct, yes.

Q. And as of the 31st of August 1994, the date on which Dublin was acquired by the Irish Permanent Building Society, Cayman had on deposit in Dublin of just over a million

pounds; is that correct?

A. Yes, yes.

Q. And as of today's date Cayman has no deposit with Dublin; is that correct?

A. Yes.

Q. Now, turning to deal with the back-to-back operations, if I may, Miss Kells?

A. Okay.

Q. I think you have informed the Tribunal that a number of loans were advanced by Dublin to its customers whether the customers were individuals or corporate and these were designated as suitably secured or considered adequate; is that correct?

A. That's correct, yes.

Q. And I think you have informed the Tribunal, it appears in the books and records from Dublin that "suitably secured" or "considered adequate" meant that the loans were cashed back; is that correct?

A. That's correct, yes.

Q. This meant that monies were placed on deposit with Dublin which equalled the amount of the loan advanced by Dublin to its customers; is that correct?

A. Yes.

Q. And "suitably secured" appears to have ceased to be used from around August or September of 1978; is that correct?

A. Yes.

Q. And "considered adequate" was used from the main 1980's

onwards; is that correct?

A. That's correct, yes.

Q. Now, I think you have been able to furnish a minute of a meeting held on the 20th of August of 1973; is that correct?

A. That's correct, yes.

Q. Sorry, if we could just move it up to item No. 1. This is a meeting. Present were Mr. Forwood, Mr. Watson, and Mr. Kelly; is that correct?

A. Yes.

Q. It is a minute of the meeting held at 11 o'clock on the 20th of August, 1973. And I think item number 1 says:

"At present the GMCT deposits act as security for resident loans" which are referred to as "suitably secured"?

A. That's right, yes.

Q. "If these deposits are replaced by market funds what is the position with regard to the security?"

A. Yes.

Q. And I think that is in the documentation, a clear example of what "suitably secured" meant to the bank; isn't that correct?

A. That's correct; and they were discussing in the body of the minute they were discussing the funds GMC removed the funds to place them somewhere else on a lower commercial beneficial basis.

Q. Yes.

A. So the concern was that if the GMC funds were withdrawn

what would happen to the suitably secured situation i.e.

the funds backing the loans made to the clients.

Q. Yes. In fact item number two still goes on to deal with the back-to-back situation doesn't it?

A. It does, yes.

Q. "Present all GMC accounts designated Irish pound accounts.

If these are replaced by UK funds, the Irish pound/English pound position would be affected adversely. Is this acceptable or should the loans on the other side of the back-to-back arrangements be re-designated English pound Sterling to maintain the balanced position?" I don't know if item No. 3 is referable - it is the same thing.

Now, I think you have informed the Tribunal, that it would appear from inquiries made by Dublin, that in the mid 1970's documentation was in place showing that the loans were hypothecated, that is the loans were secured in that Dublin had a lien, in effect, over the monies lodged as deposits with, by Cayman and Channel Islands subsidiaries on behalf of their customers; is that correct?

A. That's correct, yes.

Q. And it appears from the books and records of Dublin, that specific deposits were made by Cayman and Channel Islands and these accounts were blocked?

A. Yes. That is the securities for the loans.

Q. But that subsequent to the late 1970s it appears that specified deposits were not made as frequently by Cayman or Channel Islands subsidiaries, but monies were lodged in the

sundry sub accounts by them; is that correct?

A. That's correct, yes.

Q. And that this meant that monies were placed on deposit by Cayman or the Channel Islands subsidiary with Dublin but Dublin did not have a specific charge, or lien, over a specific deposit; is that correct?

A. Yes, yes.

Q. That Dublin, in effect, was relying on the good offices of the late Mr. Traynor to ensure that monies were kept on deposit with Dublin until a particular loan to the customer was cleared by the customer; is that correct?

A. Yes.

Q. These accounts may have been in the name of "Cayman" or "Cayman re College Trustees"; is that correct?

A. That's correct, yes.

Q. And I think we have a note of Mr. Traynor dated the 1st of June of 1982, which shows that an Irish incorporated company had a loan of £373,487.80, that the person controlling the company had two deposits with Cayman identified as "P" and "P3". Now, I just want to halt there. We are not talking about the same "P3" of which evidence was given about last Friday?

A. No, that is Channel Islands, yes.

Q. Yes; and deposits with Guinness and Mahon, with Guinness and Mahon (Guernsey) identified as A/K and A/K2?

A. Yes.

Q. If we just go through the note. And it is from Mr. Traynor

to Mr. Rue Leonard?

A. No, it is from

Q. It is from Mr. Rue Leonard to Mr. Traynor and this comes from, in fact the loan file which would have been Mr.

O'Dwyer's file?

A. That's correct, yes.

Q. And it is re: And we have took out the name there?

A. Um hum.

Q. And "I give below balances as at the 31st of May, 1978.

GMCT" sorry, it is "373,487 credit"?

A. Sorry, that is debited. That is the loan.

Q. I beg your pardon. Guinness Mahon Cayman Trust "P" 362565

- is it an 8?

A. 585.

Q. Maybe it is 585. Yes, that is credit and P3 is credited œ2,980.55 and then there is the Guinness Mahon (Guernsey) and the two accounts there A/K and A/K2. They are also in credit; is that correct?

A. That's correct, yes.

Q. And that is an example of the backing?

A. That was the backing deposits.

Q. The becoming deposits?

A. Yes.

CHAIRMAN: It obviously follows, Miss Kells, that if the customer had a loan secured on an off-shore deposit, it did not affect that customer's entitlement to have interest

credited or to have payments made out of the off-shore account through the bureau system, provided sufficient to answer the loan was kept on deposit?

A. Yes, unless the entire account was blocked which was not that

Q. MR. COUGHLAN: But it always earned interest?

A. Absolutely.

Q. Always earned interest and if there was a surplus to requirements in respect of the deposit that could be used or it was accessible?

A. Yes.

Q. Now, I think you have a letter from Mr. Traynor on Cayman note paper, dated the 9th of January, 1990, requesting balances of various customers of Dublin and you also have Dublin's reply on the 12th of January, 1990, which shows how the system operated in the mid-1980's onwards; isn't that correct?

Sorry if we put up Mr. Traynor's letter first. The 9th of January. And it is addressed to Mr. Lannigan O'Keeffe, the Managing Director of the bank. Could we just show the top of the paper? It is printed "Ansbacher Limited" and it gives an address in Cayman, but it is indicated that "please reply to 42 Fitzwilliam Square" and a local telephone number and a local fax number are given; isn't that correct?

A. Yes.

Q. And it reads:



"Dear Martin could you please arrange to let me have a note of the balances after application of interest on the 31st of December, 1989, for the following accounts". Can you make out what those accounts are?

A. Well, they are listed, they are actually blocked out.

Q. They are on the reply. If we deal with the reply. It is addressed to Mr. Traynor at 42 Fitzwilliam Square. And it reads: "Dear Des, I thank you for your letter of the 9th of January, 1990, and the listed below, the undermentioned balances following the application of interest on the 31st of December, 1989". And it deals with a resident current account; is that correct?

A. That's correct, yes.

Q. Which is overdrawn?

A. Um hum.

Q. Yes; and the next one is a foreign currency held current account; is that correct?

A. Yes. Yes.

Q. Which is overdrawn of €1,217,000 Sterling. Then there is a resident current account which is in credit to €998.41. A resident loan account which is overdrawn €191,688. And then under that two resident loan accounts which are overdrawn; isn't that correct?

A. That's correct, yes.

Q. Now, I think in respect of a back-to-back arrangements, for Irish residents?

A. Yes.

Q. You have been able to, from your examination, inform the Tribunal that the exception to the practice were loans were made by Dublin to American residents or entities based in America; is that correct?

A. Yes. That was, there was a different treatment applied.

Q. In those specific cases, specific deposit accounts were opened by Dublin regarding the particular borrower and monies were lodged in Dublin; is that correct?

A. The accounts were opened by Cayman with Dublin.

Q. By Cayman with Dublin?

A. Yes. Yes.

Q. And that Dublin, in effect, had control of the monies and would ensure that no monies were released from the deposits until the loans advanced to the specified American customers had been discharged?

A. That's correct, yes.

Q. Some of these were quite substantial; isn't that right?

A. They were, they were fairly well identified, you could clearly identify the deposit and security to be given.

Q. You were unaware as to why this practice was different yourself, are you, by the

A. I presumed it had something to do with IRS and Cayman territory.

Q. No, no, but why the practice of actual deposits, large deposits being made to back the loans, why the practice was different to the Irish one? It is a matter we will be

dealing with at a later stage, Miss Kells. It is perhaps something that wouldn't be in your knowledge at the moment.

A. Okay.

Q. Now, I think in 1991, Dublin requested Mr. Traynor to arrange for sub participation to be created in relation to borrowings, particularly to American customers and this was done and the appropriate documentation was entered into by Cayman dealing with a number of American customers. What was that?

A. Basically we would have the loan. Dublin would lend the money to the client and Dublin would, there would be the backing deposit, 90% of the deposit would be Cayman's in Cayman's control and 10 percent was with Dublin. So it was a separate arrangement again between the Cayman and Dublin with regard to the backing deposit, but essentially was an agreement whereby the funds would be retained by Dublin as security for the loans to the American residents.

Q. Now, I think you have informed the Tribunal that it would be exceedingly difficult to ascertain the amount of the back-to-back loans which Cayman and the Channel Islands subsidiaries had with Dublin, and that furthermore it would be even more difficult to break down the back-to-back loans to identify where the monies were replaced by Cayman or the Channel Island subsidiaries?

A. It would be very difficult.

Q. Now, I think at this stage, Miss Kells, if we could deal

with what is described as the Pruna loans?

A. Okay.

Q. And I am dealing with the supplement to your memorandum now?

A. Yes.

Q. Have you got a copy of that. We will get you a copy.

(Document handed to witness). Now, I think that the back-to-back loans to you, as to US residents, included a series of loans to Mr. Fernando Pruna and his wife Eudilia Pruna?

A. Eudilia.

Q. Certain of their associates and to companies which Mr. Pruna controlled; is that correct?

A. That's correct, yes.

Q. The loans were all openly backed by deposit placed by Guinness Mahon (Cayman Trust) with Guinness and Mahon; is that correct?

A. That's correct, yes.

Q. And that subsequent to the repayment of the loans, a director of Guinness and Mahon was ordered to appear in the District Court and to produce all documents pertaining to the loans made by Guinness and Mahon; is that correct?

A. That's correct, yes.

Q. The order was made by the High Court here in Ireland on the 5th of November, 1990, on foot of letters rogatory issued on the 23rd of March, 1990, by the United States District Judge for the Southern District of Florida; is that

correct?

A. That's correct, yes.

Q. And I think you have furnished the Tribunal with a copy of the High Court Order; isn't that correct?

A. That's correct, yes.

Q. I don't intend reading out the full text of the order. It is an Order of the High Court. Now, I think you have informed the Tribunal, but it is part of the evidence of the Tribunal, I should just say, this particular Order.

Now I think it appears that the letters rogatory were issued in aid of an investigation which was being conducted by the United States Attorney of an alleged organised crime drug smuggling operation, headed by Mr. Pruna; is that correct?

A. That's correct, yes.

Q. I think you have informed the Tribunal that Mr. Pruna and certain of his associates, including a Mr. Barrios had been indicted of charges, including operating and conspiring to operate a continuing criminal enterprise dedicated to the importation of cocaine and marijuana into the United States from 1981 to 1988; is that correct?

A. Yes.

CHAIRMAN: I just wonder is there a copy of the updated

MR. COUGHLAN: I beg your pardon. Of the supplemental?

Yes.

CHAIRMAN: Proceed, in any event.

Q. MR. COUGHLAN: Yes. Now, I think you have informed the Tribunal that you understand from information provided by the Tribunal, that the relevant documents were produced to the President of the District Court on the 18th of December 1990, and that the deposition of an official of Guinness and Mahon was taken before the President of the District Court on the same date; isn't that correct?

A. I understand that, yes.

Q. You further understand by information provided to the Tribunal that Mr. Pruna was subsequently convicted and served a prison sentence?

A. I believe so, yes.

Q. Now, I think you were able to inform the Tribunal that it appears from the bank's records that Mr. Fernando Pruna was a customer of Guinness Mahon Cayman Trust and was introduced by Guinness Mahon Cayman Trust to Guinness and Mahon in 1985?

A. That's correct, yes.

Q. All of the facilities provided by Guinness and Mahon to Mr. Pruna and his associates were secured by backing deposits placed with Guinness and Mahon by Guinness Mahon (Cayman Trust)?

A. Yes.

Q. So Dublin provided facilities which were backed by deposits were Cayman; isn't that correct?

A. Yes.

Q. Now, I think a series of loans were made personally to Mr. Pruna and his wife which were initially advanced in 1985 and these were secured by the backing deposits in the name of Guinness Mahon (Cayman Trust) and were also secured over property in Florida; isn't that correct?

A. That's correct, yes.

Q. And I think you have the loan, credit committee memo, isn't that correct? You first of all have the, I haven't got the top of this document (document handed to witness) we don't have it, the photocopy wouldn't show it. I think down the bottom right-hand corner is the Credit Committee minute reference; is that right?

A. That's correct.

Q. And the date and the recommendation?

A. July, 1985, yes.

Q. And just above that there is, that it is a loan for \$235,000; is that correct?

A. Two loans.

Q. And another for 160,000. \$160,000; isn't that correct?

A. Yes.

Q. And the drawn down is by way of loan accounts and the facility terms are in nine months and ten months in respect of the two loans?

A. Yes.

Q. The source of the repayment is not indicated?

A. Yes.

Q. Security, firstly a mortgage over 2351 Keystone Developments, Miami, Florida taken by GMCT, security considered adequate. And then down at the bottom in handwriting is "security considered adequate, differential one percent"; is that correct?

A. That's correct, yes.

Q. Then down at the bottom. "Total exposure \$395,000"?

A. Yes.

Q. I think in December, 1986, 243,000 of the Pruna's loan was replaced by a loan in the same amount to Mr. Raymond G Fitzgerald?

A. That's correct.

Q. Now, it is a very poor quality memorandum, but it is for the attention of Mr. O'Dwyer, that is the loan's manager; isn't that correct?

A. Yes.

Q. And it is "re Pruna". It refers to loan \$160,000 and \$83,000. "Please close both of these out, value 3rd of August, 1986, and open new loan in the name of Raymond G Fitzgerald for \$243,000", is it \$243,000"?

A. Yes.

Q. "Valued the 3rd of August, 1986, at 12%. Maturing 3rd of August, 1987. Combine our backing deposit into one deposit at" - I can't make out the figure. 243,000 isn't it?

A. Yes.

Q. "Value 3rd of August, 1986 at 11%, maturing 3rd August 1987. Have today sent courier package containing copy"?



A. Copy mortgage deed.

Q. "Copy mortgage deed and note re Fitzgerald for your files.

Also cheque for \$2,395.55 being interest on \$160,000

15/6/86 to the 3rd 8/86 at 11 percent. Please send US

\$21,77.76. Also cheque for \$785.20 on \$83,000 from the 3rd

of July, 1986, to 3rd of August 1986 at 11 percent. Please

send US \$714.72. Also enclosed, a cheque for \$7,280" is

it?

A. \$90.

Q. "\$90 being interest on new loan, \$243,000. For a quarter

3rd of August to 3rd of November at 12%. Please send US

\$6,682.50. Finally regarding loan for dollars \$575"?

A. Thousand.

Q. Thousand. "We have this down as 11 percent" and then there

is a value date. "Please amend for 1st of September to 10

percent"; is that right?

A. Yes.

Q. And that is just to deal with various rates?

A. Yes, that's correct, differentials, yes.

Q. Could you just tell us what does that mean?

A. It is basically taking the two Pruna loans and

consolidating them as a loan in the name of Raymond G

Fitzgerald and it is the payment of the interest from

Cayman to Dublin and requesting, on the loans, and

requesting Dublin to pay Cayman the interest on the deposit

accounts.

Q. I see.

A. Backing the loans.

Q. Now, the loan which replaced the two Pruna loans, that is in the name of Mr. Raymond Fitzgerald, I think this was secured by a backing deposit; isn't that correct?

A. That's correct.

Q. And by a mortgage over a property in Florida?

A. That's correct.

Q. Now, from the records it appears that both the Pruna and Fitzgerald loans were discharged in 1988; is that correct?

A. That's correct, yes.

Q. On the 10th of February, 1988, Guinness Mahon (Cayman Trust) proposed that the Fitzgerald loan should be written off against the backing deposit with a value date the 2nd of February, 1988; is that correct?

A. That's correct, yes.

Q. And this is John Furze, on Guinness Mahon (Cayman Trust Limited) note paper writing to Mr. O'Dwyer in Dublin.

"Dear Pat, I am writing in response to your telex of the 4th of February.

We have received no response whatsoever from Mr. Fitzgerald to our demand for interest on his loan of \$243,000 and I suggest that you write the loan off against the deposit, value 3rd of February, 1988.

According to my records we each have a fee due of \$2,430.

At some stage when a discharge of the mortgage is required

we will attempt to collect same.

Insofar as the Hine mortgage is concerned, you recently executed a discharge over this loan. As soon as we receive the proceeds we will advise you and arrange for you to receive your share of the interest due. Yours sincerely".

So Mr. Furze is telling Mr. O'Dwyer he can't collect the interest, so write off the whole lot; is that correct?

A. Yes. Take the deposit against the loan.

Q. Which means take the whole lot?

A. Yes.

Q. Take the whole deposit?

A. Yes.

Q. Now, I think on the 3rd of June, 1988, the balance of the loan to the Pruna's stood at \$700,000 and this was resorted, this was discharged by resorting to backing deposits; is that correct?

A. Yes.

Q. And what we have is page one of a statement; isn't that correct?

A. Yes, that's correct, yes.

Q. It is Guinness and Mahon and what does it show, Miss Kells?

A. It shows, it is a US dollar loan, external loan and it is to Mr. and Mrs. Pruna. The date is, of the statement is the 11th of July, '88. The opening balance on the 30th of March '88 is \$700,000. It shows various interest applications and lodgements, and then final repayment of

the loan on the 3rd of June, 1988, of 700,000.

Q. And this came out of the backing deposit; isn't that correct?

A. It did, yes.

Q. Now I think a loan of \$2.1 million US was provided by Guinness and Mahon to a company called Northside Management and Development Company which was involved in a property development in Atlanta in Georgia; is that correct?

A. That's correct, yes.

Q. I think the borrowings were secured by a guarantee from a company called Maxxima Investment Corporation of which Mr. Pruna was President and from Barrows Holding Limited a Channel Islands company; is that correct?

A. That's correct, yes.

Q. I think the borrowings were also secured by a Guinness Mahon (Cayman Trust) deposit of \$2.1 million US which Guinness Mahon (Cayman Trust) hypothecated in favour of Guinness and Mahon; is that correct?

A. Yes.

Q. I think you have been able to inform the Tribunal that it appears that as regards this proposed facility, Mr. Furze himself had entered into negotiations with Northside Management and Development Company and that it was only subsequent to these negotiations that he informed Guinness and Mahon; is that correct?

A. That's correct, yes.

Q. And I think the bank's records include a memorandum from

Mr. Furze to Mr. Collery, dated the 16th of September, 1987, referring to the facility?

A. That's correct, yes.

Q. And that it appears that a copy of the memorandum was sent to Mr. Traynor, who had by then resigned from Guinness and Mahon and it further appears that the memorandum itself was prepared by Mr. Traynor and typed by Miss Joan Williams, Mr. Traynor's private secretary; is that correct?

A. That's correct, yes.

Q. I think the memorandum refers to other papers and evaluations apparently attached to the memorandum for cosmetic purposes?

A. It does, yes.

Q. And I will deal with the memorandum in a moment?

A. Okay.

Q. But it appears that the facility was approved by the Credit Committee on the 1st of October, 1987, and that on the same date Guinness Mahon (Cayman Trust) advanced \$2.1 million to be held in escrow pending the closing of the transaction on the following day; is that correct?

A. The transaction closed on the 1st of October.

Q. If I just turn to the memorandum, it is from JAF, that is Mr. Furze?

A. Yes, that's correct.

Q. It is to DPC, yes; isn't that correct?

A. Mr. Collins, yes.

Q. It is headed "memorandum" and it is dated the 16th of

September, 1987; is that correct?

A. That's correct.

Q. And re Northside Management and Development Company; is that correct?

A. Yes.

Q. If we just go to the very bottom of it. It is Cayman Islands now, right down please? Cayman Islands, sorry, it is initialled or appears to be initialled on the right-hand side JAF; is that correct?

A. Yes.

Q. It is Cayman Islands JDT and the reference is JDT/AJW. I think that was Mr. Traynor's and Miss Williams reference; is that right?

A. That's right, yes.

Q. And it reads:

"I was involved in discussions prior to coming to Dublin with a view to G+M Dublin advancing \$2.1 million to the above Development Company which is indebted to the National Bank of Georgia to the extent of \$2.95 million approximately.

As you can see from the attached documentation, a Channel Islands company Barrows Holding Limited, has acquired an option to buy out NBG at a price of 2.1 million. As long as the said option is exercised prior to the 3rd of October, 1987, to do so later would involve additional payments of \$25,000 for each extra month or part thereof.

Guinness and Mahon would assume the position currently held by NBG and would take over its security, namely a first mortgage over the property.

Additionally, you would receive corporate guarantees from Maxxima Investment Corporation as well as Barrows Holding Limited. I will secure accounts for these companies. But have been assured that they do have unencumbered assets. You will also receive a deposit from GMCT of \$2.1 million which we will hypothecate.

Various other papers, valuations etc. are attached for cosmetic purposes which you can retain on file.

Initially it is proposed the facility be for one year, reviewable thereafter. Interest will be payable annually at Libor plus 1 percent. The deposit attracting Libor. Repayment of the loan and payment of interest will be affected from lot sales as well as the sale of completed homes. Please contact me for any further information you may need".

That is the memorandum which is on the records of the bank?

A. That's right, yes.

Q. Which in real terms is showing that the security for the advance of the loan is the lodging of 2.1 million and the hypothecation thereof by

A. Yes.

Q. By Cayman?

A. Yes.

Q. Now, I think from the records it appears that the facility, facility letter which was in the name of Guinness and Mahon was in fact drafted by Mr. Furze, and was faxed to Guinness and Mahon on the 29th of September, 1987, for approval; is that correct?

A. That's correct, yes.

Q. And there is a covering letter, is that right, dated September the 29th, 1987?

A. Yes.

Q. And it is addressed, it is via telefax at the top, its reference is JAF/MB. It has the Cayman address on it; isn't that correct?

A. That's correct, yes.

Q. And it is addressed to Mr. Collery at Guinness and Mahon, 17 College Green, Dublin 2. And it reads:

"Dear Pdraig, the following is a draft of the proposed letter of commitment in relation to the Westfair Project in Atlanta, Georgia.

I should be grateful if you should advise me in the event that you have any comments. Yours sincerely, John A Furze"; is that correct?

A. That's correct, yes.

Q. And what came with that letter, Sir, before I proceed to that; could I ask you at that stage, did Mr. Collery have a specific role in relation to, in relation to loans or



facilities in Guinness and Mahon?

A. Not in relation to loans and facilities, no.

Q. What came with the letter was this; it is dated the 28th of September, and it purports to be issued from College Green?

A. That's correct.

Q. And it is to Maxxima Investment Corporation and the address is given as Biscoyne Boulevard, North Miami, Florida.

"Dear Sirs, this letter will serve to confirm our willingness to provide the necessary financing required in connection with the Westfair Project in accordance with your recent application subject to the benefits of the option agreement, a copy of which is attached hereto, being assigned to you by Barrows Holding Limited.

The facility will be granted upon the following terms and conditions".

The advance is given at 2.1 million. The availability is given immediately upon acceptance of this commitment. The interest is given as one percent per annum over Libor. The commitment fee is waived. The term is for one year reviewable thereafter. The capital repayment from time to time upon releases of title following the sale of completed homes. The interest payments 12 months from the date of drawdown of the loan proceeds. The security is promissory note, dated the 23rd of March, 1984, from Northside Management and Development Company, Georgia, to the

National Bank of Georgia in the original principal amount of \$5,851,000. Together with that certain deed to secure debt of even date there with and that certain note and deed to secure debt and security arrangement modification agreement dated May 28th, 1986. All secured by improved real property in Fulton County, Georgia, and recorded at deed book number and page number given in Fulton County records, together with any and all known closing documents, including but not limited to, the property owners affidavits, waivers or borrowers rights, title insurance policies and the like.

"And the purpose of the advance was to enable you to exercise the option granted by National Bank of Georgia" and then there is legal requirements Guinness and Mahon Limited, 17 College Green, Dublin 2. To be named in all security and title documentation in place of National Bank of Georgia. Then the usual final paragraph.

So there is no mention made in the facility letter which was drafted by Mr. Furze, sent to Mr. Collery in Dublin, to be issued of the true nature of the security being the hypothecation?

A. No, there was no mention.

Q. Was that ever issued by Dublin; do you know?

A. I can't see it on letterhead, I would need to check the file again.

Q. Now, from what you can see at the moment, it appears that

what actually occurred was that the monies were in fact advanced by Guinness Mahon Cayman Trust; isn't that correct?

A. That's correct, yes.

Q. And that no money ever left Guinness and Mahon, is that correct?

A. That's correct, yes.

Q. And that the funds were simply placed directly into the backing deposit in the name of Maxxima Investment Corporation; is that correct?

A. Yes. Can I just check something?

CHAIRMAN: Sure.

Q. MR. COUGHLAN: Just check that? Perhaps I will just refer you to a letter from Mr. Furze to Mr. Collery, dated the 1st of October 1997. It is Document No. 28. We have that.

A. Yes, it was Northside Management, it wasn't Maxxima it was Northside Management.

Q. I beg your pardon. Do you have the letter?

A. Sorry, a letter dated?

Q. Dated October the 1st, 1987?

A. Yes, I have it.

Q. It is from Mr. Furze in Cayman to Mr. Collery in Dublin:

"Dear Pdraig, on behalf of Guinness and Mahon Limited we advance today \$2.1 million to Messrs. Greenfield Ellis and Bost of Atlanta, Georgia, to be held in escrow pending the closing tomorrow of the Westfair transaction.

In my discussion this week with the various firms of attorneys involved it was decided that whilst the commitment letter did spell out the terms of the transaction it was more appropriate for the benefit of the option agreement to be assigned by Barrow's Holdings Limited to Guinness and Mahon Limited rather than lend directly to a US company. However, the end result will be the same with G&M Limited standing in place at the National Bank of Georgia. I also wish to obtain the guarantee of" is it Maxima?

A. Um hum.

Q. "Investment Corporation, although since the closing is scheduled for tomorrow, this will be post closing date, closing event. Could I trouble you to please let me have two copies of our standard guarantee form, one of which will be returned, fully executed in due course.

The title documentation to the property will be forwarded to you as soon as I receive same from Bill Bost, the attorney handling this transaction on your part, he will also be sending me, probably next week, title release in respect of the sale of three condominium units, expected to close at that time. The funds emanating from these sales will be utilised to discharge portions of the indebtedness. Yours sincerely, Mr. Furze".

Again was Mr. Collery at this time of his career in the

bank in the normal way of his work, handling this type of business?

A. No.

Q. Now, I think that in respect of this particular loan, there was an authorisation by the Credit Committee; isn't that correct?

A. That's correct, yes.

Q. And if we just put that particular document up? That the loan was for 2.1 million. The purpose is set out. The security then is a promissory note, security agreement of property in Fulton County and deposit of 1.2 million for GMCT; isn't that correct?

A. Yes.

Q. And then it is recommended on the basis of the GMCT introduction and the adequate security; isn't that right?

A. That's right, yes.

Q. Now, this loan on the books of Guinness and Mahon, I think was repaid; is that correct?

A. That's correct.

Q. On the books, on the 30th of September, 1988, by using the backing deposit; is that correct?

A. That's correct.

Q. So whilst there is no evidence of œ2.1 million ever leaving Dublin?

A. It doesn't, no.

Q. It appears that 2.1 million was paid directly by Cayman; isn't that correct?

A. No, it was just the deposit was used again to repay the loan.

Q. Sorry, the 2.1 million was paid by Cayman as a backing deposit; isn't that correct, in the first instance?

A. No. The loan was drawn down so basically they just emptied the loan account and credited

Q. They emptied the loan account?

A. No. They were drawing down the account in '87. They debited the loan account and credited the deposit account.

When they were repaying it in '88 they basically did the same, just took the money out of the deposit account to repay the loan account.

Q. You will have to take that slowly, Miss Kells?

A. When they were drawing it down.

Q. First of all, there was an approval for a loan of œ2.1 million?

A. Yes.

Q. There was a pledge, or a hypothecation, by Cayman in respect of that particular facility; isn't that correct?

A. Yes.

Q. What happened at that stage?

A. When they were drawing, when the hypothecation was, loan is being drawn down, they purely debited the loan account creating

CHAIRMAN: I think it is quite intricate. I think, Mr.

Coughlan, in ease of Miss Kells, if there was only another five minutes I would sit on, but it has been a long and

quite demanding session for her in the witness-box. If it is not inconvenient to you, Miss Kells, if you prefer to go on for ten minutes, I think it might be better if we were to adjourn until ten to two if there are further documents to deal with. Thank you.

A. Thank you.

THE HEARING THEN ADJOURNED FOR LUNCH.

THE HEARING RESUMED AS FOLLOWS AFTER LUNCH::

CHAIRPERSON: Thank you Ms. Kells. Please.

SANDRA KELLS CONTINUES TO BE EXAMINED AS FOLLOWS BY MR.

COUGHLAN:

Q. MR. COUGHLAN: Now Ms. Kells, if we could go back over what we were dealing with before lunch? 2.1 million dollars appears to have gone to lawyers in the United States for the purpose of the property deal in the United States; is that correct?

A. Yes.

Q. Yes. Did that not go out of Dublin?

A. Correct.

Q. At best you know, it went from Cayman or from some source organised by Mr. Furze?

A. Correct.

Q. But what happened in Dublin, was that in respect of this particular transaction a loan was applied for?

A. Yes.

Q. A loan was approved of 2.1 million by the Credit Committee?

A. Yes.

Q. And that loan had the security of the hypothecation of 2.1 million dollars by Guinness Mahon Cayman Trust; is that it?

A. Yes, yes.

Q. Although that was not shown on the copy facility letter we have seen this morning?

A. Yes.

Q. And when that loan which was not taken up in effect, was not drawn down to the extent it left Ireland to go to America, was repaid, it was repaid by the hypothecated funds?

A. Yes.

Q. Now, can you express any view about that particular transaction, if I could ask you this: Was it the same funds that were loaned by Guinness Mahon in Dublin were effectively used by Cayman to hypothecate the same?

A. Yes, the money was quite simply taken from the loan account and put into the deposit account. The monies were not paid out of Dublin, they didn't even leave the bank.

Q. They never left the bank?

A. Yes.

Q. So the repayment of the loan was the same money that had been loaned, in effect?

A. Precisely.

Q. And that gave the appearance to the outside world at least, or anyone looking in, that the loan had in the first



instance been granted by Dublin; isn't that correct?

A. That's correct, yes.

Q. Or at least it enabled somebody to give an impression that a loan had been in fact

A. That facility was provided by Dublin to Northside Management.

Q. Yes. Now, if I could come to deal with another loan in this series of loans? I think a loan was also made by Guinness and Mahon of \$75,000 to a Mr. Jesus and Mrs. Maria Barrios; is that correct?

A. That's correct, yes.

Q. And I think we now know that they were associates of Mr. Pruna?

A. They were.

Q. Of one form or another?

A. Yes, yes.

Q. And the loan was secured over a property in the Dade County, Florida by a back-to-back deposit in the name of Guinness Mahon (Cayman Trust); is that correct?

A. Yes.

Q. And if we just look at the loan document? It is for \$75,000, the purpose and drawdown is for investment purposes. The term of the facility is the 20th of December, 1985, to the - yes, source of repayment not stated. Security mortgage over property as outlined in mortgage deed, dated 20th of 12th, 1984. Property in County of Dade, Florida. There was a promissory note,

dated 20th of the 12th, 1984, and the security was considered adequate; is that correct?

A. That's correct, yes.

Q. And I think the note on that is that the account - sorry, it then to the right of the security says: "If additional facility and security in order" - there is nothing dealt with there, is there, or is "no" crossed out?

A. "No" is crossed out.

Q. Yes. So "yes" seems to be

A. Yes, the security was in order.

Q. Yes. And then the notice: "The account has been introduced to us by GMCT. We have in the past opened similar type accounts for GMCT. We have received for GMCT the mortgage document signed by the applicants, together with the copy of the promissory note that was approved by the Credit Committee"; is that correct?

A. That's correct, in '81

Q. In April of?

A. '85, 1985.

Q. '85. Now, I think from what you now know from the Tribunal, Mr. Barrios was also named in the letters rogatory as a person indicted with the same charge as Mr. Pruna; isn't that correct?

A. Yes, he was.

Q. And from your examination does it appear that in common with the Pruna loans, it appears that this loan was also discharged by resort to the backing deposit?

A. Yes, it was by the backing deposit.

Q. Now, I think you have been able to inform the Tribunal, that apart from loans which was actually made by Guinness and Mahon, it appears Mr. John Furze may have purported to make further loans in the name of Guinness and Mahon to Maxxima Investments and to Mr. and Mrs. Andreas Pruna; is that correct?

A. That's correct, yes.

Q. And it is your belief that this could only have been done if Mr. Furze had, in his position Guinness and Mahon, stationery which he used for that purpose?

A. Correct, yes.

Q. And from the files there appear to be at least two instances of such non-facility made at the instance of Guinness Mahon (Cayman Trust)?

A. That's correct, not an extensive search but what have come to our attention.

Q. Yes. I think in the first instance it appears that in January 1985 Mr. Furze wrote to Guinness and Mahon enclosing three cheques totaling \$327,299.92 made payable to Guinness and Mahon and drawn by Maxxima Investment Corporation, Florida; is that correct?

A. That is correct, yes.

Q. And the proceeds of these cheques appear to have been lodged by Guinness and Mahon to Guinness Mahon (Cayman Trust) account with Guinness Mahon & Company in London; is that correct?

A. That's correct, yes.

Q. If we could first of all deal with the letter from Mr.

Furze. It is to Mr. O'Dwyer.

"Dear Pat, sometime ago we set up a loan from a Cayman entity which was to have followed the usual back-to-back procedure. Unfortunately the security documentation was never fully agreed upon by our client and as a result you were never advised. The loan has since been repaid.

Advances were made as follows:

6th of April, 1984 - \$140,000.

9th of April, 1984 - \$100,000.

3rd of May, 1984 - \$60,000.

The loans were at 14 percent per annum with a 2 percent differential being divided equally between us.

Cheques totaling \$327,299.92 are enclosed by way of repayment. I should be grateful if you would process these. Retain \$1,949.96 being your 1 percent differential and credit our US dollar seven day notice account with GM & Company, London, in the amount of \$325,349.96.

I shall be away from the office until next Tuesday, if you have any queries please telephone me upon my return next week."

And I think the three cheques then are cheques in the various amounts made payable to Guinness and Mahon

Limited. And they are from Maxxima Investments Corporation in Florida?

A. Yes.

Q. What's your understanding of this, Miss Kells?

A. It appears from the files, that Mr. Furze provided a facility to the client, without informing Dublin. The facility was provided on the basis of a back-to-back, i.e. the client had a cash deposit, and it was repaid before he had informed Dublin. But he had, as far as the clients were concerned the money was coming from Dublin, because the client actually makes his cheques payable to Guinness and Mahon Limited which is the Dublin entity. So as I have stated earlier, I mean, we understand that he, Mr. Furze was, used the letter head to provide facilities and this is an example of it, where the client as far as he was aware was dealing entirely, this facility was provided by Guinness and Mahon (Dublin), and he was making payments back to Guinness and Mahon (Dublin), even though he was making them through Mr. Furze in Cayman, he thought he was his contact. Quite obviously the loan was never on the books in Guinness Mahon, we have searched, the loan was never on the books in Dublin. He says, Mr. Furze says it in the first paragraph, "unfortunately security was never agreed. As a result you were never advised. The loan has since been paid!", (exclamation mark). Even he finds it, in his tone

Q. Yes.

A. So obviously the name has been used, Guinness and Mahon's name has been used for the purposes of providing facilities.

Q. And from Cayman itself?

A. From Cayman itself, yes.

Q. Why would the money, if the money is being repaid, if it is a repayment of a loan, you have seen no evidence of a loan?

A. No, we have seen no loan.

Q. And all that exists is this letter?

A. Yes, we have nothing, but obviously the client got the money, so the money had to come from Cayman.

Q. Well that - let's take that step-by-step, if we could, in the first instance. You don't know of any loan?

A. No.

Q. But existing on the files of Guinness and Mahon in Dublin was this letter?

A. Yes, with the attaching copy cheques.

Q. With the attaching copy cheques. Mr. O'Dwyer the Loan Officer, had no loan file, it is not even known who the

A. Loan was made.

Q. Who the loan was made payable to?

A. He has searched around Maxxima, Pruna, the clients that we believe it could be related to.

Q. Yes. And if it was Guinness Mahon in Dublin that was being used for that purpose, in Cayman, suggesting that loans were made payable, it was not one of the situations where there was any back-to-back facility put in place;

isn't that correct, this particular

A. No.

Q. transaction?

A. No, there is nothing. There is no credit limit, there is no loan file on the memorandum, nothing, there is no reference to security.

Q. And what Dublin receives is three dollars cheques amounting to \$327,000 or thereabouts?

A. Yes.

Q. Which it then sends to London; isn't that correct?

A. For the purpose of clearance.

Q. For the purpose of?

A. For the purpose of receiving the funds, and the instruments.

Q. Yes. London receives \$327,000?

A. Yes.

Q. Which it lodges to Cayman's account; is that correct, in London?

A. I believe so. Yes. Yes, they were lodged. We sent the money to London, to be collected and was lodged to Cayman's account in London. Because the money had to be got back to Cayman, because we had never actually lent it.

Q. Yes. Well, nobody knows if any money was lent, of course, isn't that right? Nobody knows if any money was lent?

A. No, we are just working off this letter from

Q. Yes, it could have been a loan or it could be this money going into Cayman by circuitous route; couldn't it?

A. Yes, except on the cheque itself it does state, I don't

know if you can read it?

Q. Yes?

A. "Capital 100,000" and then the interest 9 - it breaks down

the repayment between the initial capital figures which Mr.

Furze discloses in his letters.

Q. It does?

A. And interest attaching on the loans drawn.

Q. Yes.

A. The second cheque is the clearest principle, \$60,000, 14

percent interest, \$4,900.

Q. Well, it is one of two situations, it is perhaps a loan

which Mr. Furze had given?

A. To a client.

Q. To a client, and suggesting that the loan was made from

Dublin; isn't that correct?

A. Yes.

Q. Or if there was no loan, it was just money finding its way

into Cayman in a circuitous route, it is one of those two

situations?

A. Yes.

Q. How was the \$1,949.96 dealt with in Dublin, being Dublin's

1 percent of the total transaction, do you know?

A. I can only assume, I haven't specifically traced it down to

that fine a detail.

Q. Yes.

A. But I can only assume the instructions to - the



instructions to process the repayment would have also included instruction to pay the total sum minus the \$1,900, œ325,000 to - yes, you can actually see it on Mr. Furze's letter, "I should be grateful to retain the 1900 and credit us with \$325".

Q. I understand the mechanics here.

A. Yes.

Q. Just short of \$2,000 was retained in Dublin?

A. Yes, we would have had a dollar account with London, so presumably our dollar account with London was credited with \$2,000 and the 325 was credited to the Cayman account.

Q. I see. But how would it appear, how would that be accounted for in Dublin, it is not referable to any loan made in Dublin?

A. I presume it was just posted to the profit and loss account, and just was not a material enough figure to draw specific attention to it.

Q. Um hum. Now, I think - now, I think there was another matter in August of 1985, Guinness and Mahon according to correspondence appears to have offered to make available to Mr. and Mrs. Andreas Pruna a loan in the sum of \$70,000 to be secured over a property in Florida; is that correct?

A. That's correct, yes.

Q. The title to the property was transferred into the name of Mars Nominees Limited, the nominee holding company of Guinness and Mahon; is that correct?

A. That's correct.

Q. Guinness and Mahon checked the Credit Committee Book for 1985, and the Executive Directors' Minute Book for 1985 and cannot find any reference to any loan in that amount to the Prunas; is that correct?

A. That's correct, yes.

Q. Furthermore, Guinness and Mahon cannot locate any statement of account for such loan, and despite the correspondence it seems no such loan was ever made?

A. From our records we can identify

Q. And - perhaps if we just deal with the correspondence. I think there is a letter from Mr. Andreas Pruna; is that correct, Document No. 20 - 29th of November, 1985?

A. Yes.

Q. And it is to Guinness and Mahon in College Green.

"Gentlemen, I appreciate your patience, and I fully understand your anxiousness at not having received any kind of payment or word from me. It has been over a month since the first interest payment to your loan became due.

Unfortunately after much deliberation on my part, and after trying desperately to make ends meet, I'm afraid that due to some unforeseen financial difficulties I will not be able to make the now overdue first interest payment.

In addition, I have serious doubts that I can make the principal payments when they are due.

Faced with a situation in which I will be unable to meet my

obligations with you and in gratefulness of the trust that you have bestowed on me I am willing as a possible solution to transfer by deed the property located at 2085 North Hibiscus Drive, North Miami, Florida 33181, USA, to your bank in lieu of foreclosure.

For credit and other personal reasons I believe this would be a preferable solution. I have discussed all of this by phone with Mr. David A Sostchin, and he recommended I write you immediately.

I hope that you accept my offer, as perhaps the most expeditious solution to an otherwise embarrassing solution. Yours sincerely Andreas Pruna."

Now, in fact, when that letter was written, as far as your search of the records has been able to establish, there was no loan and no monies outstanding; is that correct?

A. Yes, not from Dublin's perspective.

Q. Now, there then is a letter dated the 3rd of December of 1985, Guinness Mahon Limited at College Green; isn't that correct?

A. That's correct, yes.

Q. And it is from Guinness and Mahon to Mr. and Mrs. Andreas Pruna at North Hibiscus Drive, North Miami, Florida.

"Dear Mr. and Mrs. Pruna, I acknowledge receipt of your letter of 29th November, the content of which we subsequently discussed by telephone.

In view of what you say, I confirm that in lieu of foreclosure proceedings we will take in our name or in that of our nominee company, title to the property in question. We will furthermore look to your wife and/or yourself jointly and severally under the personal guarantee to make good any losses which may be incurred by us in holding the said property, as well as reimbursement of any outgoings e.g. Real estate taxes, etc, which may be occurred.

We have today provided instructions to our attorneys to immediately intend to the legal documentation giving effect to the above. Yours sincerely for Guinness and Mahon Limited."

And there is some type of signature or

A. It is Mr. Furze's signature.

Q. That's Mr. Furze's signature?

A. Yes.

Q. Now, it is on Dublin note paper; isn't it?

A. Yes, but it is signed

Q. Signed "Guinness and Mahon", and there is reference to attorneys?

A. Yes.

Q. And foreclosure proceedings?

A. Yes.

Q. I don't suppose you have any expertise in the area of law, but are you familiar with those as being American terms?

A. Certainly "attorney", yes.

Q. "Real estate taxes" and words like that, they are not in the normal banking world here. Where you would see such documentation you don't see words like that, do you?

A. No, no.

Q. Now, there is then a letter to, again on Dublin note paper, and again it seems to be signed by Mr. Furze, dated the 3rd of December of 1985, addressed to Mr. David Sostchin, that's the correct pronunciation:

"As you will be aware, we issued a commitment to finance Mr. and Mrs. Andreas Pruna in connection with remodeling and renovations to their property located at 2085 North Hibiscus Drive, North Miami, Florida.

It appears from discussions and correspondence with Mr. Pruna, that he will be unable to satisfy the repayments required on our mortgage, and indeed he is presently in default to the extent of interest due and payable to us.

Copies of our recent letters to him on the 26th of November and 3rd December are enclosed.

We should be grateful if you would immediately arrange for title to the property to be registered in the name of Mars Nominees Limited of 17 College Green, Dublin 2, Ireland.

This company being a wholly-owned subsidiary of Guinness and Mahon Limited. Please advise us once title has been so registered.

We will be unable to dispose of the property in its present unfinished state. We have no option therefore but to continue the remodeling to the extent to which the property can be sold. We should be grateful, therefore, if you can advise the extent of work remaining to be undertaken and the approximate cost thereof.

We would also like you, if you were able to continue to oversee the alterations, and upon completion, to have an appraisal conducted in accordance with the terms of our original commitment.

Subsequently we will wish to discuss with you the marketing of the property for sale.

We should appreciate hearing from you in connection with the above in due course. Yours faithfully, for Guinness and Mahon Limited", signed by Mr. Furze; isn't that correct?

A. Yes. Yes.

Q. Now, there is an American legal document, I think, which is putting it in the name of "Mars Nominees"; isn't that correct?

A. Yes.

Q. A quit claim deed, dated 18th of December, 1985. And it is between Mr. and Mrs. Pruna and "Grantors, Mars Nominees, an Ireland Corporation, registered to do business in Florida"; is that correct?

A. Yes.

Q. And the property then is described. Now, these particular documents, were they on the files of Guinness and Mahon in Dublin?

A. Yes.

Q. No loan was made in respect of

A. Not to my

Q. In respect of any of them, and was Mr. Furze authorised or entitled to sign documents on behalf of Guinness and Mahon?

A. In Dublin, no.

Q. In Dublin, no?

A. No.

Q. Now, I think you informed the Tribunal that it appears therefore, that apart altogether from the back-to-back loans which were actually made to Mr. Pruna and his associates, there were at least two instances of fictitious or nominal loans being made to the Prunas by or on behalf of Guinness and Mahon?

A. Yes.

Q. And in fact, the last matter we looked at doesn't even appear to relate to a fictitious loan, it seems to be to move property away from Mr. Pruna into the nominee company of Guinness and Mahon; isn't that correct?

A. That's correct, yes.

Q. Yes, now just to be clear about this; these documents relating to the Prunas and their associates

A. Yes.

Q. are all dated at least, as being at a time when Guinness

Mahon (Cayman Trust) was not a wholly owned subsidiary of Dublin; is that correct?

A. Yes, they were post '84.

Q. They were post '84?

A. Yes.

Q. So in respect of the documentation, that is the letter heads which purport to come from Dublin and are signed by Mr. Furze, and documents finding their way back into the files of Guinness and Mahon, such as the transfer of the property into Mars Nominees, that somebody in Dublin must have received this documentation for the purpose of filing; isn't that correct?

A. Yes, yes. Presumably he had to inform Dublin once the property was in Mars' name.

Q. Yes.

A. And he couldn't independently control documentation, because at this stage documentation would have been coming to Mars Nominees, 17 College Green.

Q. But the document from Mr. Andreas Pruna informing Dublin that he couldn't meet his interest repayments or capital repayment, that had to be sent to Dublin?

A. That's right.

Q. It was on the files in Dublin, somebody in Dublin had to see it?

A. Yes.

Q. And whoever saw it in Dublin would have had to know that there was no loan?



A. Exactly.

Q. And from your examination of the records was there any, does this appear to be any sign of any query being raised in respect of this?

A. No.

Q. Now, I think if I could go back then to your memorandum, I am moving away from the supplement to that memorandum to page 10, if I may?

A. Sure. Yes.

Q. Now, I think you have informed the Tribunal that on the 9th of September of 1988 a firm of lawyers, Wallace, Engels Pertnoy, Martin and Solowsky based Miami, Florida, wrote to Cayman. "They informed Cayman that a Grand Jury had been.... Mars Nominees Limited"; is that correct?

A. That's correct, yes.

Q. The Assistant US District Attorney overseeing the investigation stated that he was interested in obtaining documents from the three companies, and that he might issue additional subpoenas to the companies themselves for the production of the documents; is that correct?

A. That's correct, yes.

Q. The Assistant US Attorney had apparently received information that Mars Nominees Limited was a subsidiary of Cayman, and that had held property in Dade, County Florida; is that correct?

A. Yes, that is correct, the property we are talking about.

Q. That's the property we are talking about. I think Mr.

Wallace of the firm of lawyers was the registered agent for Cayman and Dublin, and therefore the service of the subpoenas on him was valid as against Cayman and Dublin; is that correct?

A. That's right, yes.

Q. Can I take it that this was a firm of lawyers that was used by Dublin?

A. I am not aware if they were used by

Q. I see. Now, I think the subpoenas which the US attorney wished to serve sought "all documents and records pertaining to loans made by Fernando Pruna, Andreas Pruna and their wives and other family members, including all correspondence relating to the loans"; is that correct?

A. Yes, yes.

Q. "All documents and records pertaining to loans made to any corporation, other business entities to which Fernando Pruna or Andreas Pruna was an officer, director or major shareholder"?

A. Yes.

Q. "All documents, correspondence and other records pertaining to any transfer of property, either real or personal, between Fernando Pruna or Andreas Pruna and either Guinness Mahon (Cayman Trust Limited) Dublin or Mars Nominees Limited"?

A. Yes.

Q. "All documents, correspondence, and records pertaining to Mars Nominees Limited"; is that correct?

A. Yes.

Q. And "All records pertaining to any account in the name or names of Fernando Pruna". How do you pronounce that?

A. Julia Pruna.

Q. "Julia Pruna, Maria Isobella Nee Moore Barrios, for any of those named persons, including without limitation account statements, certificates of deposit and deposit box records"?

A. Yes.

Q. And "All financial statements prepared by or on behalf of Fernando Pruna, Andreas Pruna or any corporation or business entity in which Fernando Pruna or Andreas Pruna is an officer, director or major shareholder"; is that correct?

A. Yes, yes.

Q. Yes. I think the period covered by the subpoena was the 1st of January, 1981, to the 1st of September of 1988; is that correct?

A. That's correct, yes.

Q. And I think the subpoenas were to be complied with by the 23rd of September of 1988?

A. That's right, yes.

Q. Now, I think on the 20th of September of 1988 Mr. Wallace, the American lawyer, wrote to the Assistant US State Attorney raising issues as to jurisdiction and whether or not the subpoenas were binding on Cayman, Dublin or Mars Nominees Limited?

A. Yes.

Q. And I think on the 22nd of September, 1988, Cayman changed its name from Guinness Mahon (Cayman Trust Limited) to Ansbacher Limited and wrote to the late Desmond Traynor?

A. That's right, yes.

Q. I think Mr. Furze was the author of the letter, and stated that the Pruna brothers had been clients for a number of years; is that correct?

A. That's correct yes.

Q. Although mentioned in the correspondence, Cayman was fairly certain that the subject of the Grand Jury investigation was narcotics, because the subpoenas were served by a US Federal Customs Agent as well as local police information that the Prunas were involved with illegal substances?

A. Yes.

Q. Now, if I just deal with the letter from Ansbacher for Mr. Furze, dated the 22nd of September of 1988 to Mr. Traynor at 19 Lower Pembroke Street, Dublin 2. I think that was the Head Office of Cement Roadstone at the time?

A. Yes.

Q. "Dear Des, the enclosed copy correspondence and subpoenas are self-explanatory. The Pruna brothers, Andreas and Fernando, have been clients for a number of years, and although not mentioned in the correspondence we are fairly certain the subject matter of the Grand Jury investigation is narcotics, since the subpoenas were served by a US Federal Customs Agent as well as local police information

confirming their involvement with illegal substances.

Although our attorney and registered agent in Florida is contesting the grounds upon which the subpoenas have been issued, we would naturally wish to assist in this investigation if at all possible. We are therefore suggesting to the US attorney that he seeks the required information under the narcotics agreement and would also be approaching our own Attorney General for assistance in this connection.

I will advise you of the outcome of these suggestions in due course.

Guinness and Mahon (Dublin) are involved, since at one time we maintained a back-to-back situation with Fernando Pruna and his wife, which has since upon the sale of the property in Miami, been cleared.

Mars Nominees Limited are involved by virtue of the fact that Andreas Pruna unbeknownst to us registered a Florida property in that name. Although Mars Nominees executed a transfer over the property a year ago, apparently the document was never registered. The property has been listed for sale but obviously in view of these recent events this matter is now in limbo.

Our understanding is that Andreas Pruna is in custody in a federal penitentiary, and that the US are pursuing

extradition proceedings against Fernando Pruna who is in Argentina.

I am copying this letter to Pdraig to put him on notice, and I will keep both you and he apprased of events as they happen. Yours sincerely John A Furze", and it is copied CC, DPC. The reference at the bottom is "JAF/AJW".

What do you understand the reference JAF to be?

A. There is Furze.

Q. And AJW?

A. Ms. Williams' reference.

Q. Now, just to be clear about all of this now; Mr. Traynor was in 19 Lower Pembroke Street; isn't that correct?

A. That's correct.

Q. To the best of your knowledge where was Ms. Williams at that time?

A. Also with Mr. Traynor, Pembroke Street.

Q. She was his secretary?

A. Yes, sorry. Yes.

Q. In Pembroke Street. Pdraig

A. Was based with Guinness and Mahon in College Green.

Q. And Mr. Furze was in Cayman?

A. Was in Cayman.

Q. Supposed to be?

A. Supposed to be.

Q. The date of the letter is the 22nd of September of 1988?

A. Yes.

Q. Now, there is an interesting - the final paragraph on the first page, I think states that "Mars Nominees Limited are involved by virtue of the fact that Andreas Pruna unbeknown to us registered a Florida property in that name", that's the property in Hibiscus Drive North; isn't that?

A. 2085, correct.

Q. Which we have just seen correspondence signed by Mr. Furze?

A. To Andreas Pruna agreeing the transfer of the property to Mars.

Q. Now, and that had happened, from the documents we have just opened, perhaps a year prior to this particular letter in 1988; isn't that correct?

A. Yes.

Q. Now, I think on the 22nd of September of 1988 Cayman wrote to Padraig Collery enclosing a copy of the letter to Desmond Traynor. Well, when I use the term "Cayman", I will say Mr. Furze on Ansbacher note paper, using the reference JAF/AJW, wrote to Padraig Collery and copied it to Mr. Traynor; isn't that correct?

A. That's right.

Q. Yes. It reads:

"Dear Padraig, the enclosed is self-explanatory.

I have discussed the situation with Des, as a result of which if approached by any person or entity in relation to the ownership of the property by Mars Nominees and intended sale of same, we feel you should merely indicate that you

have received no instructions from your client and are therefore unable to be of assistance.

As matters develop I will keep you advised. Yours sincerely John A Furze."

A. Yes.

Q. Now, at the time this particular letter was written, Mr. Collery was an employee, on the 22nd of September of 1988, Mr. Collery was an employee of Guinness and Mahon; isn't that correct?

A. He was, yes.

Q. And Mars Nominees was the nominee company of Guinness and Mahon?

A. Wholly owned subsidiary.

Q. Wholly owned subsidiary?

A. Nominee company.

Q. Nominee company?

A. Yes.

Q. Mr. Furze had no role to play in the business of Guinness and Mahon; isn't that correct? Mr. Traynor had no role to play in the business of Guinness and Mahon?

A. Not since May 1986, no.

Q. Neither Mr. Furze nor Mr. Traynor had any role to play in the business of Mars Nominees Limited?

A. Absolutely not, no.

Q. Mr. Collery was an employee of Guinness and Mahon?

A. Yes, he was.

Q. And any client of Mr. Collery's was a client, the only



clients of Mr. Collery were Guinness and Mahon clients?

A. Yes, yes. Strictly, yes.

Q. And Mars Nominees certainly, nobody - even taking away the practical from the legal position of the bureau system,

Mars Nominees was a wholly-owned subsidiary and the nominee company of Guinness and Mahon?

A. Absolutely, yes.

Q. And the only ones who could give instructions

A. Were Guinness and Mahon.

Q. In respect of Mars Nominees?

A. Yes.

Q. But of course neither Mr. Furze nor Mr. Traynor could respond to any queries or requests for information from,

about Mars Nominees?

A. No, because Mars Nominees would be received by the bank Guinness and Mahon, and they would have no right to that correspondence.

Q. And if a query was addressed, relating to Mars Nominees, in normal circumstances, how would that query arrive? Would it arrive for Guinness and Mahon?

A. Oh, yes, the registered office at that point in time was 17 College Green, so any correspondence for Mars Nominees was a holding company for securities and

Q. Yes.

A. property, etc..

Q. What file, do you know, did this go on in Guinness and Mahon?

A. That letter was on our Ansbacher correspondence files, correspondence files.

Q. Now, I think on the 27th of September, 1988, Cayman wrote again to Padraig Collery and referred to a telephone conversation between Mr. Collery and Mr. Martin Lannigan O'Keefe and Mr. Furze; is that correct?

A. That's correct.

CHAIRMAN: I think it might just confuse the transcript a little bit, I think you have dealt with that letter a little while ago, but actually gave the 22nd of September. Perhaps we might just clarify one letter the Cayman wrote to Mr. Collery on the 27th and 22nd.

Q. MR. COUGHLAN: Sorry. 27th. Now, I think it says: "Dear Padraig, further to the discussions" - I can't make it out - can you make that out?

A. I can't.

Q. "Last week and with Martin and yourself over the telephone this morning, there follows a copy of a letter dated the 19th of September, written by John Collins to Milton Wallace, and a copy of his letter of the following days sent to the Assistant US Attorney.

As developments proceed I will let you know further", or words to that effect I think; is that right?

Now, I think on the 18th of October of 1988 Mr. Wallace of Wallace Engels wrote to Padraig Collery regarding the

subpoena. He stated, unless there were special circumstances his suggestion was that Dublin expeditiously furnish the records which had been subpoenaed; is that correct?

A. That's correct, yes.

Q. I think that's the letter to

A. From the solicitors, yes.

Q. From the attorneys?

A. Sorry.

Q. And it is addressed to Mr. Collery at College Green.

"Dear Mr. Collery, Mr. John A Furze", I can't make the whole thing out, "has been in contact with him directly concerning subpoenas. And deals with matters of bank secrecy, etc.

CHAIRMAN: I suggest, Mr. Coughlan, in view of the poor quality of some of these letters, that we may perhaps act on foot of the summaries in the first instance in the memorandum, and if it does become necessary we track back, well and good.

Q. MR. COUGHLAN: Indeed. Indeed. I think on the 23rd of March of 1989 Dublin signed a quit claim deed on the property in Atlanta, where in a loan had been paid by Dublin to Northside Management and Development Company; is that correct?

A. Paid to Dublin by Northside Management, yes.

Q. Yes.

A. Yes.

Q. I think on the 18th of July, 1989, Cayman wrote to Dublin stating that: "The US Government had filed an arrest warrant against the property in Atlanta, Northgate Investments Company", a Cayman company managed by Cayman, "being the ultimate beneficial owner of the company, has relinquished any claim which it might have to the property and does not intend to contest the forfeiture action". Is that correct?

A. Yes, yes.

Q. I think on the 21st of July, 1989, Dublin wrote to the attorneys acting in Atlanta informing the firm that Dublin did not intend to contest the forfeiture, and accordingly would be grateful if the firm of attorneys would take no action to contest the same; is that correct?

A. Yes, yes.

Q. Any claim which Dublin may have had in the property was thereby relinquished, and they would be grateful in the attorneys would forward the appropriate quit claim deed for execution?

A. Yes.

Q. Now, I think on the 20th of November of 1989, attorneys in Atlanta received a quit claim deed for submission to Dublin, and on the 22nd of November of 1989 Cayman wrote to Dublin enclosing a copy of the letter from the attorneys in Atlanta. They stated that Mr. Collery would know the back-to-back loan was discharged from the deposit proceeds

some time ago, therefore the execution of the deed would not now involve Dublin in any further participation with the particular real estate development; is that correct?

A. That is correct, yes.

Q. On the 30th of November of 1989, the US State Attorney for the Southern District of Florida served a complaint on Dublin's Secretary; is that correct?

A. That's correct.

Q. The complaint was for the forfeiture of the property previously owned by Mr. and Mrs. Andreas Pruna in Miami, Florida, that's the property in Hibiscus Drive?

A. That's right, yes.

Q. We show the type of document which was served on the Secretary of Guinness and Mahon. I don't intend to read the whole of this document at this stage, Sir, but it relates to an arrest in rem of the property at Hibiscus Drive; isn't that correct?

A. Yes, that is correct.

Q. I think on the 8th of December of 1989 Cayman wrote to Mr. Wallace, the attorney in Florida. They stated that they were aware of the property forfeiture notice, but since the client was in jail, and that all Cayman's other records had been surrendered to the US authorities under the narcotics agreement of 1984, amended, Cayman suggested that no action be taken; is that correct?

A. That's correct, yes.

Q. On the 12th of December of 1989 Cayman wrote again to Mr.

Wallace. They said that in or around 1984 that they had been associated with Andreas Pruna and had various business dealings with a Cayman company known as Phantom Five Films Limited. At the time of their association Mr. Pruna owned the property in Miami.

In 1985, unknown to Cayman, Mr. and Mrs. Pruna transferred the property to Mars Nominees Limited, a wholly-owned, a company wholly-owned by Dublin.

Cayman was advised after the fact, and in September of 1986 on instructions from Cayman, Mars Nominees Limited transferred title to the property by executing under seal, a quit claim deed which was delivered by John Furze, to Andreas Pruna, with instructions for the transfer to be registered.

Such registration, however, did not happen, hence the reference to Mars in the arrest warrant. Cayman said that Dublin was concerned at the allegation that Mars was owned by Pruna. Their concern was that by mention being made in the complaint the name had become tainted in association with Pruna, aside from the statement that the company was owned or controlled by Pruna. Cayman was seeking advice on three issues:

What action, if any, did Mr. Wallace recommend to be taken to correct the error in the complaint relative to Mars Nominees Limited?

To what extent might Mars Nominees Limited be adversely

affected in any future transaction in the US, by virtue of having been named in the complaint?

And (3) Dublin had been served with the arrest warrant and complaint, as naturally had Mars Nominees Limited, to what extent should they acknowledge services of the process?

Now, I think in January of 1990, a partner from Wallace, Mr. Wallace J Solowsky wrote to Cayman and copied the letter to Dublin.

"Mars Nominees have been listed on the Drug Enforcement Administration NADES Computer". He advised that if Mars Nominees Limited had further transactions in the US it was possible that the transactions would be considered suspect.

On the 2nd of March of 1990, Mr. Solowsky wrote to Cayman saying that he had spoken with the Assistant US Attorney. She had requested that the attorney prepare the affidavit disclaiming any interest in the property. Mr. Solowsky would send the affidavit to Cayman shortly. Subsequently Dublin returned to Mr. Solowsky the affidavit and waivers of claim.

Now, the information being furnished by Cayman to the lawyers in Miami, who were dealing with the US attorneys, was obviously erroneous; isn't that correct?

A. Yes, it appears on the files.

Q. It appears on the file in Dublin to have been erroneous at

least?

A. Yes, yes.

Q. And the lawyers in Miami were dealing in good faith on the information they were receiving from Cayman?

A. Precisely.

Q. And what was erroneous in the information which was being furnished to the lawyers in Miami was the fact that the property had been transferred unbeknownst to anybody by Mr. Andreas Pruna into Mars Nominees?

A. Yes.

Q. And on the information which was furnished to the lawyer in Miami to deal with the US attorney, and by Dublin disclaiming any interest in the property, do you know whether the documents which we have just opened here were ever furnished either to the lawyer in Miami or to the US attorney, to the best of your knowledge?

A. I don't think they were.

Q. Now, I think on the 23rd of March of 1990 the US District Judge for the Southern District of Florida made an order that letters rogatory be entered into, and that the same be delivered to the Assistant US Attorney for transmission to suitable channels of the appropriate judicial authorities in the Republic of Ireland; isn't that correct?

A. Yes, that's correct.

Q. The letters rogatory stated that the US attorney was conducting an investigation of an alleged organised crime, drugs smuggling operation headed by Fernando Pruna; isn't



that correct?

A. That's correct, yes.

Q. An indictment had been handed down and had charged Pruna and the members of his organisation with crimes, including operating and conspiring to operate a continual criminal enterprise dedicated to the importation of cocaine and marijuana into the US from 1981 to 1988; is that correct?

A. Yes.

Q. I think you have informed the Tribunal that the US attorney was informed that evidence relevant to the below might be located at a bank in Dublin, Guinness and Mahon Limited, 17 College Green, Dublin 2; is that correct?

A. Yes.

Q. Evidence that had developed so far showed that the alleged organisation utilised several bank accounts located at Guinness and Mahon and Cayman Trust Limited in the Cayman Islands to deposit the profits from alleged drug smuggling operations and to facilitate the movements of the profit from drug smuggling, other bank accounts located in countries throughout the world?

A. Yes.

Q. This Cayman Trust was a subsidiary of Guinness Mahon Limited, a Dublin bank at 17 College Green. That was the understanding at that stage?

A. Yes.

Q. "The Dublin bank had now sold the Cayman Trust to Ansbacher Limited. The Dublin headquarters of Guinness and Mahon

Limited held certain mortgages for the Prunas and their associates, and made loans and had hypothecated deposits made by the Prunas"?

A. Yes.

Q. "Correspondence concerning these matters passed between the trust in Grand Cayman and the offices of Pat O'Dwyer, JD Traynor and Padraig Collery and others in the Dublin bank. These deposits and transactions were not only in the Prunas' names and their associates' names, but also in the names of their nominee operations. For example, records show that Guinness and Mahon Limited held mortgages or interests in Pruna property", and then it sets out: "The entries and persons that were the subject of the request were as follows:", and included are the Prunas, Mars Nominees and the Barrios'; isn't that correct?

A. Maxxima.

Q. And then Westfair Investments, Maxxima, Northside Management and Development, Northgate, Texas ATM, Barrow Holdings Limited, Westfair Condominium Project, Zoran Mortgage?

A. Yes.

Q. And I think you have informed the Tribunal that on the 5th of November of 1990 Mr. Justice Lavin in the High Court in Dublin, made an order that Martin Lanigan O'Keeffe or another official of Dublin, nominated by Mr. O'Keeffe attend before the President of the District Court on the 23rd of November, 1990, to be examined under oath, touching

upon the testimony in the letters rogatory, and that the bank is not aware of the outcome of the hearing in the District Court. I think you dealt with some matters in the supplemental?

A. Yes.

Q. Thanks.

MR. CONNOLLY: No questions, Sir.

CHAIRMAN: Mr. Seligman?

THE WITNESS WAS THEN EXAMINED BY MR. SELIGMAN AS FOLLOWS:

Q. MR. SELIGMAN: Mr. Chairman, Ms. Kells, I think when you were discussing the affairs of College Trustees you mentioned the day-to-day running of that company was carried out by Sovereign Trustees Limited?

A. Yes.

Q. I am told, Ms. Kells, that in fact the name of the company carried out management services was Sovereign Management Limited?

A. Okay.

Q. Could that be correct?

A. Okay, it is a slip-up.

Q. Thank you.

CHAIRPERSON: Thank you Ms. Kells.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Healy is going to take the next witness. I think he is just discussing the matter with the solicitor first.

CHAIRPERSON: Yes.

MR. HEALY: Mr. Martin Keane.

MARTINE KEANE, HAVING BEEN PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Thank you, Mr. Keane. You are already sworn from the recent hearing.

A. Thank you.

Q. MR. HEALY: Thank you, Mr. Keane. The last time that you gave evidence to the Tribunal it was in connection with a specific transaction or specific dealings you had or knowledge you had concerning a relationship between the late Mr. Des Traynor and Mr. Denis Foley TD; isn't that right?

A. That's correct.

Q. And at that time it was indicated that you would be providing the Tribunal with further assistance in connection with more general matters involving your role as an official or as an executive of the bank?

A. That's correct.

Q. And you have provided the Tribunal with another Memorandum of Evidence concerning your more general dealings with the bank in the period from when you joined the bank in July of

1972 until July of 1988; is that right?

A. That's correct.

Q. Because this covers such a long span of time I don't intend to read through your entire memorandum in the first instance and then to come back to it. I am going to deal with individual parts of it as we go along.

A. Fine.

Q. You start off by saying: "I joined Guinness and Mahon in July of 1972 approximately, as a junior executive in the Corporate Financial Department of the bank". You say that you remained in Guinness and Mahon until July of 1988?

A. Correct.

Q. Now, when you joined did you come in from school or from

A. No, I came in from an accounting firm.

Q. Were you training as or a trained

A. I had recently qualified.

Q. I see. And when you say that you came to work in the "Corporate Finance Department of the bank", perhaps you would just enlarge a little on what you mean by "Corporate Finance", and how the bank was divided between Corporate Finance and any other department?

A. Guinness and Mahon was a merchant bank. One of the main activities of any merchant bank would be corporate finance, which would mainly be advisory in connection with mergers and acquisitions flotations, raising of capital, that kind of business. That would be a standard main activity for any merchant bank.

Q. It would have been on a fairly small scale, I suggest, in 1972, there weren't that many flotations in Ireland?

A. There was very few merchant banks, it was a very small department, only three or four people.

Q. Yes. How would you describe the other departments of the bank as distinct from the Corporate Finance Department?

A. From memory, there would be the main Banking Department which dealt with the advancing of loans and also the limited retail banking that Guinness and Mahon carried out. There was an Executive and Trustee Department, which dealt with what we normally expect them to deal with.

There was an Investment Department which managed portfolios for people and made investments dealing with quoted securities, I think they were the, obviously then the ancillary back-up departments, Financial Control, Foreign Exchange, money desk, all the normal things on a small scale.

Q. That you would have even on, in a big bank on a smaller scale?

A. Much smaller scale.

Q. Were the main activities of the bank in corporate finance and lending, would they be the two main?

A. They were two of the main, I think the investment side would be quite important as well.

Q. I see. And when you joined the bank in 1972 who were the main executives to whom you reported at that time?

A. At that time Guinness and Mahon had a slightly unusual

management structure, in that there were four joint

Managing Directors. The late Mr. John Guinness, the late Mr. Traynor, Mr. Maurice O'Kelly and Mr. William Forwood. Mr. John Guinness was also a Chairman.

Q. Of the bank?

A. Of the Board of Directors. Of the Board. It was a wholly-owned subsidiary of Guinness Mahon & Company in London, which was a listed company I believe on the London Stock Exchange.

Q. You go on to say, repeating what you have just told the Tribunal. "When I joined Guinness Mahon the late John Guinness was Chairman and he, the Late Desmond Traynor, Maurice O'Kelly and William Forwood were joint Managing Directors. While I was not at that time involved in the operations of any of the bank's offshore subsidiaries, I was aware that Guinness Mahon (Cayman Trust) was in existence. I understood that Cayman carried out an offshore trust operation".

Just dealing with the Dublin operation for a moment, from the time that you joined the bank in 1972 up until the time you left in 1988 Mr. Traynor, the late Mr. Traynor was an executive of the bank at all times until around 1986; isn't that right?

A. That's correct. In fact he, the role would have changed, I think, in around 1977 I think. Mr. Guinness ceased to be a Managing Director, became Non-Executive Chairman. Mr. Forwood left the bank, Mr. Traynor became, I think, the

Executive Deputy Chairman, and Mr. Traynor, Mr. O'Kelly was Managing Director, about 1977.

Q. So did Mr. Traynor from that time become effectively, the Chief Executive Officer of the bank under whom there were a number of other executives, although at least one of them, Mr. O'Kelly, may have shared the same nominal status as Mr. Traynor?

A. Correct.

Q. But in day-to-day practical terms Mr. Traynor was the boss, if you like; would that be right?

A. I think between himself and Mr. O'Kelly, Mr. O'Kelly dealt with an awful lot of the day-to-day operations of the bank. It was more, from the people working, the point of view of people working in the bank we would have recorded them as joint.

Q. I see. And was that a relationship between the bank staff and the executives that was evolving around the time you joined the bank in 1972?

A. Evolving.

Q. To the extent power was beginning to be concentrated in Mr. Traynor's hand or in Mr. Traynor's and Mr. O'Kelly's hands?

A. I wouldn't have thought so, not in '72. I think it was precipitated by some, some problem in the later 70s over loans in London, he intervened and wanted the structure cleared up, and I think Mr. Traynor and Mr. Kelly came out top on that, I think it was more related to particular circumstances in the middle to late 70s.



Q. I see. You say that you were aware of Guinness Mahon Cayman Trusts existence, and that you understood it carried on an offshore operation. You obviously now know, presumably from things you have learned perhaps in the course of your work, also from the things you have learned from reading in the newspapers about the proceedings of the Tribunals, I suppose, you now know presumably that Mr. Traynor, was one of the people in effective control and ownership of Guinness Mahon Cayman Trust along with Mr. Furze and Mr. Collins?

A. Yes, I know that now.

Q. At the time you joined the bank or we'll say within a few years after joining the bank, what understanding did you have of Mr. Traynor's role in Cayman?

A. Yes. My understanding was that Cayman was very much Mr. Traynor's baby.

Q. Yes.

A. And really nobody else had any really serious involvement in it. Everything to do with Cayman went to him.

Q. Did you understand that at that time, in 1972 and for some years afterwards, Cayman was actually a wholly-owned subsidiary of Dublin?

A. I would, I am not sure when I became aware of - I could have become aware in a very general way early on of the existence, and I would say it is probably in the middle 70s I would probably have become more aware of Cayman and the fact that it was Mr. Traynor's - I was a very junior

executive at the time.

Q. I understand.

A. As I proceeded up the bank a little bit I think I would have developed a greater awareness.

Q. As you put it, you became aware that it was Mr. Traynor's baby, even though as you may have subsequently learned or certainly may now know, he didn't actually own the bank at that stage and didn't acquire ownership of it until a later stage; isn't that correct?

A. Correct.

Q. Nevertheless, am I right in thinking that your impression is that it was his baby, if not his bank even at that stage?

A. His baby.

Q. Yes. Did you have much by way of dealings with Guinness Mahon Cayman Trust in your early days or any time during the course of your career?

A. Very little, hardly nothing at all in my early days and hardly nothing later on.

Q. You say you were aware that the bank had established a similar small operation in Jersey by the name of Guinness Mahon (Jersey Trust). It was your understanding that Guinness Mahon (Jersey Trust) was established to act as Trustee and Manager.

You say: "That as Cayman was no longer within the scheduled territories from 1972, funds could not be

transferred and companies and/or trusts could not be set up there without Exchange Control approval, but no such obstacle existed in the case of the Channel Islands.

There were also at that time in Guinness and Mahon a number of old UK trusts which moved to Ireland in the 1960s due to the imposition of capital taxes, and it was believed, and as it was believed that similar taxes would be introduced in Ireland, an offshore location for these trusts was required as well as for some Irish trusts of which Dublin was a trustee".

A. Correct.

Q. Now, you say "That as Cayman was no longer within the scheduled territories", by way which I take it you mean within the Sterling area effectively?

A. Correct.

Q. "From 1972 funds could not be transferred or companies or trusts could not be set up there without Exchange Control."

I take it again what you mean is they couldn't be set up there for the benefit of Irish residents without Exchange Control or funds transferred without Exchange Control?

A. Correct.

Q. And your understanding is that that is the reason why the focus of some of the offshore activities of the Dublin bank switched to the Channel Islands?

A. Correct.

Q. Now, has it ever occurred to you that it might have been possible to continue to deal with the Cayman offshore

location, provided Exchange Control was obtained or applied for, whatever it would have been granted or not I am somewhat doubtful, but

A. I never speculated on that.

Q. I see. But from what did you form the impression that Exchange Control was the obstacle to dealing with Cayman?

A. I don't know exactly how I formed that impression, but it coincided in time with the change.

Q. You go on to say that you subsequently learned that a series of trusts were set up in Jersey of which Guinness Mahon Jersey was trustee. Limited companies were in turn established by the trustees of the trusts, and it was these companies which held the funds placed with the trust. The company vehicle was used to facilitate the holding of bank accounts and the operation of the trust funds.

Now, you talk about the holding of bank accounts, do I take it that you mean the holding of bank accounts in this jurisdiction by companies formed by the trusts in the offshore jurisdiction?

A. Correct.

Q. So therefore when you talk about business in this country being refocused on the Channel Islands, it was for the purposes of setting up trusts which would own companies or own the shares in companies which would open deposits in Dublin; is that right?

A. No, I don't think so. When I am talking about the

business of the trusts that moved, distinguishing - I am talking about some of the old UK trusts. As I saw it at that time, there were three elements, there would be Irish trusts which were Irish resident trusts, had been in being for some considerable time. UK trusts which had moved to Ireland, changed their residence sometime in the 60s, these were large trusts, a lot of them relate to the Guinness family. And then there were these more recently set up trusts set up from 1972 onwards. And all of these three elements of business were seeking a permanent place of business for the banking in the Channel Islands.

Q. You say the trusts were seeking "a permanent place of business". They wanted to go into a lower tax

A. That's right.

Q. jurisdiction?

A. Yes.

Q. Or a nil tax jurisdiction, if possible, obviously?

A. If possible.

Q. And were apprehensive that capital taxes being introduced in England might be introduced here as well?

A. That's correct.

Q. But if those companies were leaving

A. They would be trusts now.

Q. If those trusts were leaving rather Guinness Mahon in Dublin?

A. Yes.

Q. And were becoming involved with a Guinness Mahon entity in

the Channel Islands?

A. Yes.

Q. Do I understand that the funds of those trusts were going to be reinvested back into Dublin, or some of them in any case?

A. Of the trusts moving, and I wasn't involved with those trusts, but the little I do know of them, I think a large number of them would have will big portfolios, they wouldn't be heavily cashflows, they would be largely big investment portfolios.

Q. And would those stocks have been managed or those portfolios or securities have been managed by Guinness Mahon?

A. In Dublin or London.

Q. In Dublin or in London?

A. Yes.

Q. But the reason for Guinness Mahon to become involved in setting up an operation in the Cayman Islands was surely not just to get the trust administration fees, was it?

A. Sorry, are we talking about the Cayman Islands or Channel Islands?

Q. Channel Islands, I beg your pardon.

A. I don't know. I mean Mr. Traynor and the person who was working at the time had set up a series of Guinness Mahon Jersey Trusts in 1972, and there were also these trusts which was in Dublin which wished to move to a new location.

Q. Yes, I know the trusts may have wished to move, but Mr.

Traynor also wished to establish trust companies and ultimately

A. He had already done so.

Q. Banks in the Channel Islands; is that right?

A. That's correct.

Q. So he wasn't doing that surely solely in order to retain whatever fees the bank was earning from the administration of these trusts?

A. I don't know.

Q. It is being realistic about it. He wasn't going to all this trouble just to gain

A. Not for these

Q. What was to be made on the administration of trusts, he was looking for the control of the funds that the trusts had, isn't that why they came here in the first instance?

A. I think we are getting confused on different things, Mr. Healy. The trusts, the old trusts, the Guinness trusts, those trusts were moving to - they had nothing to do with Mr. Traynor.

Q. Leave them aside then.

A. Yeah. So they were the reason they were seeking the bank to set up some establishment in the Channel Islands. Mr. Traynor set up Guinness Mahon Jersey Trust, which he was interested in, and it had various trusts in place when I first came in contact which had already set up a large number of trusts and underlying companies. And that's what he was interested in, I think he wasn't very

interested in the

Q. In the trusts that were moving from Ireland?

A. Yes, not really.

Q. That had originally moved from England?

A. That's right.

Q. He was more interested in servicing new business other than that old business?

A. Correct.

Q. And the new business that he was servicing then, was that going to involve deposits being made by that new business in Dublin?

A. Yes, I think so.

Q. So it was going to involve cash funds coming under the control of his Channel Islands' entity, which presumably he hoped would end up in Dublin?

A. Correct, I believe so.

Q. Now, you go on to say that "Guinness Mahon (Jersey Trust) was a small operation and had no permanent office or place of business in the Channel Islands. A son of a former client of Mr. Traynor, resident in Jersey, made annual returns in respect of the trust companies and, where required, acted as settlor for trusts which were established".

You say: "When I joined Guinness Mahon in 1972 Mr. Traynor had an assistant who was an employee of the bank. This person left the bank in or about 1974 and I was drafted in to assist Mr. Traynor when required" - you are repeating



yourself. Perhaps this was approximately 1974.

Now, at that time do I understand you to be saying that your main role was other than providing some assistance to Mr. Traynor?

A. My main role was in corporate finance.

Q. That was dealing with Mr. O'Kelly?

A. Yes.

Q. Mainly reporting to him?

A. Yes, correct.

Q. Mr. Traynor was on the other side of the business?

A. Um - I say - Mr. O'Kelly was largely corporate finance, Mr. Traynor had a wider role, I couldn't really define it.

Q. Could you attempt to define it?

A. Well, at that stage he was one of the joint Managing Directors and clearly he had a lot of, I think he, he was a big business getter for the bank I would say at that stage. He was a high profile person, he had a lot of good connections with the bank, which I believe was why he was brought into the bank in the first place by Mr. Guinness.

Q. You say that he was "instrumental in the offshore business", by that do you mean that all of the offshore business was in the main under his control?

A. Yes.

Q. Can you indicate what that involved on a day-to-day basis?

What did being involved in the offshore business mean from the point of view of dealings, clients or entities might

have with Mr. Traynor?

A. I really don't know, at that point, Mr. Healy, I find that difficult - I mean, he had a lot of private clients. I think looking back with hindsight I would say Mr. Traynor dealt with a lot of private clients who may have had trusts or companies offshore.

Q. The whole purpose of the inquiry is to look back on those days with the benefit of hindsight, so you can be as retrospective as you wish?

A. I think the main, that would have been one of his main areas of activity.

Q. Dealing with private clients?

A. Private clients.

Q. You recall the evidence that you gave the last time you attended the Tribunal, was in connection with Mr. Foley. Would you classify Mr. Foley as a private client in that context?

A. I would have, yes.

Q. Somebody who came into the bank, had funds, and was not going to be depositing them in Guinness and Mahon in any case, directly?

A. Not necessarily.

Q. He would have had private clients who also did business with Guinness and Mahon directly in Dublin?

A. Absolutely. Absolutely.

Q. But he wasn't dealing with everybody who came in off the street and wanted to become a customer of the bank?

A. I don't think, Mr. Healy, no.

Q. When you say he had private clients, these are people with whom he would have had an association perhaps independently of the bank?

A. Correct.

Q. Those clients wouldn't have come to the bank but for Mr. Traynor maybe?

A. I think that's correct.

Q. Was Mr. Foley, for instance, the only individual with whom you had any dealings of the kind you outlined, and they were limited enough from your evidence? Was he the only individual you had dealings like that with in the context of your relationship with Mr. Traynor?

A. I think he is the only - at that specific time I was introduced, it wasn't, I wasn't really told too much.

Q. Well, did you have other dealings - I don't need at this point for you to name individuals - did you have other dealings with other private clients of Mr. Traynor?

A. I may have had from time to time. I think various people in the bank may have had some limited exposure to them from time to time.

Q. When you say that you were drafted in to assist Mr. Traynor when somebody else left the bank, somebody else was doing work for Mr. Traynor presumably on a regular basis?

A. Correct.

Q. Do you know what kind of work that was?

A. Well, the person involved had specifically spent a lot of

time setting up the Jersey, Guinness Mahon Jersey Trust operation, and I think had also been involved in Cayman with Mr. Traynor; and the Guinness Mahon Jersey Trust operation, while it was relatively small, that would have had a large number of trusts out of Jersey and underlying companies, and there was a lot of administrative work in connection

Q. So the individual doing this work was dealing, as you say, not just with the set up of the Guinness Mahon Jersey Trust, was dealing not just with the Channel Islands but also with the Cayman operation?

A. That's correct.

Q. Was that his, were those his main duties?

A. I - I don't know, Mr. Healy, to be honest.

Q. Can you recall did he have much else?

A. They would be a large part of his duties.

Q. When he left were you the only person who filled in for what, for him, in dealing with whatever Mr. Traynor wanted done in relation to offshore entities?

A. In relation to when he left, specifically there was a, there was an administrative problem or a situation in the Channel Islands which I have outlined. Guinness Mahon Jersey Trust was there and didn't have a proper establishment, and there was a lot of administrative stuff, paying local taxes, it was being carried out I think to some degree by local accountants in Jersey. At that time also the, Mr. Traynor and this person had jointly been

involved in the setting up of Guinness Mahon Channel Islands, which they were in the process of applying for, starting the application for a banking license in Guernsey.

Q. I appreciate that, and you deal with that later on in your statement?

A. Yes. So I was brought in specifically to, if you like, fill a gap in relation to Jersey alone.

Q. Well, maybe we will come back to that issue in a moment. And I will just deal with what you have to say about Guinness Mahon Channel Islands, we will then come back to the role you played after that individual left.

"At that time the bank's offshore business was through Guinness Mahon (Cayman Trust) and Guinness Mahon (Jersey Trust). The bank was in the process of establishing Guinness Mahon (Channel Islands) as a subsidiary with a full banking license. I accompanied Mr. Traynor to a number of meetings with the directors of Guinness Mahon and Company in London and with officials of the Guernsey Regulator in relation to the obtaining of a full banking license for Guinness Mahon (Channel Islands) who would also take on trust work.

By the time the license had been obtained I believe there was a downturn in the bank's business, and as the investment required was substantial the bank decided not to proceed. The license was relinquished to the Guernsey authorities and Guinness Mahon (Channel Islands) became

dormant" - at least as a bank in any case; isn't that right?

A. That's correct.

Q. You say that in 1974 Capital Gains Tax was introduced in this country, and as there was likely to be a greater demand for offshore services the bank decided that it still needed to establish a full service trust operation in the Channel Islands. So you then go on to explain how it set up College Trustees as a subsidiary of Guinness Mahon Channel Islands?

A. That's correct.

Q. And I will come on to the detail part of your statement about that in a moment. But what you are saying is that initially it was envisaged that a bank would be set up in the Channel Islands but that because of a downturn in the bank's business, do you mean in Guinness Mahon's business?

A. I believe so, I mean my recollection, my recollection is, Mr. Healy

Q. Right, I am merely asking the question because I don't understand how a downturn in Guinness Mahon's business in Dublin

A. Possibly a reappraisal of the business that might be got on that.

Q. What business would that be?

A. Setting up a bank in the Channel Islands is a very expensive operation, and it would require recruitment of staff, which are hard to get, they also have to be bought

houses in Guernsey which is very, very expensive, so even a very small bank has a very expensive setup cost. I believe it was just reviewed for reasons best known to the Board in Dublin, they decided not to proceed.

Q. You say that the potential introduction or actual introduction of Capital Gains Tax was felt to be likely to prompt or stimulate a greater demand for offshore services. I am just wondering why do you specify Capital Gains Tax?

A. Capital Gains Taxes was 1974.

Q. Yes.

A. That's really, and I think we hadn't had Capital Gains Tax heretofore. There was a great deal of activity of tax, legal tax avoidance schemes going on around that time. That's just my recollection.

Q. Could you possibly have had the impression that it is Capital Taxes in general that was driving the need or at least the desire to establish a trust operation?

A. It may well be wide enough to include it in Capital Tax in general.

Q. Because I am sure you will agree that where cash is concerned in any case, I don't think the Revenue sees an abrogation of cash as giving rise to a capital gain, merely another potential charge to tax, but not on foot of any provision of the Capital Gains Tax legislation?

A. No. Correct.

Q. So it may have been Capital Taxes or impending Capital

Taxes which had that effect?

A. Correct.

Q. In your mind in any case?

A. In my mind.

Q. You say that around that time, and you refer to an individual entity or family with trusts, I don't think we need to mention or identify that particular trust, had come into contact with Mr. John Lipscombe, who had extensive experience in offshore banking and who operated an established trust management company in the Channel Islands by the name of Sovereign Management Limited.

"In 1975 College Trustees was established as a subsidiary of Guinness Mahon (Channel Islands)." You describe that as a dormant Dublin subsidiary.

"Sovereign Management agreed to provide management services to College Trustees, and all of the trusts were transferred from Guinness Mahon Jersey Trust and Dublin to College Trustees and were managed by Mr. John Lipscombe and his staff through Sovereign Management."

You then say: "In common with the Cayman deposits, the funds held by the Jersey Trusts were also deposited with Guinness and Mahon in Dublin. Initially the deposits were in the name of the individual trust companies. After Guinness Mahon (Channel Islands) was incorporated, Mr. Traynor decided to transfer the accounts from the names of the individual companies to the name of Guinness Mahon



(Channel Islands), and the individual accounts were identified by letters or numbers such as A, B, C, and so forth."

A. Yes, correct.

Q. You say that in 1987 College Trustees was taken over by Sovereign Management. The Cayman and Channel Islands subsidiaries had earlier been sold to the London parent company GM Co. in 1984.

You say, while you had no involvement in the operation of the bureau system, I was aware that there was a bureau system for Cayman Sterling accounts, in which the individual balances held in amalgamated funds were kept.

A bureau system was also set up for the Channel Island Sterling accounts once the accounts were amalgamated together in a single holding.

Now, if I can just go back to the part of your statement in which you describe how you became involved in assisting Mr. Traynor after another individual in the bank had left, and you were explaining how that individual had assisted with a significant amount of administrative work in setting up Guinness Mahon Jersey Trust and in setting up Guinness Mahon Channel Islands, initially as it was hoped as a bank and subsequently holding on to it as some kind of trust company or nominee company for bank accounts or whatever. But apart from that work, what other work did that

individual do, to your recollection?

A. When he was in the bank? I think he did some corporate finance work, and he was very much in the nature of a personal assistant to Mr. Traynor. I believe he was actually Director of the bank.

Q. I see. And if most of the work that was being done in connection with offshore entities or subsidiaries, other than that related to trusts, which had moved from England we will say, we will leave those out for the moment as not being of huge interest to Mr. Traynor: Am I right in saying you were dealing mainly with the clients of Mr. Traynor or the class of individual we described earlier?

A. The people in the Jersey Trust?

Q. Yes.

A. Yes, I think that would be correct.

Q. And in dealing with these people and setting up trusts for them, did Mr. Traynor have regular dealings with the clients or individuals in question after the trusts were set up?

A. I would have thought so, yes.

Q. Did you have any dealings with any of those individuals even as a contact person?

A. Not initially but as time went on I might have been a contact person for some of them.

Q. What would those contacts involve?

A. Well, possibly a contact with somebody, if they wished to withdraw funds or wished to do something of that nature.

Q. Would that be the main type of contact in fact, somebody would have been given your name, presumably like Mr. Foley had been given your name, ring up "look for me" Des Traynor might have said, or "look for Mr. Keane if you want to withdraw money", and you would receive a phone call or more direct contact from somebody wishing to make a withdrawal?

A. It is possible, it would be fairly infrequent, my memory at that stage, pretty infrequent.

Q. Would it always be the same individuals or a number of different individuals?

A. Same individual, a very limited number I would have thought.

Q. But would the requests always be of a similar nature, a desire to withdraw, make a withdrawal?

A. I think so, yes.

Q. And what role did you have in arranging those withdrawals, if any, or did you just pass on information?

A. I just passed it on normally, at that time. I don't think I would have - I think it was very minimal in, my recollection at the early stage in that early period would be, my role was largely administrative, I had very little contact with the underlying beneficiaries or people who were the beneficiaries of these trusts or owners of these companies.

Q. When you say your role was "administrative", are you referring to the work you described earlier?

A. Yes.

Q. Well, could I leave that work aside for a moment?

A. Yes.

Q. And talk about the work or the role you had in dealing with contacts that people made with you, seeking to make withdrawals?

A. Right.

Q. However limited those contacts might have been. What would you do if somebody contacted you?

A. I might say to Mr. Traynor, I think at that time the most likely thing was I would speak to Mr. Traynor, whatever, if he hadn't been available on the day, which is why I might have been contacted.

Q. How would the contact be made, by phone or

A. By phone mostly.

Q. By phone mostly. Do you remember personal contacts?

A. Yeah, I can, yeah.

Q. Somebody would come in and arrange to meet you in the bank?

A. I think they would ring up first.

Q. Of course, yes.

A. Yes.

Q. And how would you know that the individual you were meeting had, as it were, some right or entitlement to make a withdrawal or ask Mr. Traynor to arrange a withdrawal? How would the individual identify himself and establish a connection with funds held on his behalf?

A. I think just established very slowly over a period of time. At that start I think I would have known none of

them, and there was a time that some of them, a large number of them I never met. I think if you met them once they tended to ask for you a second time.

Q. So would it be fair to say, if somebody rang up and indicated that he had been given your name by Mr. Traynor and you didn't know who he was, you would have to talk to Mr. Mr. Traynor?

A. Absolutely.

Q. And the second time you would know who he was?

A. Yes.

Q. And assuming that you did identify the person who made contact with you, would you put in train the steps necessary to make the withdrawal or would you have to get Mr. Traynor's say-so?

A. I think I probably would have got Mr. Traynor's say-so at that time.

Q. You were not working on what I will call, perhaps in my words "the banking side"?

A. No.

Q. So would you have known how to actually effect a withdrawal?

A. I think I would, not really, in the sense that I think Mr. Traynor would probably have told me "debit to the accounts" and he will deal with it.

Q. He would ask you to make a debit to a particular account?

A. Particular account, probably a suspense account.

Q. You would make the debit to a suspense account or

particular accounts and inform him that you have done it?

A. Correct.

Q. Would I be right in thinking, you assumed he would make whatever other internal arrangements to reflect this debit in the account of the individual who was getting the money?

A. It is not as cut and dried as that, on a lot of occasions that would be the case.

Q. And these withdrawals, would they be by way of draft or by cash?

A. My memory is they would mostly be cash and not very large amounts.

Q. When you say "not very large amounts", do you mean hundreds or thousands?

A. I would say my memory would be a couple of thousand.

Q. A couple of thousand?

A. Yes, I think at that stage, at that stage, I would have to say in that period even - it is not a very frequent, I don't know how many, I don't have a recollection of it being something that happened every day or every week.

Q. I understand. But would it have happened several times in a year?

A. Yes.

Q. Several times in respect of the entire operation or several times in respect of individuals?

A. In respect of individuals.

Q. I see. So the individuals involved would only come to you not more than a few times in a year, in the case of each

individual, more in the case of some, less in the case of others I suppose?

A. I think a lot of them may have dealt with Mr. Traynor anyway, I was just a back stop.

Q. Some of them may have dealt with him directly but you may have been asked to put the steps in train to

A. I doubt it, no.

Q. You think you would have dealt with some of them and he would have dealt with some of them?

A. That's my memory.

Q. It would never have been from your point of view, on the basis of your recollection no more than a few requests per individual per annum?

A. That's my recollection.

Q. The requests would have been in the order of cash of a couple of thousand pounds?

A. Typically.

Q. Which would have been not an insubstantial sum in the 1970s?

A. No.

Q. I think in the 1970s you could have bought a house for  $\pounds 5,000$  in the early 70s?

A. I am sure you could.

Q. I don't think a TD earned  $\pounds 5,000$  in the early 70s for instance. Was your involvement in the type of activity you are describing limited to the Channel Islands or did it also involve Cayman?

A. Limited to the Channel Islands.

Q. Limited to the Channel Islands. And were you aware of the involvement of Mr. Rue Leonard or later Mr. Pdraig Collery in connection with any of the administrative aspects of what Mr. Traynor was doing or the limited role you played in the Channel Island operation?

A. Was I aware of Mr.?

Q. Rue Leonard or Mr. Collery having a role in

A. Yes, I was.

Q. in recording transactions?

A. Yes.

Q. And just to clarify one aspect of the mechanics of the operation; would you provide the cash to Mr. Traynor or would you provide it to the individual by whom it was being requested?

A. I think - I can't recall. I think it could be either. I think it was more likely to be the Cash Department, that I would authorise the Cash Department to issue the cash.

Q. To an individual?

A. To an individual.

Q. And do you recall were those individuals in fact the private clients that we mentioned earlier, of Mr. Traynor?

A. Not - I mean not everybody I would put on the list were called "private clients", some of them were maybe less private than others.

Q. But they were the people coming in to him for, if you like, his special attention as opposed to dealing with other



members of the bank staff in connection with offshore activity?

A. Yes, I think so.

Q. During this time there were, when I say "during this time", I mean during your period in, during your career in Guinness and Mahon, there was a change in the administration records in the bank, in that the bank became more computerised, certainly initially computerised early on and then even more computerised; isn't that right?

A. That's correct.

Q. You were aware, I take it, that Mr. Leonard or the late Mr. Rue Leonard and Mr. Collery were involved in keeping records of offshore transactions initially on a manual basis and subsequently on a computerised basis?

A. Correct.

Q. And when the expression "bureau system" is used, do you agree with me that it appears to be intended to refer both to the manual and to the computerised system of recording transactions on the offshore accounts?

A. Well, my only recollection of the bureau system is from the type of the computerised

Q. I see. But you are aware that prior to that there was a keeping of manual records?

A. I think that's correct, yes.

Q. In relation to those accounts?

A. I think so.

Q. You think so?

A. For Cayman.

Q. For Cayman?

A. I think.

Q. Why do you have a slight doubt? I appreciate this is a long time ago, why do you have a slight doubt in relation to Channel Islands?

A. Because, I think the Channel Islands accounts were as I described in the memorandum, they went on to a bureau system at a later date.

Q. And prior to that you think they were kept in the names of the individual, well they were not kept in the names of the individual companies after a while but in the names of Guinness Mahon Channel Island with a code or number attached?

A. Yes, a whole lot of individual accounts.

Q. And a whole lot of individuals accounts?

A. Yes.

Q. So all those accounts were kept in a coded form. Am I right in thinking much of the activity on those accounts would be conducted in Dublin, if somebody comes in and makes a withdrawal of the kind you described, it would obviously depend on that account; isn't that right?

A. Yes.

Q. When those accounts are pooled the withdrawal would normally be made from the pooled account and a corresponding entry made on the bureau system from the individual account; isn't that right?

A. By Mr. Collery or Mr.

Q. Yes, during the period when the pool system operated you had an almost complete barrier to information leaking out from the individual accounts into the pooled account; isn't that right?

A. Absolutely.

Q. Prior to that obviously, as we have seen from the evidence given at the Tribunal, some of the coded individual accounts, might give clues to the identities of the individuals or entities for whose benefits they were being kept; isn't that right?

A. I am not sure.

Q. Well, were you, are you aware of evidence given that there were occasions when an account might be described as "Guinness Mahon" or "GMCT" or "GMCI" or "G and J", "Re: somebody", or "re:" and the initials and an account holder given, not his name?

A. I wasn't aware.

Q. You weren't aware of that. Would you have been involved in passing entries across those accounts?

A. Very rarely I think.

Q. So that somebody else would do that, even though you might be the contact for the individual from outside; is that right?

A. Yes, I think that's correct.

Q. Now, eventually as we know the bureau system was set up for, well the computerised bureau system

A. Yes.

Q. was set up for both the Cayman and the Channel Island operation. And I think that there are some documents which have only, they have been in the possession of the Tribunal for some time but in a mountain of documents they have only become, their meaning has only become apparent in the last few days, and I think that some evidence was given this morning in connection with a request from Mr. Furze to Guinness and Mahon on the 1st of February of 1978 regarding the operation of a computerised system to record Cayman transactions in Dublin?

A. This is the bureau system?

Q. Yes. But it was - what was produced in evidence was a letter from Mr. Furze purporting to ask for this service to be set up and indicating that no third party should have access to it and so forth. And I think that your attention has been drawn to a document or a number of documents, the connections between them are fairly difficult to discern, but one of them in any case appears to suggest that a memorandum was sent to you in situations of the system of Guinness Mahon in Guernsey; isn't that right? That's a copy of some of the documents.

(Document handed to witness).

Now, the first document I want to look at is a memorandum of the 19th of April of 1978 from John Lipscombe?

A. Okay.

Q. To Mr. Rue Leonard, and it seems to be to you as well; is

that right?

A. Copied to me.

Q. Copied to you perhaps, yes. The document is on Guinness Mahon Jersey Limited note paper. At that stage it was presumably dealing with the College Trustees' work I suppose?

A. Yes.

Q. It is dated the 19th of April, 1978, and it says: "I have at last drafted a letter purporting - I have at last drafted a letter concerning computer services to GMG and this is enclosed for your consideration/amendment. If you will return it to me with such comments, etc. I will put it in final form and will expect then to receive a comprehensive reply from you at the appropriate historical time."

First of all, the, if you like the primary addressee of this memorandum or this note is Mr. Leonard who is the individual responsible for the actual recording of information prior to Mr. Collery; is that right?

A. Yeah, I mean I am looking at all this correspondence to do with the setting up of the bureau system.

Q. Yes.

A. It is all this correspondence which is all between Mr. Leonard as Head of Accounts in Dublin and Mr. Lipscombe.

Q. Yes.

A. And that was my understanding, it was entirely a matter

between them as to the setting it up, I had no involvement from it.

Q. Of course. It is only because Mr. Leonard is unfortunately deceased that I am bringing the matter to your attention at all. I want to make it clear that your role here is clearly a secondary one, to judge from the memorandum, and you were not the person dealing with administration, nevertheless presumably because of your role in the Channel Island activities as opposed to the Cayman Islands, the matter was deemed to be appropriate to be drawn to your attention.

Well, can I approach it another way?

A. Okay.

Q. You have seen the documentation, and judging from the documentation it would appear, am I right in thinking, we can go through the details in a moment, am I right in thinking it would appear that a computerised system was set up to do what had already been done on a manual basis;. And that that, that having been set up a letter was then sent from Guinness Mahon Guernsey asking for those services, and that letter was designed to ensure that those services would be viewed as purely the provision of administrative services by Dublin to Guernsey, and I suggest to you that the letter, to judge from this memorandum, was deemed or was intended to take effect from an earlier date than the date of the memorandum, and the reply was also intended to take effect from an earlier

date; that's the only explanation for the use of the expression "I am enclosing something for your consideration/amendment". Do you see that?

A. Yes, I see it.

Q. Why would somebody draft a letter purporting to contain a request for assistance, and ask the person to whom it was being sent to consider it, and if necessary to amend it, and then the man who is sending it says "I will put it in final form and will then expect to receive a comprehensive reply from you at the appropriate historical time". Of course the appropriate historical time can only refer to an appropriate time in the past?

A. Mr. Healy, I have no recollection of any of this.

Q. But you know it was done in any case?

A. I know the bureau system was set up, and I know it was all settled between Mr. Lipscombe and Mr. Leonard.

Q. I won't take up the details with you, I will just clarify one or two aspects of it. There is no doubt that records were provided or administered, if you like, in Dublin for the Channel Islands prior to the computerised system?

A. I think that's correct.

Q. And with the advent of the computerised system we know from other evidence that a much more comprehensive service was now being provided; isn't that right?

A. Right.

Q. And we now know that with the advent of this service, as I said from evidence given at recent sittings, the entire

generation of original documentation for both Cayman and the Channel Islands was being conducted in Dublin, even the stationery was bought in Dublin?

A. If you tell me so.

Q. I see. That's the evidence in any case

A. Yes.

Q. from Mr. Collery. But I want to go further than that and suggest that I am right in thinking that not only were the records generated in Dublin, but that a lot of the transactions would have resulted from contacts between people in Dublin and Mr. Traynor, contacts made either through you, Mr. Collery, Mr. Leonard or other officers and officials of the bank who might relay messages received by them to Mr. Traynor?

A. I think that's correct.

Q. Thanks very much.

MR. CONNOLLY: No questions Sir.

CHAIRMAN: Thank you very much Mr. Keane.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Those are the witnesses for today.

CHAIRPERSON: Very good. Usual time tomorrow.

THE HEARING THEN ADJOURNED UNTIL THE 18TH FEBRUARY, 2000.