

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 9TH MARCH

2000, AT 10:30AM:

CONTINUATION OF EXAMINATION OF MR. O'GRADY-WALSH BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Thank you, Mr. O'Grady-Walsh.

If I could just proceed from where we were yesterday afternoon, that is after the 1976 inspection report and the correspondence and meetings which flowed from that. A question then arose in relation to the free resources ratio in respect of these particular loans backed, or purported to be backed by cash deposits, as the Central Bank saw it, and I think the Central Bank engaged in communication and meetings with Guinness & Mahon, isn't that correct, on that particular issue?

I think there was a meeting held on the 25th January 1978, which was it's tab 2.1. Mr. Traynor I think at the meeting, you were present at the meeting with Mr. Daly on behalf of the Central Bank and Mr. Traynor and Mr. O'Kelly represented Guinness & Mahon at the meeting; isn't that correct, I think?

A. That's correct.

Q. And I think Mr. Traynor said initially that he was rather concerned regarding the Bank, that's the Central Bank's letter of the 10th January 1978, in which the Bank had expressed surprise at the decrease in the free resources

ratio of Guinness & Mahon, group basis as revealed in the accounts of the 31st October 1978.

A. Yes.

Q. And he went on to say that he was sure he had emphasised in the past that while his bank would be seeking to maintain the free resources ratio of 10 percent, there could be hiccups in this arrangement as it happened on the 31st October 1978; that sort of thing would be perfectly understandable. The Bank would be attempting to achieve there might be, for a very short period, a hiccup, but would be brought back into the line, I suppose?

A. I am not sure every chief executive of a bank would be saying to us, there may be hiccups. I mean, he was being a little bit naughty I think.

Q. I see. You would have expected the chief executive of a bank to maintain the 10 percent?

A. Ah no, but I think it's a question of language.

Obviously, as I think I explained yesterday, we were, especially in the early days, we were trying to bring them around. And you see, the point is that this ratio was, to a degree, arbitrary on our part. I have no doubt that in drawing it up we would have put in a cushion of comfort. It occurred to me since then that it might have been useful if I mention that when we were drafting these things in the beginning, I recall that I had an awareness that the capital ratio, believe it or not, in US banks at that time was 2 percent.

Q. I see. So well, in fairness to the Central Bank of Ireland, and notwithstanding the strength of supervisory bodies in the United States of America, we have seen over the years some fairly spectacular failures in the United States?

A. Absolutely, yes.

Q. Isn't that

A. Ah yes, that's true.

Q. But in any event, this particular meeting, if we go through the note of the minute of the meeting, seems to have been centred around that Mr. Traynor wanted approximately €4 million worth of loans which he maintained were backed by cash deposits either in Cayman or here, or however it was described; he wanted them excluded, effectively, from the considerations by the Central Bank. He wanted them to be viewed as absolutely rock solid; isn't that right?

A. So it appears, yes.

Q. But the Central Bank were not prepared to allow that. The Central Bank would not take into account the cash-backed nature of these loans; isn't that correct?

A. That's the last paragraph?

Q. Yes.

A. Yes, that's correct.

Q. So

A. Yeah

Q. No, you can't

A. Yes.

Q. And can I suggest that in the normal course of events, if an Irish bank had €4 million worth of loans out and had in place in this country cash-backing to the extent of €4 million, the Central Bank would have allowed them to bring that in for consideration in calculation of the free resources ratio.

A. I actually don't you see, free resources ratio has been presented here as something pretty straightforward. I heard Mr. Adrian Byrne saying yesterday in simple terms you could say for €10 there was €1 there were, in fact, two ratios. There was a capital, the gross assets ratio of 4 percent; then there was a free resources ratio which I think for the clearing banks might have been at the level of 8 percent. And, it appears that in the case of Guinness & Mahon, we had set it at 10. I seem to recall that for other smaller banks we had set it at a different level.

One of our concerns in this area was, I think, that we had been alerted to the fact that we might have difficulty in the courts or maybe not that's making it too dramatic.

We might have difficulty, in the event of a dispute, in sustaining a case that we could differentiate banks.

There was a question of banks in given categories. I have forgotten the beginning of the question.

Q. I was asking, in the normal course of events, even in Guinness & Mahon, if the depositor or the borrower had himself got deposits in Guinness & Mahon in a normal straightforward way for the resident deposit equivalent to

the amount of the loan borrowed, the view of the Central

Bank would be that that was

A. I remember your question now. I mean, I think the answer

would probably be yes, but I have to say that I don't

recall. I mean, there were it was there were

elaborations in relation to the calculation of this

ratio. There was a question of size of I seem to

recall if, for instance, a loan which was considered to be

in a powerless state where it had been fully provided or

partly provided, a question arose later how you would treat

a general reserve for latent losses. It was quite a

sophisticated it certainly, over time, became more

sophisticated. I don't remember, so I can honestly say to

you, I don't wish appear to be defensive. I think it's

likely that at that time we would have agreed, yes, you

don't count them. I am simply saying to you it's not as

clear cut as that in my mind.

Q. I see. If I could take a reasonably common sense approach

to the issue, it would seem unlikely, I suggest to you

A. Yes, I'd go along with that

Q. that if there was a proper cash-backing to a borrowing,

that that wouldn't be viewed by the Central Bank as being

totally secure?

A. I see what you are saying, and, I mean, it appears

eminently reasonable to me, but I have to say that I do not

recall whether, you know, definition, we would

automatically have excluded such a loan, I have to say

that.

Q. I see. But as of 1978 when discussion took place about the free resources ratio, and these particular Cayman or offshore-backed loans, did

A. Sorry, yes

Q. Mr. Daly has initialled the note, and I take it Mr. Daly probably prepared this note of the meeting?

A. I presume so, yes.

Q. It would appear that Mr. Daly was informing the Guinness & Mahon people that you, Mr. O'Grady-Walsh, may wish to discuss the tax aspect of these loans at a later date.

A. Yes.

Q. So can I take it that as of then, you wished to have some discussion to get a better understanding of these cash-backed deposits from a tax point of view, would that be fair to say?

A. So it appears, yes.

Q. Now, I think at tab 2.2 there is an internal memorandum of the 10th February 1978. That's a Central Bank internal memorandum. And under the heading, "Loans by Guinness & Mahon Secured by Cash-backed Deposits in Cayman and the Channel Islands," the internal memorandum reads: "The method by which these loans are secured is complicated and is designed as a tax-avoidance scheme. The procedure is that funds are transferred to the Cayman Islands and the Channel Islands (Guernsey) to a registered discretionary trust of which GMCT/GMCI are the trustees. The trust is

controlled by GMCT/GMCI. A wholly-owned and controlled company is formed by the trust. This company places on deposit with the Cayman/Guernsey bank an amount equal to a sum to be advanced by G&M Dublin. Before the advance is issued by the Dublin office, the Cayman/Guernsey company signs an agreement with GMCT/GMCI which stipulates that in the event of the borrower failing to meet his commitments to the Dublin office, GMCT/GMCI has the right to forfeit a sum from the deposit equal to any loss incurred by the Dublin office on the loan. GMCT/GMCI may transfer the forfeited deposit to the credit of the Dublin office by way of dividend.

"No evidence of the agreements between the Cayman/Guernsey company and the Cayman/Guernsey bank is maintained at the Dublin office, purely as a precaution against a physical inspection of the Bank's affairs by the Revenue Commissioners. However, in order to satisfy the bank's auditors as to the adequacy of the security on the loans, Mr. Traynor, during the course of the bank's annual audit, personally brings the agreements from Cayman/Guernsey. The auditors inspect the agreements but do not take notes of their contents."

Now, over the page: "A list of the loans secured by the deposits in Cayman/Guernsey is available at all times in the Dublin office and is available for inspection at all times to the Central Bank. The amount involved is

variable. At 31st December 1977, the loans amounted to 4.4 million of which 2.2 million related to Cayman and 2.2 million related to Guernsey. Should the Central Bank wish to verify the existence of the agreements they will be available in Dublin during the course of the next audit - March/April 1978.

"Mr. Traynor is gravely concerned that no reference to the existence of the agreements should appear in the records of the Dublin office and has requested that the amount should not be stated separately in the monthly return."

Now, can I take it that here, again, the Central Bank are having some concerns, or at least discussing internally what was going on in Guinness & Mahon about these particular cash-backed loans?

A. That's correct, yeah.

Q. And

A. Sorry, this took place, of course, before the matter we discussed before.

Q. You are absolutely correct. But and perhaps that gave rise to the or one of the matters which gave rise to the discussion or the meeting about the free resources ratio subsequently.

A. Possibly.

Q. But could I suggest to you that from the Central Bank's point of view, it must have been apparent that something unusual, at least, was going on here?



A. I think so, yeah.

Q. Subsequent then to the meeting I think which was if you go to tab 2.3, the request had been received by Guinness & Mahon to treat the loans as being absolutely secured.

A. Yes, but that was also before the

Q. If you just look at the recommendation if you would look at the recommendation loan by Guinness & Mahon which are secured by cash deposits in Cayman and Channel Islands, and if you note that the word "secured" is in parenthesis and then the note reads: "From the information available it would appear that the loans are secured by a cash deposit and as such form a normal back-to-back arrangement.

However, the fact that the bank takes such extreme precautions to keep the existence of the deposits secret from the Revenue Commissioners, indicates that the bank might well be a party to tax" and "evasion" is crossed out. That was in the original typescript copy, and

"avoidance" is put in "scheme. Should this be the case and the Bank" that's the capital B for bank, that's the Central Bank "accepts the right of set-off for the purpose of calculating the free resources ratio. The Bank would be placed in a very embarrassing position should the Revenue authorities ever become aware of the situation.

It is therefore recommended that the Bank does not accept a right of set-off for the purpose of calculating the free resources ratio."

That that particular recommendation was, in fact, given effect to insofar as the Central Bank would not allow them to be taken into account in the calculation of the free resources ratio, but the author of this particular note was Mr. Byrne?

A. That's correct.

Q. And he, in giving his evidence, said that yes, he himself used the term evasion, tax evasion scheme, and that was his view and it is his preferred view, and he says that the paragraph in question makes no sense unless it is read to read, to mean evasion there.

A. Mm-hmm.

Q. Now, would you have a preferred view in relation to that?

A. I think you said in this note, I think this, in fact, is an extract from the inspection report. I mean, this was in the context of a complete inspection report and it's signed by Mr. Adrian Byrne. I presume there was another inspector as well and we had, we had we had taken care, in these early days in banking supervision, to establish a department which was well furnished with highly qualified people. We brought in professional people to do the job and we had a hierarchy of seniority in that department. Mr. Daly was the manager, if I recall. And this report was done by two chartered accountants, one of them evidently here has said that he put in evasion evasion. And the question arises how it came to be avoidance. He said yesterday, because I was here, I heard

him say that he thought, when you pressed him on the matter, that it might be Mr. Daly's writing. I am not expressing any view on the matter. All I am saying is that I am quite certain I didn't do it. You are not suggesting otherwise.

Q. No.

A. Now, I was in the position if it's accepted that it wasn't I who changed the word, I was in the position, as the senior person in the Bank whose attention is brought of having something that said avoidance, I, for the life of me, I can't remember now whether I asked Mr. Daly, what's all this about? So, beyond that, I mean, I can't comment. It's clear that what this thing led on to, the end of the paragraph was that in view of the dissatisfaction about this, whether it is evasion or avoidance, in either case, the recommendation was that we shouldn't allow this thing to be set-off for the purpose of calculating the free resources ratio. And I wrote on the margin: "The relevant debit basis should not be deducted from the...calculating the free resources ratio." So, apparently, I was focusing on I was focusing on the executive action that should follow from the uncertainty or whatever that surrounded this particular matter.

Q. Now, I don't think this is actually part of a report.

A. Is it not?

Q. I think it's

A. It's headed "Recommendations".

Q. It is a recommendation.

A. It's headed "Recommendations" and

Q. I will just go through the dates if I may. Sorry, the only dates we have are the dates on the document and this is how they actually came to us. Now, the report itself commenced on the the examination commenced on the 8th June 1978.

A. June '78? Well, that was much later. But there must have been an examination before that.

Q. But it was in '76, the examination was prior to that.

A. I see. Well, I mean recommendations obviously arose out of some preceding memorandum which the length of which or the content of which we do not hear about.

Q. Could it be, I am just asking you, that could it be that this recommendation may have risen out of some meeting or communication from Guinness & Mahon relating to the free resources ratio?

A. I really don't think so. I mean, the word "recommendations," suggests to me, and besides, you know, it says, "sundry debt" and it refers to other matters which clearly suggests that the document in relation to which, giving recommendations

MR. FEENEY: Mr. Chairman, I think I can just clarify.

In fact, if you go back to the note of the meeting of the 25th January '78, you will see at that meeting in the penultimate paragraph on the first page, Mr. Traynor said that his bank "Mr. O'Grady-Walsh said that he would

certainly consider the matter and the meeting then concluded." So that there was a request by Mr. Traynor on the 25th January 1978 to Mr. O'Grady-Walsh, and it appears then there are documents dated 23rd February '78, and the 6/3/78, which would follow from that request in relation to the ratio made by Mr. Traynor to Mr. O'Grady-Walsh, that appears to be the sequence.

CHAIRMAN: That seems to be

MR. FEENEY: The inspection then followed.

A. I mean, the recommendations go on to talk about sundry debtors, the Central Bank clearing suspense account, sundry stockbrokers account so, I mean

Q. MR. COUGHLAN: If you go over the page, the effect on free resources ratio. I don't know if all of these other matters would be taken into account in respect of that.

But from the documents which we have been furnished, and I am thankful to My Friend Mr. Feeney for just clarifying the matter. There was the meeting which we have just been through with Mr. Traynor and Mr. O' Kelly, yourself and Mr. Daly, to discuss the question of the free resources ratio. Do you remember that particular document?

A. Sorry, that was at tab?

Q. 2.1.

A. Which was on the 23rd March, which was a fortnight later.

Q. No, sorry, I beg your pardon, maybe it's tab 2.2. It's

the meeting on the 2.1, 25th January 1978. At 11am.

It's on the screen

A. I have it, yes, sorry.

Q. That was that meeting and there is a minute of the meeting.

A. Yes, I have that.

CHAIRMAN: Well, it was clearly an ongoing process. I don't think we will benefit from getting bogged down in the precise designation.

Q. MR. COUGHLAN: No. But can I take it, Mr. O'Grady-Walsh, that you, notwithstanding whether the designation was evasion or avoidance, you accepted the recommendation one way or the other that it should not be taken into account in the calculation of the free resources ratio?

A. That's correct. That's correct. I seem to recall reading these papers a few days ago, that somewhere or other, I, where it spontaneously said, before I got a recommendation from anybody, that they shouldn't allow this for free resources ratio purpose and that when a recommendation came to me, in fact, it was echoing something I had already myself indicated. I think I said that yesterday.

Q. I think at the meeting, Mr. Daly had informed Guinness & Mahon that you wished to have consideration of the tax aspect of these particular matters; isn't that right?

A. Yes.

Q. Now, tax, under this particular recommendation, tax is the only issue, isn't it?

A. Yes. Well, yes, yes, and it concludes in relation to free resource ratio.

Q. But leading on to that.

A. Right, okay.

Q. Now, what was your own view about that?

A. I honestly don't know. I mean, I certainly wouldn't claim any knowledge about tax matters. I was dealing with professional people on our own staff and certainly there is no way in which I would take issue with them and say it's this, if they were saying otherwise and what was before me evidently was a document in which the word "evasion" was crossed out and the word "avoidance" was put in. This has occurred, I think you mentioned, in one or two other places, and in none of the cases was there any attempt made to obliterate, you know, the other word. There was nothing underhand about this.

Q. I am not suggesting there was, Mr. O'Grady-Walsh.

A. I don't think you are.

Q. In like manner, there was no attempt on the face of these records, at least, anyway, to press Guinness & Mahon for sight of documentation to allow the Bank, the Central Bank, to take appropriate advice, either from a tax accountant or a tax lawyer about what was going on; isn't that correct?

A. That's right. I mean, may I say that I don't think we would have been at liberty to bring in a tax accountant or

a tax lawyer. I mean, how could we have cooperated with the question of the oath of secrecy, for instance

Q. Well, Mr. O'Grady-Walsh, you are not seriously suggesting that the Central Bank wouldn't be able to take legal advice on the matter?

A. No. We took legal advice on other matters, yes.

Q. And you are saying the Central Bank was precluded by reason of the oath from taking legal advice

A. I didn't say I don't think we were talking about legal advice. I think we were talking about somebody who would come and investigate it on our behalf.

Q. No. No. Asking for advice.

A. Yes

Q. Legal advice or professional advice where somebody would be bound in exactly the same way by the oath, the secrecy the Central Bank had, and of course the advice being sought from a lawyer would itself be by way of protected by privilege?

A. Evidently we didn't.

Q. Yes. Well then, let's go on to tab 3.1, and this is extracts from the examination report as of the 30th April 1978; isn't that correct?

A. Mm-hmm.

Q. Sorry, I beg your pardon. My Friend here says perhaps we should go to tab 3.2 first because that preceded the report, and this is a minute of a meeting with Guinness & Mahon held on Wednesday 13th September 1978; present for



Guinness & Mahon were Mr. Traynor and Mr. O' Kelly, and present for the Central Bank were Mr. Daly, Mr. Byrne and Mr. Fitzgerald. And the purpose of the meeting was to discuss various matters arising from the recent examination of the bank by Central Bank examiners. So it was obviously a meeting in the course of the preparation of the examination report, I presume.

A. Mm-hmm.

Q. And the third page of that particular memorandum or minute of the meeting deals with the question of taxation avoidance schemes, and Mr. Daly said that: "The Central Bank was not happy with the extent of the bank's involvement in tax avoidance schemes. The Bank felt that such schemes were not in the national interest and it was considering whether to request Guinness & Mahon to wind down its activities in this area. Mr. Traynor said that such a request would make him very unhappy. He added that it was not correct to say that the bank was involved in any tax avoidance schemes. The scheme to which Mr. Daly was referring was devised and arranged by the bank's customers and its financial advisers. The bank merely informed its customers of the existence of the banking facility available in Guernsey and which were formerly available in the Cayman Islands. Mr. O' Kelly said that branch managers of the associated banks advised customers to deposit funds in their branches in the UK for the purpose of tax avoidance and asked if the Bank was also considering

taking action in these cases. Mr. Daly said that the Bank was unhappy with tax avoidance schemes generally. The meeting concluded."

Now, at this meeting, Mr. Daly, who I presume yes, he was the senior person present from the Central Bank at the meeting, himself, Mr. Byrne and Mr. Fitzgerald, expressed a view to Guinness & Mahon that what they were engaging in, even designating it as tax avoidance, was, in the view of the Central Bank, contrary to the national interest; isn't that right?

A. Mm-hmm.

Q. Now, can I suggest to you that for Mr. Daly to express that view, there must have been discussion on the subject inside the Central Bank?

A. Probably.

Q. And Mr. Daly, in expressing the view, was speaking for the Bank; isn't that correct?

A. Yes.

Q. And can I ask you this question: If the Central Bank took a view that what bankers or a supervised bank were engaged in was contrary to the national interest, is that an extremely serious view for the Central Bank to take?

A. Of course it's an expression, to say something is not in the national interest, I think that one would use such a phrase, I really think this one would use such a phrase in dealing with somebody with whom one was having difficulty in getting information or they didn't seem to be

very forthcoming, to say, this isn't in the national interest. To make it sound serious, to bring it home to them that we are talking about something that's important here, of course taking it very simply, it wasn't in the national interest if tax avoidance was succeeding in the diminution of the Revenue. But I don't think that I would accept the suggestion, if that's what you are suggesting, that we wanted to that we took a desperately serious view of this. I mean, one can use, in the ordinary exchange between people, one can use language which is calculated to bring pressure on them, but I don't think that the precise language that one will use necessarily has to be parsed and analysed, it must have meant this. I would say that in the ordinary course of business, if we were talking to someone and said that's not in the national interest, I don't think I should be interpreted as saying it is desperately serious. I should be interpreted as saying, look, it's pretty serious and you better cooperate with me.

Q. Well now, could I just deal with that, if you don't mind, Mr. O'Grady-Walsh. This is the language of a Central Bank

A. That's correct.

Q. in a formal discussion with a supervised bank. Now, it is carefully noted; isn't that correct?

A. Mm-hmm.

Q. Would you not agree that whilst one, in ordinary

conversation, might say it to somebody that's not in the national interest, for a Central Banker to use that expression to a supervised bank is an extremely serious thing to say?

A. It is serious, but I mean

Q. Very serious.

A. Well, I don't know. I think can I answer you this way. I think it occurs later in a letter from the Governor, is that correct? I mean, I am not sure. So, I mean, I am not hiding from the fact that we thought our problem in relation to this matter was difficult, we were trying to resolve it and we were putting pressure on them to respond to us and we were using that kind of language.

But

Q. This is all directed to my original question about the qualitative assessment of the people who were running this bank.

A. Yes.

Q. The Central Bank is saying to these people what you are doing is not in the national interest.

A. Mm-hmm.

Q. Now, Mr. O'Grady-Walsh, I must suggest to you, for the Central Bank to express such a view and to carefully record the expression of that view means that this wasn't just a throw-away remark. This was a very serious assertion by the Central Bank.

A. It was a serious assertion, yes.

Q. And was calling into question, I suggest to you, the fitness of the people conducting this activity to run a bank in this state.

A. I wouldn't accept that, because the fitness has to be considered in the round.

Q. Very good. Well, let me go on then to deal with the final paragraph of the note of this meeting.

"Mr. O'Kelly" who was the Managing Director of Guinness & Mahon and accompanied Mr. Traynor to this meeting "said that branch managers of the associated banks advised customers to deposit funds in their branches in the UK for the purpose of tax avoidance and asked if the Bank was also considering taking action in these cases. Mr. Daly said the Bank was unhappy with tax avoidance schemes generally."

Now, could I suggest to you that a reading of that particular note could mean that Mr. O' Kelly was saying, look, why are you getting on our back? We are only doing what everybody else is doing in a different way. Could that would that be a fair reading of that note, would you think?

A. I think so, yeah.

Q. Now, the view of the Central Bank was that such activity was contrary to the national interest. And here was another director of Guinness & Mahon, not just Mr. Traynor, expressing a view which was fundamentally at variance with

a view of the Central Bank isn't that correct?

fundamentally at variance with the view of the Central Bank?

A. He was stating a fact.

Q. I don't know if it was a fact.

A. Sorry, I proffered it to be stating a fact. I don't think he was expressing a view. I mean, there might have been an implied view.

Q. Yes, well, the person in the Central Bank reading this, a senior person in the Central Bank reading the account of this meeting, and surely the purpose of this particular minute was to allow it to be circulated to the appropriate people at a senior level in the Central Bank, and reading this, first of all, you can see the view of the Central Bank has been expressed and then a director of this bank comes back to the Central Bank and says, why are you getting on our back really? Isn't that right?

A. Well, I mean, you are putting that construction on it and I wouldn't disagree. That seems to be the thrust of it, yes.

Q. Absolutely. If I was sitting there and I received this, I'd say, well, that's what he is really saying to us. Maybe I am wrong. Maybe Mr. O'Kelly had a totally different view and maybe he will have a totally different view.

If the Central Bank was of the view that something was

contrary to the national interest, would that, of itself,  
call into question the fitness of somebody to run a bank?

A. No.

Q. Very good.

We now go to the report, if I may, which is at tab 3.1.

And that is the report it's a report as of the 30th  
April 1978. And if you go to page 1 of the report and the  
summary of main findings. And the first summary the  
first main finding in the summary is if I just go above  
that.

"During the course of the examination we received the full  
cooperation of the management of the bank. However, the  
staff of the bank were unable or reluctant to give  
information on certain aspects of the bank's activities and  
as a result, much information was received from the  
directors."

Then there is the summary of the main findings.

And the first main finding is: "The bank is participating  
in taxation avoidance arrangements."

A. Yes.

Q. And then if you go we have it over the page and it's the  
main findings. It's page 9, actually, of the report  
itself. Do you have that?

A. I have it, yes.

Q. And it sets out in detail the activity as indicated by the

directors.

"The bank has advanced loans amounting to 5.5 million which, according to the books and records of the bank, are either partially secured or unsecured. Details of the major loans involved are outlined in Appendix 10. We have been informed by the vice-chairman of the bank, Mr. D. Traynor, that each of these loans are, in effect, secured by means of a cash deposit placed with Guinness Mahon Cayman Trust Limited, a wholly-owned subsidiary of the bank, or with G&M Guernsey Limited, a wholly-owned subsidiary of Guinness and Mahon (London). These deposits are placed as part a complex tax-avoidance scheme and considerable measures are being taken by the bank to ensure that knowledge of the existence of the scheme does not become known to the Revenue authorities in Ireland. The scheme, as we understand it, operates as follows:

"A prospective borrower is advised by the bank to place funds with Guinness & Mahon (Guernsey). The funds are placed in the name of a discretionary trust of which Guinness & Mahon (Guernsey) are trustees. The trust then forms a locally incorporated company to which it makes a deposit equal to the amount of the loan which the customer intends to borrow from Guinness & Mahon Dublin. The Guernsey company redeposits the same amount with the Guernsey bank and agrees to forfeit the deposit up to an amount equal to any loss incurred by Guinness & Mahon



Limited on the loan to a specified customer, i.e., the prospective borrower. This deposit is placed with Guinness & Mahon (Dublin) by the Guernsey bank. The advance is, therefore, secured by funds deposited in Dublin by the Guernsey bank.

"The creation of the discretionary trust (of which Guinness & Mahon (Guernsey) are trustees) effectively assigns control of the deposit to the bank and removes all evidence of the link between the deposit and the borrower. It is therefore impossible to prove that the depositor and the borrower are, in fact, the same person.

"Through this arrangement, the borrower is able to claim taxation relief on the interest paid on his advance from the Dublin bank and presumably does not pay tax on the interest which he earns on his deposit with the Guernsey company.

"Since 1972, the Cayman Islands ceased to be part of the Schedule Territories. We have been informed by Mr. Traynor that no funds have been transferred to the Cayman Islands from Ireland since that date. Loans advanced under the scheme since 1972 are secured by funds deposited in the Cayman Trust before that date. Most new business is now being channelled through Guinness & Mahon Guernsey Limited, a subsidiary of Guinness & Mahon Dublin."

So, what is set out is the working of the scheme; isn't that correct, in the report, as described by the directors?

A. Pardon?

Q. As described by the directors of Guinness & Mahon obviously.

Now, if you go to the conclusions and recommendations under the heading "Tax-avoidance Scheme" which is I haven't got a number on the top of mine.

A. I have it.

Q. It reads: "Tax-avoidance scheme."

"The bank has advanced loans amounting to €5.5 million loans to customers which are 'secured' by deposits placed with Guinness Mahon Cayman Trust Limited or Guinness Mahon Guernsey Limited. These deposits form part of the tax-avoidance schemes. The full extent to which the bank is involved in these schemes is difficult to determine.

We are of the view that while the provision of advice on tax avoidance within the law may be an acceptable part of the work of any bank, it is not, in our view, appropriate or ethical for a bank to participate in, as distinct from advise on tax-avoidance schemes. We suggest, therefore, that the bank should cease its participation in these schemes."

A. Yes.

Q. Now, can I take that this is something which must have come to your attention at some stage?

A. Well, I don't know. I mean, I don't have the file you know, the full file before me. I don't know whether my initials appear on it's probable that it did, yes, but I don't know.

Q. Now

A. In any event, I mean, I can discuss it with you, you know

Q. Of course, yes, and I intended to ask you anyway as a Central Banker.

A view has now been expressed in the report, the examination report of the Central Bank, and this is for internal purposes in the Central Bank; isn't that correct?

And whether the scheme is tax evasion or tax avoidance, and just operate on the basis here that the view is taken that it's tax avoidance.

A. There is no reference to tax evasion here.

Q. No. We know that on previous documents there was, but

A. I don't know who the examiners were or who reviewed this particular one.

Q. I think the examiners at that time were Mr. Fitzgerald, Mr. Burke, and Hynes and it was reviewed by Mr. Byrne.

A. Mr. Byrne evidently accepted this then, that he accepted the use of the word avoidance in this context obviously.

Q. Well, the view of the Central Bank, so, therefore, appears to be that a bank, like any other professional, would not be precluded from giving advice in relation to tax avoidance; isn't that correct?

A. Mm-hmm.

Q. But that the view of the Central Bank was that a bank should not assist or participate in a tax-avoidance scheme; isn't that correct?

A. Yes.

Q. That it was not appropriate. And I don't know how we'd deal with the word appropriate, but that a stronger word was used here by the Central Bank, it was unethical?

A. In this case?

Q. Yes.

A. Yes, yes.

Q. Now, if a bank was engaging in an activity which the Central Bank considered to be unethical, might I suggest to you that that would call into question whether the people engaged in this unethical activity were appropriate people to be running a bank in this state?

A. It would not reflect favourably on them, but as I have said before, I mean, the matter would have to be considered in the round. And you drew attention, if I may say so, a few moments ago to the summary of the findings of this report and the thing about tax parts to do with participating in taxation avoidance arrangements.

May I just draw attention to the other main findings.

"The bank is in compliance with conditions...considerable success has been achieved with regard to the recovery of debts and that were forming...profitability, shows

considered improvement. The bank's own portfolio..."

This is what I mean by taking an overview of what in many other respects, the bank was functioning quite well.

Q. Might I suggest, Mr. O'Grady-Walsh, not confusing quantitative with qualitative in those circumstances.

A. On that in my mind, the distinction isn't as sharp as has been made by other witnesses. I mean, I noticed in Mr. Byrne's thing, a distinction being made between quantitative and qualitative and indeed between micro-supervision and macro-supervision. Indeed, when I first saw them before I attended here at all, I thought they were rather stretched, frankly.

Q. I see.

A. The distinctions. There is a kind of seamless aura about the whole thing, certainly coming at it from where I came at it and but, I mean, I have no difficulty in saying that these matters obviously impinged on quantitative things and they impinged on qualitative things.

Q. What I am concerned about here is and of course, I don't want to get into a discussion of, indeed, the logic and the transition from quantitative to qualitative, but from the Central Bank's point of view here, what was happening was, as you looked at this report, on the quantitative side, compliance with conditions was occurring. The loan exposure was being reduced. They were purely quantitative matters, aren't they?

A. I wouldn't agree with that.

Q. You wouldn't agree?

A. No, because it reflects the extent to which the management was responding to what the bank was wanting them to do. I mean, the quantitative was the result of policy action on policies in the bank which surely is relevant to an assessment of the qualitative

Q. Could I ask you this, quantitative, as I understand it from Mr. Byrne's evidence, was to do with how people were carrying out the banking business, would that be

A. No, there was a measurement of the end result.

Q. Of them carrying out banking business?

A. Yes.

Q. Qualitative related to the integrity or the fitness of a person to carry on the business; is that right?

A. No. It was broader certainly that, but broader than that. I mean, the quality, the manner in which they were responding to our pressures generally, the manner in which they were conducting the bank's business generally.

Q. Mr. O'Grady-Walsh, does that sit easily with the view you expressed in the Irish Trust Bank case about the fitness of somebody to be involved, albeit somewhat differently than these particular directors were involved in Guinness & Mahon?

A. I reread recently the report of the Irish Trust Bank case, and it appeared to me evident that the Central Bank had some knowledge or other that it was unwilling to come forward with. I don't know at this time what that

knowledge was. The Bank was obviously trying to be fair and discreet and whatever. There was an expression used, however, by somebody from the UK who we had consulted with, said Mr. Bates' integrity had matured. Now, I don't think it would be fair or proper for me to elaborate on that, but I think that the normal person would read something into that, and I am in a difficulty because you are asking me really to comment on things that I felt or knew about Mr. Bates and I wouldn't like to do that.

Q. I am not asking you about that. I am asking you for what

A. No, but you are asking me

Q. I am asking you to recall what you expressed in sworn evidence in the High Court in that case.

A. What did I say in sworn evidence in the High Court?

Q. Just on the newspaper reports that we have, and you can correct me if I am wrong in this, but would this be the type of evidence you gave? Mr. Bates had been involved in a company which had got into difficulties prior to applying to have a banking licence in this country; isn't that correct?

A. Yes.

Q. In Burnley. And I think and I am not suggesting that Mr. Bates did anything wittingly or unwittingly in relation to his application, but there was a failure to disclose the company failure to you as the licensing authority; isn't that correct?

A. Yes, in applying for the licence originally, I think so, yes.

Q. And I think you expressed the view in the High Court that it wasn't the fact that Mr. Bates was involved in a company which had failed, because that can happen to any businessman, I suppose, but that your concern and the concern of the Central Bank was the failure to disclose that; isn't that correct?

A. I am quite sure of this, I mean, I don't remember, but that wasn't the extent of our concern about Mr. Bates. If you are telling me that I swore in the High Court that that was the only matter

Q. I didn't say it was the only matter. I didn't say it, but that what concerned you was not that somebody was involved in a company failure, because that can happen to anybody. But that what did concern you was that there was failure to disclose that on the application?

A. Well, obviously, that would concern us, and I am sure I was right in swearing that that would concern us.

Q. Yes, I am not suggesting that you weren't right. And that you expressed the view in the High Court that for somebody to hold a senior position in a bank, I won't go into every position, but a senior position in a bank, that he would have to be a person of the highest integrity.

A. Mm-hmm.

Q. That's what the Central Bank would expect; isn't that right?



A. Is that what I said?

Q. Yes. And that it was the failure to disclose which exercised your mind to form a view about Mr. Bates, or words to that effect?

A. Presumably that was identified as one factor. I mean, that wasn't I don't think it's suggested that was the only factor.

Q. There was also a letter from the Bank of England, I think.

A. Well

Q. That came out in the evidence. But your view, your view was that for somebody to hold a senior position in a bank, they had to be of the highest integrity.

A. Yes.

Q. This is altogether apart from their act as a businessman, as a banker, that they must be people of the highest integrity; isn't that correct?

A. Was I stating a general proposition there?

Q. Well, I am asking you now, was that your view or is that your view?

A. Of course, yes. Can I make a distinction?

Q. Yes.

A. The trust bank, the Irish Trust Bank, was largely owned by Mr. Bates.

Q. I know that.

A. And clearly one's concern about the integrity of a person has much greater relevance in the case where they own and

control a bank than one in which the bank is owned and controlled by a prestigious and strong external institution. I am not getting away from the fact that we would expect people to be of the highest integrity, but I am making distinctions between the implications of falling from that high test on the one hand, in a bank where the man owns a business and another where he doesn't, he is a paid official effectively.

Q. I am asking you now, that when a view was taken by the Central Bank in its examination report, that the activity being engaged in by this bank was unethical, you could hardly, I suggest, have held the view then, that the people involved in the running of this bank were people of the highest integrity?

A. If you had said to me you wouldn't have thought that Mr. Traynor was a person of the highest integrity, I would be inclined to agree with you. But I am not sure I would extend it to other people.

Q. Well, could I suggest to you at least, at least, you must have somebody in the Central Bank would have formed the view at that time that Mr. Traynor was not a man of the highest integrity?

A. So it would appear from this, yes.

Q. And so in those circumstances, might I suggest to you that it would have been open to the Central Bank to take some steps to have him removed from his position?

A. No, I think that's a leap too far, if I may say so.

Q. I see.

A. I think I should when I said a moment ago agreed that he might be regarded as a person not of the highest integrity, I don't think one would say that he wasn't a man of integrity. You know, highest integrity has a ring to it, the man I told you yesterday, and I would still say he was never personally ever convinced that what he was doing was illegal. And I cannot speak for the rest of the Bank. So, I mean, if a man was very if, as I suggested yesterday, he was a person who would embark on these tortuous arrangements to be careful to be within the law, to facilitate all this business, then you could say it's unethical really for a banker to be doing that. It's unethical. And whatever word you could even say it's not in the national interest. But to come along and say, this man isn't fit to be a director and come along with these assertions to I don't know how we would have gone about it, to his Chairman, and say you better remove him. I think that would be an extremely serious thing to do, especially considering that the Chairman had evidently or was evidently endorsing what was going on and indeed all the other directors.

Q. Didn't that make it all the more serious?

A. No, what it would do to me here were people whom I knew and believed, and still believe, Mr. Guinness and Mr. O'Kelly, people of the highest probity, and I still regard them as such. Now, the fact that they were there

offered a reassurance, offered a reassurance that what was going on here by Mr. Traynor, however much we might dislike it, however much we might question it, wasn't something that we could on about which we could make acquisitions against him and ask his colleagues to remove him. I think it would be an extraordinary thing to do.

Q. But you weren't questioning it. You were accepting it.

There was an assertion here. Leave aside the legality.

A. Pardon?

Q. Leave aside the legality for the moment.

A. Yes.

Q. The Central Bank took a view that Guinness & Mahon, not just Mr. Traynor, Guinness & Mahon were engaging in an activity which was unethical and contrary to the national interest.

A. Yes.

Q. And are you seriously suggesting in those circumstances, Mr. O'Grady-Walsh, that the Central Bank should have taken the view that these people were people who were appropriate to run a bank in this state?

A. I would say notwithstanding how you put it, that I continue we, in the Bank continued to regard the people on the Board of Guinness & Mahon as suitable people to run a bank.

Q. I know that's what happened. I know that is what happened. But I am asking you, in light of the evidence which was available to the Central Bank, the view, which

nobody could suggest wasn't a reasonable view for the Central Bank to take

A. Mm-hmm.

Q. was in existence within the Central Bank, and notwithstanding all of that, you were saying that the Central Bank did not form the view that these people should be removed from their position?

A. Well, it appears in a report it appears in a report of examiners that the examiners said that in their view it wasn't appropriate or ethical. Now, you asked me was that the Central Bank view? And I said it possibly was. But what we had before us is a record of what the examiners said to him. It may be, I don't know, it may be that when we saw this report, that we sat down in conclave and considered it. I don't know. And that a view was formed in the Bank that notwithstanding that we were very unhappy with what was going on, notwithstanding that we felt that it wasn't appropriate for them to be doing that, that or that it was in the Bank's interest of the stability of the banking system as a whole to go with this and to exert pressure on them to discontinue it, which is what we did and which was eventually effective, to go along with it.

Q. Absolutely ineffective, Mr. O'Grady-Walsh. The system continued and grew in Guinness & Mahon.

A. Not to the knowledge of the Central Bank.

Q. No. No, I know that. I know that. Things got worse. Information was concealed from the Central Bank. A bank

was being run within the bank; isn't that correct?

A. I have heard this yesterday. I mean

Q. Could I ask you this, Mr. O'Grady-Walsh: There existed, and there is evidence from many officials from Guinness & Mahon who have given evidence here, that a bureau system was maintained within the records of Guinness & Mahon which recorded all of this business; one of the clearest examples of a bank being operated within a bank; isn't that correct, would you agree?

A. Yes, if you want

Q. An unlicensed bank operating within a licensed bank in effect?

A. If you want to define it like that, yes.

Q. Could I ask you this, if you had known that, would you have made sure that every single person who knew about that was removed from banking?

A. I think so. We didn't know it of course.

Q. I am not saying you did know it. But there was no probing by the Central Bank pushing for more and more documentation?

A. Well, I mean, I don't think that's demonstrable from the documents it seems to me from reading the documents that we constantly came back to this question.

Q. Yes.

A. You are saying there was no probing.

Q. There wasn't follow-through. The Central Bank never followed this through to see that inside Guinness & Mahon,

there was actually printed notepaper headed "Guinness Mahon Cayman Trust"?

A. But

Q. That statements no, no, I am asking about the examinations that were taking place, the direction of examination.

A. In any examination of any bank, if the directors have documentation and headed notepaper and books and records that they concealed from the Central Bank, how in heaven's name could the Central Bank or any other examiner know about it?

Q. Well, in 1989 the internal auditors found it.

A. '89?

Q. In '89 the internal auditors found it. Again, the internal audit report was concealed from the Central Bank or wasn't furnished to the Central Bank which it should have been in the normal course of events.

A. The internal auditor was working in the bank, he was an officer of the bank.

Q. Yes. But looking at it so, and we know that the Central Bank didn't do anything about, notwithstanding information available to it at the time, looking at it with the benefit of hindsight and speaking as a Central Banker, and from the evidence which has emerged at the McCracken Tribunal and this Tribunal, that a bureau system was being maintained, that switches were taking place in relation to funds, that Irish residents were being serviced through Guinness &

Mahon on behalf of this purported offshore transaction these offshore transactions, that information was deliberately withheld from the Central Bank, and I just list those few matters for the moment.

Would your view what would your view be now about the appropriateness about anyone who knew anything about those transactions inside Guinness & Mahon to have been proper persons to be engaged in banking?

A. I don't think that's a fair question to put to me. I mean, that's a purely hypothetical question. You are talking about things that evolved over the subsequent years. What we knew at that time was that there was some complex system of offshore accounts and offsetting. We pursued that. We had no means of knowing that there were hidden books or any of the things that you have listed there. They have all come to light

CHAIRMAN: Sorry to interrupt you. My understanding is in answer to Mr. Coughlan a moment ago, you said if you had known of the bureau system, it is accepted you did not, you would have moved to remove persons involved, so I think you did express that view, Mr. O'Grady-Walsh, and of course I accept you were entirely unaware of these particular ramifications that have only come to light in the Tribunals. But may I take it that is the view that you are happy to express that if you had known, it would have been incumbent on you to act?

A. Absolutely.



Q. MR. COUGHLAN: And to remove every single person who knew about this or participated in it?

A. We didn't know.

Q. I am only asking for your view now as a Central Banker with the benefit of hindsight.

A. Yes.

Q. Now, of course, the Central Bank proceeded on the basis, as evidenced from these reports anyway, that there was tax avoidance; isn't that correct?

A. Yes.

Q. Mr. Traynor protested at one stage that there was neither tax avoidance or tax evasion going on and he gave some explanation of discretionary trusts being used by international companies for the purpose of moving funds around the world.

Now, again, I just put that to you as another example of a piece of evidence which was available to the Central Bank which it is hard to see how anyone could have placed any reliance on.

A. Could have placed any reliance on the information?

Q. Yes, that Mr. Traynor was saying there wasn't tax avoidance going on. Multinational companies using discretionary trusts to move money around the world. Like, without being a lawyer or without being any sort of tax consultant or expert in discretionary trust, to think that shareholders of a multinational company would allow their

funds to be placed in discretionary trusts and possibly given away to anyone else, it's hard to see how reliance could be placed on it, could you agree?

A. Yes.

Q. Now

A. I don't think the Bank did place reliance on it.

Q. No, but here was a director giving a very unusual account of matters, would you agree?

A. Yeah.

Q. And the Central Bank continued to deal with that director?

A. Yes.

Q. I think the 1978 examination report included a schedule of loans which were backed by either Cayman deposits or Guernsey deposits. I think it's Appendix 10 of the report.

A. At tab?

Q. I will get you the tab now. It's the last page of 3.1. Tab 3.1.

A. Yes.

Q. And that disclosed to the Central Bank that there was a loan outstanding or borrowing outstanding of €416,467 which was indicated to the Central Bank was backed by a deposit in Cayman of €230,000 and it related to K.P. O'Reilly-Hyland; isn't that correct?

A. Yes.

Q. Now, I think at the time Mr. O'Reilly-Hyland I think at the time Mr. O'Reilly-Hyland was a director of the Central

Bank; isn't that correct?

A. Yes.

Q. Do you remember seeing that particular reference?

A. No, but I mean, I probably did.

Q. It must have come to you?

A. I probably did.

Q. Now, this did not, I suggest, raise questions about Guinness & Mahon and its customers and questions of tax or otherwise. They were being dealt with separately in the report. But might I suggest that they would have raised questions within the Central Bank or should have raised questions within the Central Bank?

A. The fact that he was listed here?

Q. Yes.

A. I would imagine so.

Q. And really I am more concerned with this in terms of conflict situation, conflicts of interest situations or matters of that nature. Do you know if the matter was taken any further than you in the Central Bank?

A. I don't know, but I would be highly confident that I mean, having noted, I am assuming that I did note it, that I would have talked to the Governor and/or the general manager about it.

Q. I think just I think the Governor will give evidence, Mr. Murray was the Governor, I think, at the time?

A. Yes, yes.

Q. I think will give evidence that he has no recollection of

the matter being brought to his attention.

A. Well, I have no recollection of bringing it to his attention. I am merely saying that it's highly probable that I did, to him or to Mr. Breen, because it would have been my sense of duty, my sense you know, I mean, it would immediately have the significance or the potential significance of

Q. At least you had to pass the information on?

A. Absolutely, yes.

Q. Now, in fairness, you were not then and never have been a member of the Board of the Central Bank; isn't that correct?

A. That's correct.

Q. So as to how a matter like this should have been dealt with either by the Governor or the Board is not a matter that you could properly comment on; is that correct?

A. Well, if Mr. Murray is going to give evidence, I don't think it would be appropriate for me to, you know, to comment on what should

Q. Should be done in this situation?

A. Should or shouldn't be done, yes. I just feel though, on the face of it, if this was there in the context of the totality of our knowledge, I mean, what this might suggest, because I notice there isn't a correspondence between the loan and the deposit, so it evidently wasn't a back-to-back situation or maybe there were other accounts, but that I have forgotten my trail of thought.

Q. Could I assist you. Could it raise in the mind of somebody who might have been having some doubts about what was going on in Guinness & Mahon, if they saw that, well, there was a loan to a director of the Central Bank, that it might give some comfort to somebody to say, well, maybe what's going on in Guinness & Mahon is all right?

A. Ah no, no, I don't think I didn't know that's where you were heading I don't think that would give us comfort.

I think it would raise a question in one's mind, but

CHAIRMAN: I think you were anxious to express a view, so by all means, Mr. O'Grady-Walsh, if you want to

A. It's that it's that it would have occurred to me, I am quite sure this is strange, this is something to do with this tax avoidance thing that we are doing here and it may be that Mr. O'Reilly-Hyland is involved in this. That's what would have prompted me to mention it up the line, and that's why I am pretty confident that, you know, given my sense of responsibility and so on, that I would have said to the Governor or the general manager or both, by the way, Mr. O'Reilly-Hyland's name has surfaced in all of this.

You know, that would have been the context, but I don't think I wouldn't for a moment agree, if I may say so, that one would take comfort and say, it must be all right because Mr. O'Reilly-Hyland is involved. I think it's the other way round, just look and say uh-uh, you know.

Q. Yes. Well, I understand your evidence and your concern

about the safety of deposits in banks and attempting to nurture this bank along. The fact that the Central Bank were effectively giving a pass mark to Guinness & Mahon on the examinations or the inspections to continue, do you think that that should have been done in the circumstances of 1978 when it became apparent to the Central Bank that a member of the Board of the Central Bank had some involvement, we don't know what it was, but had some involvement in a scheme which the Central Bank had misgivings about, without the matter going to the Board of the Central Bank?

A. Sorry, the beginning of your question, did you think that did I think it appropriate

Q. The Central Bank were giving a pass mark to Guinness & Mahon on the examination. There was a member of the Board of the Central Bank involved, we don't know how involved, or what his involvement was, but he was involved in a scheme which the Central Bank I am not saying anything about Mr. O'Reilly-Hyland now. There is a document here and the Central Bank were expressing misgivings about a scheme. I am asking for your view as to whether Guinness & Mahon should have been given the pass mark by the Central Bank without the issue at least going to the Board of the Central Bank to clarify the documentary situation.

A. I don't think that our view about, you know, giving a pass mark as you put it, to Guinness & Mahon, would have been impacted on one way or the other, but observance of the

fact that Mr. O'Reilly-Hyland had an account relationship. I don't think that and certainly the people who did the report rightly merely recorded a fact, you know, they just put it in. They didn't comment on it one way or the other. And when it came to me, I said assuming I noticed it and, you know, I am not suggesting I didn't, but I don't remember, I am assuming, I would certainly have brought it to the attention of the Governor and Mr. Breen. You know, whether it was appropriate to bring it to the Board or not, you know, isn't really for me to say, I think, but I think you are asking me my opinion.

Q. Yes.

A. Bringing first of all, I think it would have been a highly questionable thing to do to bring a matter like that into open forum in the front of Mr. O'Reilly-Hyland's colleagues when all that was at issue here was some evidence that he that the accounts he had might have had a connection with something about which we had, to say the least of it, misgivings, and I think that it would have been I mean, if I were Governor, I don't think I would have, you know, brought it to the Board, you know. However else I might have dealt with it, I don't think it would be an appropriate thing to do. It would be a different matter, I mean, if I had concrete evidence that there was something wrong being done by the directors, even then I don't think it's to the Board

Q. You'd go to the Director himself perhaps?

A. Yes, I would think so. If that were the case. I mean, I postulated

Q. Well, I suppose perceptions are as important as facts and the question of conflicts of interests. What might a third party think of the Central Bank if this matter emerged into the public and the matter had not been brought to the Board; isn't that so?

A. It's a hypothesis. I think I wouldn't exclude the possibility that it would become known to the public. I am not saying that that was anything the Central Bank relied upon, but I am just making the point because I think that the hypothesis is not real frankly.

MR. COUGHLAN: Thanks, Mr. O'Grady-Walsh.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. CONNOLLY:

Q. Mr. O'Grady-Walsh, I want to ask you some questions on behalf of the Revenue Commissioners.

Was it your view in these years, 1978 and '79, that what was involved in Guinness & Mahon was tax avoidance?

A. My personal view?

Q. Yes.

A. I wasn't an expert. I think the view that I went along with, or the view that I had, was that it was tax avoidance, not tax evasion.

Q. If your view was that it was tax evasion, would that



justify you taking a stance that Mr. Traynor, as the Chief Executive of Guinness & Mahon, should stand down?

A. If it was I imagine that if it was absolutely clear to us that that's what was happening I don't know, I think I'd have I think I would then feel obliged to pursue it with his co-directors, first of all, because they were they had attended meetings and so on, and I have to tax sorry, confront them with the question as to whether they that we had in mind that this was tax evasion and what was their understanding of it. I mean, I would have had to pursue that very carefully. And if in the end of the day we could see that there was a conspiracy, if you like, or that there was a concerted effort by this bank and its management and Board for tax evasion, I don't think really we would have had any option but to act against the bank in some way.

Q. So, the deciding factor as to whether or not someone like Mr. Traynor should step down, or perhaps even other members of the Guinness & Mahon Board, was the question of whether or not tax evasion or tax avoidance was involved; is that correct?

A. Well, you are putting that very starkly. I tried to illustrate a while ago that there was a multiplicity of factors we would take into account, again if we were accepting there was tax avoidance, there was a whole just, we couldn't take that simply and say it's all right then. We would have to have regard to a whole

lot of other factors as to how the bank was being run.

Q. I think your answer to Mr. Coughlan on that is that the fact that there was tax avoidance in itself wouldn't be sufficient for someone like Mr. Traynor to be required to be stood down.

A. That's right.

Q. What other factors would be required for you to say that is sufficient for him to be sidelined?

A. A whole variety of things. I mean, how he was responding, how otherwise he was running the bank, how he was responding to our requests to reduce overexposures to different kinds of loans, how he was every kind of problem relating to his management of the bank, how he was responding to them and dealing with them.

Q. Including whether or not the tax avoidance was being brought to an end?

A. I presume so, yes.

Q. But in any event, tax evasion, if established, would have been a clear-cut indication for the standing down of Mr. Traynor and perhaps also some other members of the Board?

A. I think so, yes.

Q. Well, it was the case in 1978 that there was some body of educated opinion within the Central Bank that this was tax evasion rather than tax avoidance; isn't that correct?

A. If you are referring to what appeared in a report

Q. Well, I refer to the reports and also the testimony of the

last witness.

A. I was

Q. There was some opinion of responsible officials at the time in 1978, that this was tax evasion rather than tax avoidance; isn't that correct?

A. That's correct.

Q. And it would appear that in some way, the preferred view of the more authoritative opinion was that it was tax avoidance at best and that was the way it was to be dealt with in the records, isn't that is that a fair

A. I am not sure by what you mean by the preferred view? That has a connotation which I wouldn't accept.

Q. I will put it bluntly. The word "evasion" was crossed out and "avoidance" was put in its place but the rest of the report remained as it stood.

A. Yes.

Q. Does that not indicate a preference for the word "avoidance"?

A. It reflects a different judgement.

Q. Well, does it indicate a prevailing judgement that that was the final form of the report that was going to be kept on record?

A. It reflects the judgement that mattered.

Q. Okay. Well, before that view was reached, to what extent do you know was there any deliberation, as you describe it, in conclave in the Central Bank, to work out whether, in fact, it was tax evasion or tax avoidance?

A. Well, I have already said that we had a structure in this banking supervision department, we had brought in professional people there, the head of the Department, the head of the Department who would have liaised with me evidently had the view that it was tax avoidance. I wasn't an expert, nor am I on tax matters at all, and I said that there was a hierarchial arrangement there. It doesn't seem to me the sensible arrangement that somebody at my level would start an inquisition as to why you think that, especially when I didn't have the competence in the area.

Q. Just to take Mr. Coughlan's question. It wasn't beyond you to take advice from outsiders who would be governed by confidentiality. It wasn't beyond you to do that if you felt in some way lacking in appropriate skills to make the judgments required?

A. I have referred to lack of skills on my part. I am not saying there was a lack of skills in the Bank.

Q. Well, let's look at one item that emerges in one of these reports that was an identification that there was money offshore in overseas deposit accounts, there was no interest effectively being no tax being paid on any interest that would accumulate on that money, and the loans which were backed by these overseas deposits gave rise to interest relief being claimed in domestic tax situations.

Now, if we have interest relief being claimed in relation to domestic tax exposure and no tax being paid on the

overseas interest that's earned, now, what does all that indicate to you? Does that not indicate the hallmarks of tax evasion rather than tax avoidance?

A. I honestly have no idea. I don't know. It's not part of my function to be a tax I don't know.

Q. Well, would you regard it as a prudent matter for the Central Bank to make some inquiry on the way these accounts were operated generally, not any specific accounts, how they were operated generally, so as to come to a more informed view as to whether this was tax evasion or tax avoidance?

A. Perhaps our inspectors did that.

Q. Well, you don't know one way the other whether there was any inquiry into this matter?

A. I presume that in compiling their reports, they acted conscientiously and they were qualified people. I mean, if you are saying that we didn't bring in outside help or outside experts, then I acknowledge that we didn't do that.

Q. All right. Well, insofar as you relied on the skills available within the Bank, do you know, for instance, whether any inquiries were made of Guinness & Mahon as to whether any of these persons were in a situation of regularity with the Revenue to give the Central Bank comfort that was tax avoidance rather than tax evasion?

A. I don't think the Central bank would have dreamt of asking about any individual in relation to the Revenue if that's

what you are asking me.

Q. Well, what I am asking you is what determined that this was to be tax avoidance rather than tax evasion on what we have seen in these reports?

A. I don't know.

Q. Why is it your preferred view that this was tax avoidance rather than tax evasion?

A. The senior person in the department, the manager of the department for whom I had the highest regard and still have, evidently took that view. You don't what's the common expression which I don't like? You don't buy a dog and bark yourself. I mean, an organisation can't function if you are going to get people up the hierarchy questioning the people below about recommendations that are coming to them.

Q. And when you mentioned to Mr. Coughlan that pressure was being brought to bear, can you specifically say that at any stage in 1978 or in subsequent years that there was ever an indication to Guinness & Mahon that if they didn't regularise their position with regard to these overseas accounts, that they might have to consider standing down Mr. Traynor or some members of the Board? Was that ever specifically invoked to your knowledge?

A. Not to my knowledge. And I would be surprised if it were. I don't think that you know, I have tried to answer the question already, as to whether we would request that Mr. Traynor be stood down, and I think that answer

still applies. I mean, I would even say that as time went on, when it appeared, when it appeared that there was a response to the pressures that we undoubtedly maintained, I said yesterday we were obviously on their backs continually about this. It appeared to be being effective, I think the case that might have been brought against Mr. Traynor was diminished.

Q. One distinction I want to bring to your attention and ask for comment in relation to the Irish Trust Bank which was explored by Mr. Coughlan as an example of how the Central Bank conducted its business on a previous occasion.

Mr. Bates was effectively the prime shareholder of the Irish Trust Bank, so in his being regarded as an unsuitable person, you were effectively closing down the bank, whereas the standing down of someone like Mr. Traynor was not going to close down Guinness & Mahon. It might have created some awkwardness, but it wouldn't have had the huge complications that would have arisen in the situation with Mr. Bates.

A. Sorry, we weren't closing down the Irish Trust Bank.

Q. I said it could have the effect of closing down the bank because he was the prime shareholder.

A. No. Sorry. We acted I mean, we imposed the condition requiring him to divest himself of his shares, I think that was what it was, and to remove himself. We weren't seeking to close down the bank. Well, he took an action

which brought the matter in the public arena. The bank closed about a year later, and I can't recall whether the one precipitated the other or not, but it certainly was a good illustration of the limitations on the value of conditions.

Q. No, but this was a bank with no previous trading history, and I can appreciate, compared to Guinness & Mahon, nothing like it, and here was a situation where Mr. Bates was apparently central to all that was involved in the Irish Trust Bank. So that in the event that you were to take a view as to the suitability of Mr. Traynor as a person of appropriate probity to be involved as chief executive of Guinness & Mahon, it wasn't going to be fatal to the deposit holders in Guinness & Mahon in the same way as the view taken in relation to the other bank might well have had serious repercussions.

So what I am putting to you is that the role of the Central Bank, which has to balance the national interest and the depositors of banks, in its own delicate way, was unnecessarily slow in invoking appropriate sanctions against Guinness & Mahon, given all the information that it had in 1978 and subsequent years.

A. I think I have already referred in my evidence in response to Mr. Coughlan to views we had about Mr. Bates. To elaborate on those views, A, I have a memory deficit, and B, I do know that there were great sensitivities at the time about our disclosing in full what we knew or thought



we knew about Mr. Bates. We were in no doubt, no doubt about his unsuitability. And he was the owner of a bank and what we sought to do was to bring about a situation in which he would no longer be owner of the bank, and he was Chairman of the bank.

Now, there is a complete difference, if I may put to you, between such a situation the nature of the offence, in inserted commas, the nature of the matters that were wrong in relation to Mr. Bates were of an entirely different nature and of an entirely different order well, of an entirely different nature from those which pertained to Mr. Traynor, and I don't think we can make a valid comparison.

Q. Well, I can put it this far, that there was a certain amount of disquiet in the Central Bank as to how Guinness & Mahon was operating these loans backed by overseas deposit accounts.

A. Yes.

Q. And that that disquiet went so far as to have a view of some persons that what was involved at worst was tax evasion, but at best tax avoidance, and that they were not going to regard these loans as being appropriately secured from the prudential point of view. That was the information, if I can so summarise it, that was available to the Central Bank during key years.

Now, what I am putting to you is the Central Bank, so far

as you have given evidence so far, did not take it on itself the task of exploring in any great detail as to whether this was really tax avoidance as opposed to tax evasion. You simply wanted the practice ceased or diminished, but you didn't grapple with the situation to test out, is this as serious as some people think it is?

This could be tax evasion, can you comment on that?

A. I have to assume that our professional people pursued that matter. I mean, I didn't pursue it, and I presume we had a banking supervision department staffed with well qualified people who did examinations, they obviously encountered great difficulty in getting to the bottom of the thing. But, I mean, to suggest that they didn't pursue it, I think would be entirely wrong.

Q. All right. Well...

Well then, tell us what would be appropriate information for you to have that would have satisfied you or your colleagues, that this was tax avoidance rather than tax evasion? Let's assume the investigation was carried out, what would satisfy you that this is probably tax avoidance rather than tax evasion?

A. You mean the other, evasion, rather than avoidance?

Q. No, no. You got sufficient information, it would appear, to give you the comfort for the that this was tax avoidance and not the serious matter of tax evasion. What kind of information do you say would be appropriate to be

present to give you that kind of comfort?

A. I don't know.

CHAIRMAN: Well, I was going to invite you in a moment, Mr. Nesbitt, and I am aware informally, Mr. Nesbitt, you may be seeking representation on a limited basis in that context then, yes, you can proceed.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Mr. O'Grady-Walsh, I am just interested in the document which is described as a extract from the Guinness & Mahon examination report of the 30th April of 1978, it's tab number 3.1, Appendix 10.

A. I don't know who this gentleman represents.

CHAIRMAN: This is Mr. Nesbitt who appears for Mr. Kenneth O'Reilly-Hyland.

MR. NESBITT: Sorry, just very few questions.

Q. Now, as I understand your evidence in relation to this report, you inquired of Guinness & Mahon, obtained information and then wrote the report; is that right?

A. Our people did, yes.

Q. And you were involved in the division that was doing this, wasn't that right?

A. No, I wasn't.

Q. You weren't at the time?

A. No, I wasn't. I was the deputy general manager. I had many other responsibilities.

Q. Indeed. And as I understand it, when the report was written, the only complaint about what you had found that was contained in the report was that there was a view that there was an inappropriateness of Guinness & Mahon being a lender as well as in some other guise, through a subsidiary or some other company, being a bank that provided deposit to back up a lending, is that right?

A. I don't know I mean, what does the report say? We were unhappy about these accounts and arrangements.

Q. Yes. The photocopy is bad, but it's the part under "Taxation avoidance schemes, conclusions and recommendations" that I am concerned with.

A. Yes.

Q. So I think I understand it, but the view was not that anybody who may have borrowed from the bank was doing anything wrong, but there was just a level of inappropriateness of the bank being involved in any back-to-back arrangement that might exist.

A. I don't think it was expressed. I think there was a view that it was inappropriate that it would be involved in a system of tax avoidance.

Q. Tax avoidance is legal?

A. Pardon?

Q. Tax avoidance was legal.

A. Yes.

Q. So, this seems to be quite a fine distinction. Presumably they were allowed do anything that was legal?

A. Pardon?

Q. Presumably they were allowed do anything that was legal?

A. No. I think it's been brought out that we were unhappy that notwithstanding it was avoidance and we thought it was inappropriate.

Q. Very good. I assume all the members of the Board of the Central Bank would have banking arrangements with banks in Ireland?

A. Yes.

Q. And every time an issue would arise, that do it arise concerning a bank, there would be likely members on the Board who would say, well, I bank with that bank or I have had business with that bank in the past?

A. I don't think that any of these inspection reports went to the Board of the Central Bank as a matter of routine.

Q. I think that's probably the case. I am asking a slightly larger question, which is: The very nature of the role of the Central Bank meant that people on the Board would have banking relationships with the banks that the Central Bank oversaw. So that actually having a bank account or borrowing from banks wasn't something that was considered unusual or to be frowned upon if you were a member of the Central Bank Board?

A. Absolutely not, no.

Q. And I assume, also, that consequent upon this report, if anybody in the Bank had considered that it reflected badly on Mr. O'Reilly-Hyland, it would have been brought to his

attention?

A. I can only speak to my own role and I have explained already this morning that if that I am pretty confident, I cannot recall it, but I am pretty search, pretty sure that I would have brought this particular thing without necessarily having a judgement as to whether it was proper or not, but in the context of the report, I would have brought this to the attention of the Governor or the people above me.

Q. Well, you didn't bring it to Mr. O'Reilly-Hyland's attention?

A. Not my function.

Q. And his evidence will be nobody mentioned it to him?

A. I can't comment on that, I certainly didn't and it wasn't my job to do so.

Q. I suggest you are able to comment on the following. If the thing was not brought to his attention, we must conclude that nobody to whom you had mentioned it, considered it reflected badly on Mr. O'Reilly-Hyland or his capacity as a governor a director of the Bank?

A. I can only conclude that if, on the basis of your hypothesis, let's say I can only conclude that they thought for one reason or another they wouldn't do so. I can't get into their minds on why they might or might not so decide.

MR. NESBITT: Thank you very much.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FEENEY:

Q. MR. FEENEY: I want to clarify one matter with you, Mr. O'Grady-Walsh.

You have booklet in front of you, and I just want to go through some documents to put things in date order as to what occurred.

Could you start at tab 2.1 which is a meeting of the 25th January 1978. And you were present at that meeting?

A. Yeah.

Q. And in the penultimate paragraph it is indicated that in conclusion, Mr. Traynor said, and then Mr. O'Grady-Walsh, in the last sentence, said that he would certainly consider the matter, the matter then concluded. What was being requested was that Mr. Traynor the bank had loans of €4 million which were secured by deposits placed with the banks Cayman Islands subsidiary and he wondered if the Bank would consider these loans as not risk. That was a request you were asked to deal with?

A. Yes.

Q. Now, if you go over to tab 2.2, that meeting we have just had was on the 21st January. You have a three-page document which is dated at the end, the 10/2/78, do you see it dated at the bottom?

A. Yes.

Q. Now, in the second paragraph underneath 1 and the heading,

it indicates that the method by which these loans are secured is complicated and it is designed as a tax-avoidance scheme. At that stage, you were being informed that it was a tax-avoidance scheme.

A. Yes.

Q. Now, on the 14/2/78 somebody has written in the left-hand column, "some matter". Do you recognise the handwriting in the left-hand column?

A. Yes, it's mine.

Q. Your initials immediately above the date?

A. Yes.

Q. Now, could you read out what you wrote in the column following this paragraph which indicated the presence of a tax-avoidance scheme. What did you write?

A. I wrote: "The Central Bank should not" which I underlined "exclude these from risk assets for purposes of the capital requirement."

Q. Now, that is you arriving at a view in response to the matter which Mr. Traynor has requested you to arrive at in the penultimate paragraph of the meeting on the 25th January?

A. I said I would consider the matter.

Q. Yes, and you consider the matter and the view you form as indicated in that note of the 14/2/78, is that they should not be allowed for

A. That was my view.

Q. And you do that on the basis of the memo which was



available to you dated 10th February.

A. Yes.

MR. FEENEY: Thank you very much.

CHAIRMAN: Thank you very much, Mr. O'Grady-Walsh.

A. Thank you.

THE WITNESS THEN WITHDREW.

MR. HEALY: It's a matter for you. I could call another witness now or I could

CHAIRMAN: I think you should use the time, Mr. Healy, and get started.

MR. HEALY: Mr. Ken O'Reilly-Hyland.

KENNETH O'REILLY-HYLAND, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Mr. Nesbitt, I take it you are formally seeking limited representation? And I think it's Mr. O'Shea is instructing you?

MR. NESBITT: Yes, Kennedy McGonigal Ballagh are the solicitors.

CHAIRMAN: I think clearly in the context of what has risen in the usual basis, I shall accede to that.

MR. NESBITT: Thank you.

MR. HEALY: Thank you Mr. O'Reilly-Hyland.

Q. Now, I think, Mr. O'Reilly-Hyland, your solicitors were furnished with a copy of a letter sent to your solicitors by Mr. Davis, solicitor for the Tribunal, in which Mr. Davis raised a number of questions with you concerning the matters that have been mentioned in evidence this morning and mentioned by your counsel in examining Mr. O'Grady-Walsh.

And you are familiar with the matters that you know the Tribunal wishes to take up with you?

A. Sorry, I couldn't hear that very well.

Q. Are you familiar with the matters the Tribunal wishes to take up with you?

A. Yes, indeed, I think I have a list of them here, yes, thank you.

Q. Now, if I could just put this in context, because I am anxious that matters that are not germane to the Tribunal's inquiry could be ventilated.

What has drawn the Tribunal's attention to your potential involvement as a witness here, Mr. O'Reilly-Hyland, is that in the course of carrying out an inspection at the central at Guinness & Mahon, Central Bank inspectors were furnished with information which caused them to make a list of Guinness & Mahon loans secured by what they describe in parenthesis, and you will see it on the overhead projector in front of you, or on the monitor, they

describe it as: "Deposits held in Cayman Guernsey trust companies". And they identified loans in your name secured, as they put it, by deposits in the Cayman Islands.

Now, I don't want to go into all of the details of the information made available to the Central Bank in the course of their inspection, but some of that information is made available elsewhere in the body of the report and I don't think it need trouble the Tribunal at this stage to go into that information in detail. Suffice it to say, that information shows that a loan in your name in Guinness & Mahon appeared to be backed by a Cayman deposit, the loan was not for the full amount of 416,000 there, I think there may have been a number of loans.

Now, at that time, you were a director of the Central Bank; isn't that right?

A. I became a director in 1973.

Q. This was 1978. You became a director in '73?

A. Yes, I was, yes.

Q. You were first appointed in '73 and were you reappointed in '78?

A. In '78, yes.

Q. You served in total, therefore, for a period of ten years?

A. That is correct.

Q. So that in 1978, when this report was prepared and when a reference was made to your name in the report, you were at

that time a serving director?

A. I was.

Q. Now, in that report, and indeed also in an earlier report, certain misgivings had been expressed by the Central Bank concerning activities including the backing of Guinness & Mahon loans by deposits in Cayman Guernsey. I am not interested for a moment, in at least where your evidence is concerned, in whether these misgivings were valid or justified or not, I simply wish to draw to your attention that certain misgivings from expressed.

Now, the issue the Tribunal wishes to pursue is this:

Whether you were given any notification or given any or made aware in any way of the fact that misgivings were expressed in a Central Bank report concerning activities with which your name was associated in Guinness & Mahon, according to the report now?

A. No.

Q. So you had no official and no member of the Board, I suppose in your case, only the Governor would have done so, brought this matter to your attention?

A. No.

Q. Now, I understand from, or could I just clarify one other matter.

Was the matter drawn to your attention by any individual, any official or any staff member, any director of Guinness & Mahon?

A. No.

Q. From your solicitor, I understand that when you took up your position as a Governor as a director of the Central Bank, you informed the then-appointing Minister, Mr. Colley, that you had certain financial involvements; is that right?

A. I explained quite clearly what my commercial situation was and an active underwriting member of Lloyd's, I had a total exposure to my weight and I had protected this by a trust, an offshore trust.

Q. Can I ask you what relevance would there, or did you let me just rephrase that question. In what way did you think that was relevant to your position or your potential position as a Governor of the Central Bank as a director of the Central Bank?

A. Well, supposing, as in recent events, Lloyd's had made me bankrupt, that would have a very bad effect on the Central Bank and I thought it my duty to tell the Minister that I had such exposure, but I had protected my family, and possibly myself against bankruptcy.

Q. So what you were telling the Minister was that he needn't be concerned that your involvement in Lloyd's could expose you to ruin or bankruptcy and that that might impact on your position as a director?

A. Yes.

Q. It wasn't because you had an offshore trust that you were informing the Minister for Finance of the nature of that

trust or the reason why you put it together?

A. No. The comment about the trust arose out of the underwriting exposure.

Q. Can I ask you just one last question, Mr. O'Reilly-Hyland.

Do you think that you'd have preferred to have been made aware at the time that the Central Bank had expressed misgivings about the activities of a supervised bank where those activities, on the face of the documents the Central Bank had, involved you or appeared to involve you?

A. I think I should have been informed immediately.

MR. HEALY: Thank you very much.

CHAIRMAN: I think it's fair on a number of obvious grounds that we proceed with the other few questions including anything Mr. Nesbitt may seek to raise at this juncture rather than after lunch. Mr. Connolly?

MR. CONNOLLY: I have no questions, Sir.

CHAIRMAN: Mr. Nesbitt?

MR. NESBITT: I have no questions, Sir.

CHAIRMAN: Very good. Then thank you for coming to give evidence, Mr. O'Reilly-Hyland. We will adjourn until a quarter to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1:45P.M.:

PHILIP DALTON, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY  
MR. COUGHLAN:

Q. MR. COUGHLAN: I think you furnished a further Memorandum of Evidence for the assistance of the Tribunal; isn't that correct?

A. That's correct.

Q. And I think in that you have informed the Tribunal that you were formerly an authorised officer of the Central Bank of Ireland and having been requested by the Tribunal sorry, and have been requested, following your taking up of a new position outside the Central Bank in February of this year, to continue to assist the Tribunal in matters relating to exchange control, being a subject upon which you have previously given evidence to the Tribunal and you're pleased to do so.

A. That's correct.

Q. I think you've been asked to comment on exchange control requirements applicable to certain loans made by Guinness & Mahon in the 1970s and early 1980s; is that correct?

A. That's right.

Q. The name of the bank, that is the bank in small B, was changed to Guinness & Mahon Ireland Limited in 1994 and you refer to it as G & M; is that right?

A. That's right.

Q. You informed the Tribunal that the general context of the

exchange control has been set out in statements of evidence previously given by Mr. Louis O'Byrne and yourself to the Tribunal, and will not be further explained in this particular evidence of yours; isn't that correct?

A. That's right.

Q. However, the basis of the law for the matters you've been asked to comment on was set out in Part 3, Payments of the Exchange Control Act 1954, which dealt with the restrictions on payments to persons resident outside the Scheduled Territories as defined from time to time and certain restrictions on payments to persons resident in the Scheduled Territories?

A. Yes.

Q. I think you informed the Tribunal that under exchange controls, a commitment or obligation, whether present or future, actual or contingent, by an Irish resident to a non-resident, with respect to a controlled or restricted activity would have required exchange control approval at the time when the commitment was entered into, if it might in the future result in an obligation to make a payment by the resident to a non-resident.

A. That's right.

CHAIRMAN: Because this is a public tribunal, you might want to put that a little more colloquially.

A. On the basis of tentative exchange control was to monitor capital movements into and out of the state, and there was



a series of delegated authorities which were given to what we call the authorised dealers and authorised dealers by definition were licensed banks in the state that could, under the guidance of the Central Bank, trade in foreign exchange payments in and out of the country.

So to put this in context, what we were saying here was that if any resident of the state, and that was clearly defined within the notices that were issued by the Central Bank, that any resident of the state, if he or she wished to make a payment to a non-resident party, doesn't matter what form the party took, well then it had to either be a delegated authority to which the authorised dealers could process the payments, the transaction, or it had to be a specific authority from the Central Bank.

Q. MR. COUGHLAN: So for an Irish resident to make a payment outside the Scheduled Territories

A. As defined.

Q. as defined from time to time, they either had to have exchange control they had to have exchange control approval?

A. In one form or another, through a delegation or a specific authority from the bank.

Q. I think exchange control ceased to operate on the 31st of September 1992; is that correct?

A. That's correct.

Q. And all of your comments which you will deal with in the

course of this evidence, and the regular exchange control regulations you refer to are prior to that time, correct?

A. That's right.

Q. I think you informed the Tribunal that it is your understanding that the security arrangements entered into by Guinness & Mahon for certain loans involved funds deposited in the Cayman Islands or the Channel Islands.

A. That's right.

Q. You've informed the Tribunal that up to the 23rd of June 1972, the Scheduled Territories included the Cayman Islands; is that correct?

A. That's correct.

Q. And up to the 18th of December 1978, the Scheduled Territories included the Channel Islands?

A. That's right.

Q. On those respective dates each of those jurisdictions ceased to be part of the Scheduled Territories by a Ministerial Order made by Statutory Instrument under Section 30 of the Exchange Control Act; is that right?

A. That's right.

Q. I think the records of the Central Bank, the Banking Supervision Department, contain a number of references to a structure of back-to-back security over certain deposits which was employed by Guinness & Mahon as explained to the Central Bank by Guinness & Mahon; is that correct?

A. That's right.

Q. I just want to make it clear this is information which has been brought to your attention of recent times; is that correct?

A. That's right.

Q. And I think you have extracted from the various Examination Reports the references to these back-to-back arrangements; isn't that correct?

A. That's right.

Q. And I think you say that an Inspection Report of the Central Bank on Guinness & Mahon as at the 29th of February 1976 and an Inspection Report on Guinness & Mahon as of the 31st of August 1982 describe certain arrangements.

A. Extracts from those, yes.

Q. And you then say that a security arrangement for a loan by Guinness & Mahon to a borrower resident in the state in which a non-resident entity provided security directly to Guinness & Mahon and which provided for a commitment on the part of the borrower to a non-resident would have required exchange control consent?

A. Yes.

Q. And you say that applications for retrospective exchange control consent were occasionally made to the Central Bank in cases where consent had initially been obtained for a loan had not been obtained for a loan to an Irish borrower from a non-resident lender or for the giving of a guarantee by an Irish resident to a non-resident.

A. Yes.

Q. So one could apply for retrospective exchange control approval, but this was not a frequent occurrence; is that correct?

A. Not a frequent occurrence and would be decided on its merits.

Q. Yes. And you say that in such cases, if the Central Bank was satisfied that if a proper application had been submitted at the time of the borrowing or entering into the guarantee, exchange consent would then have been granted and then the position would have been regularised?

A. That's correct.

Q. So the test which the exchange control people in the Central Bank would have replied is, if the application had been made before the arrangement had been entered into and was capable of being granted, retrospective exchange control would be granted.

A. Yes.

Q. And I think you informed the Tribunal that it is your understanding that in the case of some Irish resident borrowers, certain of the security arrangements involving non-resident deposits placed with Guinness & Mahon did not envisage that the borrowing in Ireland would have an explicit obligation to the non-resident which provided the security. That's your understanding.

A. Yes.

Q. And that in such circumstances, it was not envisaged that the payment would become due by the borrower to a

non-resident in the event of the security being enforced.

A. That's my understanding.

Q. I think you then say that the extract from the Central Bank's Inspection Report on Guinness & Mahon, as of the 29th of February 1976, describes arrangements whereby loans to customers of Guinness & Mahon were secured by back-to-back arrangements with deposits in offshore companies as follows, and then you quote the extract from the Central Bank Inspection Report.

A. Yes.

Q. We have displayed this over and over again on the screen so I'll just read through, in your statement, the extract now, Mr. Dalton.

A. That's okay.

Q. The extract reads: "Prior to the 22nd of June 1972 when the Cayman Islands ceased to be part of the Scheduled Territories, Guinness & Mahon Dublin arranged for the transfer of funds to a Cayman registered discretionary trust of which Guinness Mahon Cayman was the trustee. The use of the trust funds was totally at the discretion of the trustees. A Cayman company was formed which was controlled by the trust and a deposit placed in the Cayman bank in the name of the Cayman company. The customer in Dublin whose funds had been transferred would then apply to the bank, the Dublin bank, for a loan equal to the funds deposited by the Cayman company. Before the loan was advanced, the Cayman company signed an agreement with Guinness & Mahon

Cayman Trust whereby it agreed to transfer an amount equal to any loss incurred on the loan to a specified Dublin customer to the benefit of Guinness & Mahon Cayman Trust. For exchange control and tax reasons Guinness & Mahon Dublin were expressly excluded from having any claim on the forfeited deposit, but as Guinness & Mahon Cayman Trust is a wholly owned subsidiary of Guinness & Mahon Dublin, the forfeited deposit could, if required, be transferred by way of dividend." That's the extract from the report.

A. Yes.

Q. And you've informed the Tribunal that the extract from the report from Guinness & Mahon as of the 31st of August 1982 explains arrangements whereby borrowings by Guinness & Mahon were secured by liens granted by Guinness & Mahon over deposits in the case of loans secured by deposit where the borrower and depositor were not necessarily the same person, are offset loans.

And then there's a second description of promissory notes signed by borrowers pledging funds which they themselves had deposited in Cayman to Guinness & Mahon and these were back-to-back loans; is that correct?

A. Yes.

Q. You say that the description of the security for the borrowing arrangements from the 1976 Report indicates to you that Guinness & Mahon, as lender, was not intended to have any direct claim on or legal relationship with the depositor of the funds in Guinness & Mahon Cayman Trust?

A. Yes.

Q. And therefore the question of a commitment by the borrower, that is the borrower here in Dublin, to a non-resident did not arise and exchange control consent would not have been needed.

A. That's correct.

Q. You say that, however, if the advance of funds to the borrower was conditional upon Guinness & Mahon having a claim on the deposit by or with Guinness & Mahon Cayman Trust in the event of default by the borrower, and this would result in the borrower having a commitment to a party outside the Scheduled Territories, then exchange controls would have applied; is that correct?

A. Yes.

Q. And you say that these comments are also applicable in relation to exchange controls and the arrangements described in the Central Bank's Inspection Report of 1982.

A. Yes.

Q. If I might just go back to the arrangement which was described in the '76 report. The arrangement was that a borrower would borrow money from Guinness & Mahon in Dublin; isn't that correct? That the same person could well have made a deposit with the Cayman bank; isn't that correct?

A. It appears, yes.

Q. But that the system which was put in place or as described to the examiners from the Central Bank was that Guinness &

Mahon, in the event of a failure of the borrower to meet his commitment to repay the loan here, that the Cayman bank could, in effect, take the deposit which had been placed abroad into its own funds; isn't that correct?

A. Yes, appears to be.

Q. And that the procedure then was that Guinness & Mahon in Dublin, as the parent of Cayman, could then receive that as a dividend.

A. Yes.

Q. If that was all that was involved, there would have been no exchange control approval required; is that correct?

A. From the evidence that's given, yes.

Q. If, however, the borrower agreed to that particular scheme, what is your view as to whether exchange control in those circumstances

A. My view would be that if there was some commitment made, future or contingent or actual, then yes, exchange control would have been impacted.

CHAIRMAN: Because the dividend would be little more than a collusive device?

A. Yes.

Q. MR. COUGHLAN: And you have a similar view about the arrangement described in the 1982 Central Bank Inspection Report; isn't that correct?

A. Yes.

Q. That if matters were just as they appeared on the face of



the Report, there would be no need for exchange control approval, but if the borrower agreed to this at the commencement, there would be need for exchange control?

A. Absolutely.

Q. Thank you, Mr. Dalton.

MR. QUINN: No questions.

CHAIRMAN: Thank you once again, Mr. Dalton, for making yourself available. May I wish you well.

A. Thank you very much.

MR. COUGHLAN: Those are the available witnesses today, Sir, on this phase. There will be some other witnesses tomorrow.

CHAIRMAN: I think there had been some difficulty with the availability of some of the remaining three or four witnesses.

MR. COUGHLAN: That's correct.

CHAIRMAN: One, indeed, of those witnesses, Mr. Barron, is very much a factual resume, but I suppose if anything cropped up, it is preferable if he is available to testify tomorrow, is that your understanding?

MR. COUGHLAN: He may or may not be, Sir, but there are some other witnesses from the Central Bank and from outside the Central Bank who may be able to deal with that.

CHAIRMAN: Okay. Thank you very much. Until tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
FRIDAY, 10TH MARCH 2000 AT 10:30A.M.