

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 10TH MARCH,
2000, AT 10:30AM:

MR. HEALY: Yes, Sir. Mr. Charles Murray.

CHARLES MURRAY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MR. HEALY:

CHAIRMAN: Please sit down Mr. Murray. Thank you for your
attendance.

Q. MR. HEALY: Thank you, Mr. Murray, for coming to the
Tribunal and providing the Tribunal with assistance, at
what I know was very short notice arising from, arising
from certain matters that came to the attention of the
Tribunal in the last few weeks.

Now, Mr. Murray, after the Tribunal first made contact with
you, you had a meeting with members of the Tribunal legal
team, and arising out of that meeting, a memorandum was
prepared which I think you have had an opportunity of
examining, and some corrections made by you were
incorporated or have been incorporated into that
memorandum. In addition, you provided a tabulated
response to a number of queries raised by the Tribunal in a
letter from the Tribunal solicitor, isn't that right?

A. That is so.

Q. Now, if it's of any assistance to you, I can let you have a
copy of those tabulated responses where I have consolidated

the questions with your responses, if you understand me, so that you can read them all at the same time or at least follow them.

A. That would be a convenience. (Documents handed to witness.)

Q. Now, you have also arranged for the memorandum of the meeting which you corrected or amended to be consolidated into one typed document, and again I can let you have a copy of that. What I propose to do initially is simply to go through these two documents, and then we can discuss any matters that require elaboration at a later point, if that's satisfactory to you?

A. Thank you. Could I just raise one point?

Q. You can of course. (Document handed to witness.)

A. This note which has just been handed to me, a record of my meeting on the 28th of February, at which you say I raised certain points from the draft I was given; this document, which has just been handed to me, does that incorporate those amendments.

Q. Precisely. That's what it does do. I have the original handwritten amendments in case any difficulty arises and you should have you shouldn't be in any way hesitant, Mr. Murray, to make any further clarifications or revisions or corrections that occur to you as we go through the evidence.

Now Mr. Murray, you are a former Governor of the Central Bank, and I think you were Governor of the Central Bank in

the 1970s, is that right?

A. That is so, from 1976 to the end of 1981.

Q. And prior to that, you were a distinguished civil servant for many years, and immediately prior to your appointment to the Board of Central Bank, I gather you were the Secretary of the Department of Finance, is that correct?

A. That is correct.

Q. And you had many, many years experience in the service of the State, I don't know whether it was always in the one department, but I assume that you were in the Department of Finance for some years?

A. I was in the Department of Finance from about 1960 to 1976.

Q. So you were in the Department of Finance therefore, during the period from when Exchange Control was delegated by the Minister for Finance to the Central Bank in about 1975 1965, sorry, and during the early part of the period during which Exchange Control affected places like the Cayman Islands, and during a short part of the time when Exchange Control affected the Channel Islands. If you like I can give you the dates?

A. No, I couldn't give you the dates.

Q. I can give you the dates if you like, if it will assist you? The Cayman Islands ceased to be part of the Scheduled Territories and came within the ambit of Exchange Control if you like, from about 1972, and the Channel Islands, and indeed England as well, the U.K. mainland, came within the

ambit of Exchange Control I think from around 1979, the beginning of 1979. So that means that you would have been in office in the Central Bank during the early part of, I suppose, the period when Exchange Control had its widest ambit when places like England and that came within the arena of Exchange Control. I think you are anxious to point out

A. I wonder could I interrupt counsel with permission at this stage, in case there is any confusion on the point on my part conveying confusion rather. I could say almost dogmatically that I never had any dealings with the policy or principle or practice of Exchange Control.

Q. You do agree it was a function delegated to the Central Bank by the Minister for Finance from 1965 onwards?

A. That is so, but I had nothing got to do with that delegation.

Q. I understand that. Now, you are very anxious to point out, and I don't think you are in any way seeking to qualify any of the information or the assistance you have given the Tribunal, that while you are anxious to be of as much assistance as possible, your recollection of events and of the procedures governing the activities you were involved in some 25 years ago, may not be a hundred percent perfect?

A. That is so.

Q. And you would wish any evidence you give to be considered in the light of that reservation?

A. That is correct.

Q. Now, I am going to go through the two documents and to some extent, they'll be slightly they may be overlapping and there may be disparate things mentioned which don't appear to have any connection, and we will pull them together after we have gone through the written documents.

I think you have informed the Tribunal that you had never read the Guinness & Mahon Inspectors' Report. I presume that must mean the Inspectors' Reports of 1976 and 1978?

A. That is correct, that is so, yes.

Q. In the ordinary course your understanding is that Inspectors' Reports would have gone to the Deputy General Manager?

A. Yes.

Q. And your impression is that that appears to be the position from the references on the copy reports that were made available to you?

A. That is so.

Q. I think you have informed the Tribunal that it would be usual for correspondence to be drafted by the Inspector with responsibility for a particular examination and subject to amendment, would be signed by the General Manager or the Deputy General Manager, and you think it is doubtful in this context that Mr. O'Grady-Walsh would have drafted correspondence, or at least you would have been surprised if he had?

A. That is so.

Q. Does that mean that he may have examined correspondence drafted by another official and approved it or handed it on, perhaps even to you for signature, as we know happened in one case in relation to one letter to the Chairman of Guinness & Mahon?

A. That is so, but could I clarify by saying that I was generalising there to some extent of what would be the normal practice in the Bank at that time.

Q. Yes, I understand that, and in due course, we may refer to one letter that was signed by you, whether you had any significant role in drafting it is another matter.

A number of the issues which have attracted the attention of the Tribunal were brought to your notice, including the following: Whether the concerns of the Inspector or Deputy General Manager should have been brought to the attention of the Governor, and if they had been brought to the attention of the Governor, what action would have been taken? And I think your view in a general way, we may come back to this in some detail, is that reports is that the reports, the reports that have been mentioned in evidence in this Tribunal, and mainly the '76 and '78 reports, would have to be considered in the light of assurances subsequently given by Mr. Traynor. These are the assurances by Mr. Traynor that the activities causing some concern would cease and that any remaining accounts involved in those activities would be run down. And your

view was that it appeared to you that those closest to the issue were not unhappy due to the assurances they had been given.

You also informed the Bank or informed the Tribunal, that a factor in the thinking of the Central Bank was that Guinness & Mahon was a long established and reputable bank. And that while there were a number of matters on which the Inspectors were not 100 percent satisfied, this would not be unusual, and of course that's understandable in any inspection. The Inspectors, you noted were given assurances that the level of borrowings would not increase, and you are also anxious to draw the attention of the Tribunal to the fact that eventually, GMCT, which was, if you like, the cause of the concerns, was sold by Guinness & Mahon which is something that happened in or about 1984 when it was sold to Guinness & Mahon's parent bank, Guinness & Mahon Company (London).

A. That is correct.

Q. Now, one of the other matters that was drawn to your attention was the view the Tribunal took that Mr. Traynor seemed to have given a number of different explanations to the Central Bank Inspectors concerning the activities of Guinness & Mahon's offshore subsidiaries, and the Tribunal wished to know whether you had any view as to whether the Bank, the Central Bank, should have been happy that Mr. Traynor should remain on as Chief Executive? And I think

that while you do address that matter later on in your other response to the Tribunal's queries, you did mention to the Tribunal that if a question arose as to the suitability of someone to continue as Chief Executive of a bank, that matter would involve Board discussion. And then you mentioned, with reference to the Irish Trust Bank case, that the Irish Trust case must have gone to the Board, and you mentioned another case, Merchant Banking, as the only other instance where the Central Bank considered the revocation of a licence.

I think you were referring to issues of seriousness that went as far as the Board, and obviously the revocation of a licence was a matter that had to get Board approval, isn't that right?

A. That is so, but could I clarify that, that I was replying to the questions, specific question, should a question regarding the suitability of somebody to continue as Chief Executive of a bank, would that matter involve Board discussion? And I was saying in effect, that in two cases where clearly that sort of issue arose, that was the, as far as my recollection went, the Irish Trust, and Merchant Banking case, so in those cases the Board was involved because the issue of revocation of licence arose and of course, that would be a matter in the first instance for the Board.

Q. I think by contrast, you were of the view that the imposition of a condition in the ordinary way would not

have to go to the Board? .

A. That is so. And of course, in that, as the Tribunal team reminded me, I was quite wrong.

Q. Well, I am not sure the Tribunal suggested you were wrong, but I think a different view has, in any case, been expressed and I think a more conservative view is being taken, that the imposition of a condition is a matter that should go to the Board. In any event nothing turns on it, nothing specific turns on it at this point.

Apart from the Irish Trust Bank case, I think your recollection is that an issue as to the suitability of an individual to hold office didn't go to the Board of the Central Bank as a single issue. I think what you meant by that or what you mean by that is that the Board were never to ask were never asked to consider solely the issue whether Mr. X was an appropriate individual to hold office in a bank?

A. Yes, that is so, because I was making the point, as best I could, that this issue clearly did go to the Board on two occasions but wasn't the only issue that went to them.

Q. And you commented that the issue is one which would frequently and most significantly arise at the time of the issue of a licence, when of course it would be one of the many other issues that would arise at the time of issue of a licence.

You went on to mention as to whether you went on to deal

with the question as to whether the Central Bank would engage in an element of persuasion if it had doubts as to the suitability of an individual office holder, and I think what you have commented is that you do not recall this ever coming before you, but that it is something that could have arisen. In the ordinary way, I think you would be happy to leave such a matter to senior staff of the Bank?

A. That is so.

Q. Though you did point out that the Central Bank were in general, very particular, as to the character of office holders in banks?

A. That is so.

Q. Now, you were then asked for your view on the involvement of a director of the Central Bank in activities on which Central Bank Inspectors had expressed concern and specifically, whether an issue such as that should have been brought to the attention of the Governor, and I want to make it clear that what the Tribunal is concerned about here is not whether or not, because we don't there is no evidence before the Tribunal concerning this matter, whether or not an individual was so involved in questionable activities is not the question, or is not the issue, but rather the Central Bank had formed the impression that an individual was involved, and certainly had information to suggest that he may have been involved, and the question is whether that issue should have been brought to the Governor. And your response I think is that

this involved two matters.

Firstly, whether the concerns were such that they should have been brought to the attention of the Governor irrespective of the involvement of a director of the Central Bank.

And secondly, whether the matter should have been brought to the attention of the Governor in the light of that involvement.

As regards (A), in other words, absent of any involvement as a director of the Central Bank, your view was that the matter was dealt with in a satisfactory manner by the Inspectors. They recorded the facts. That's what he did in this case and I think the Inspector the one of the Inspectors involved indicated that he saw it as his view to record the facts as they were.

A. So I understand.

Q. With regard to how the matter should be viewed in the light of the involvement of such an individual as a director of the Central Bank, your view is that you would have preferred, if the director's involvement had been brought to your attention.

Now, I think that you go on the note goes on to say that the Central Bank Inspectors had a strong suspicion that the activities of Guinness & Mahon and the provision of backed loans involved tax avoidance. And your view was

that while tax avoidance was not a crime or your view was that tax avoidance was not a crime and that therefore any view you might take of the matter would be coloured by that consideration. The activity of tax avoidance is not itself illegal?

A. That is so.

Q. At the same time, I think you pointed out that your preference would have been that the Governor be alerted. You say that you are uncertain as to what, if any, action you would have taken had the matter been brought to your attention, but you feel that it was a matter that might be significant in the context of the reappointment of the director in question, and that had the Minister discussed that aspect with you, you would have been in a position to inform him of the tax avoidance aspect?

A. That is correct.

Q. Am I correct in suggesting therefore, that your view is that at the very least, that is one context in which the matter might have had to be brought up, but that you are uncertain as to whether it wouldn't have involved or necessitated taking any other action as well?

A. I find a difficulty in answering that question. I find it difficult to put myself in the mindset of 1976 before the developments subsequently summed up as the Ansbacher developments had taken place.

Q. Well, we may have to come back to it in a slightly more detailed context, but I understand that there is a

difficulty in forming a judgement with the benefit of hindsight.

You went on to say what you went on to say was this: If the view was taken that the activities of Guinness & Mahon, through its offshore subsidiary, amounted to tax evasion rather than tax avoidance, then in those circumstances, the Central Bank would have insisted on the removal of the Chief Executive. Am I right in that?

A. That is so. They might have insisted on a lot else, but the question was in the context of the suitability of the Chief Executive you know, for remaining in office. So that would be one effect of tax evasion, shall we say.

Q. I now want to pass onto the list, I think it's nine queries and nine responses, and unfortunately there may be a degree of repetition, but I still think it preferable to go through the document.

You were asked about the involvement of the Governor and Board of the Central Bank and the Central Bank's licences and supervisory function, and your answer was that any view you might give at this remove would not be comprehensive or authoritative. I think you feel that that's perhaps a matter for the current authorities, is that right?

A. Yes, I did suggest in my reply that perhaps the Tribunal team would approach the Central Bank about this issue.

Q. And it has done that, and in fact has obtained a comprehensive account which indeed may be read into the

record at a later point.

You were asked whether in the ordinary course, the Governor and Board would have been provided with copies of examination reports during your tenure? And your response is that the Governor and the Board would not have been provided with copies of examination reports during your tenure. And I take it that you mean in the ordinary way?

A. That is so.

Q. You were asked whether at any time to your knowledge, the Governor or the Board would have been provided with copies of examination reports, and you say that while you can't speak for periods outside your tenure, you expect that the answer again is "no"?

A. Yes.

Q. You were then asked whether the Guinness & Mahon examination reports or any aspects of the reports or any matters arising from the reports were brought to the attention of the Governor or Board or any of its members?

And you say that the 1976 examination report, but no other, was brought to your attention and you wrote to the Chairman of Guinness & Mahon Limited about it on the 9th September, 1976. You say that you have no recollection of bringing any of these reports, or any aspect of the reports, or any matters arising from the reports to the attention of the Board or any of its members.

You were asked for your knowledge, direct or indirect, of

the concerns of the Inspectors regarding the activities of Guinness & Mahon's offshore subsidiaries, and in particular, in connection with the provision of loans by Guinness & Mahon to Irish customers backed by deposits of its offshore subsidiaries. And your response is that,

"Apart from the fact that the 1976 examination report was brought to my attention, I had no knowledge, direct or indirect, of the concerns of the Inspectors regarding the activities of Guinness & Mahon's offshore subsidiaries."

You were asked, what actions, if any, would have been taken had those concerns come to your attention, and you say that apart from the letter of the 9th September, 1976, you have no recollection of any other action taken by you. You go on to say that you have every confidence that the senior management of the Bank would have taken any action required.

You were asked for your comments as to whether it was appropriate to accept the assurances of Mr. Traynor that the provision of backed loans, using offshore deposits would cease in circumstances where it was clear that the Central Bank Inspectors did not attach very much weight to Mr. Traynor's various explanations given from time to time about the nature of these deposits. You say, "From my reading of the Inspectors' Reports, it is not clear that the Inspectors were particularly concerned about various explanations concerning the nature of the deposits in

question. What was clear is that they were concerned about the offshore deposits, backed loans, tax avoidance, and that these issues were pursued with Guinness & Mahon on a number of occasions and certain assurances obtained.

Given also that Guinness & Mahon was a long established bank in good-standing, and given also that Mr. Traynor's true colours were not yet to be revealed, I consider that the approach adopted by the Inspectors was appropriate."

Next you were asked, whether the involvement of Mr. O'Reilly-Hyland, as, I should clarify this, as a person appearing to be the recipient of a loan backed by offshore funds, was a matter which ought to have been brought to the attention of the Governor or of the Board? You say that, you suggest that "ought to have been brought to the attention of" is putting the issue too strongly.

You go on to say, "The issue is one of nuance and perhaps judgement. Having said that, I would have preferred to have been informed, if only so that I could have put the Minister in the picture were he ever to discuss with me the reappointment of the individual in question. It would have been up to me to inform or not to inform the Board. I doubt very much whether I would have informed the Board or any of its members."

You were asked about the actions, if any, which you would have taken, had this matter been brought to your attention

and whether such action would have included informing the Board or any of its members? And you have obviously already answered that in response to Query No. 8.

I think, Mr. Murray, that the supervision staff of the Central Bank is now quite large, somewhere in the order of seventy individuals I think the supervision staff of the Central Bank is at the moment quite large?

A. Yes.

Q. I think about seventy individuals or something like that?

A. Yes.

Q. But the Central Bank now has not just a, perhaps wider remit in terms of supervision, but a larger number of institutions to supervise than it ever had to do in the past?

A. So I understand.

Q. In particular since the inception of the Financial Services Centre?

A. That is one of the factors.

Q. I fear that during the seventies, mid-seventies to mid-eighties, there were about twenty to twenty five individuals staffing the particular section of the Central Bank involved with bank supervision?

A. I have no information about that.

Q. I think you will agree with me that staff would probably have involved a number of experts such as accountants carrying out inspections and reporting to more senior management within the Central Bank?

A. Yes. My understanding is that most, if not all, of the people who would inspect banks would be accountants.

Q. I think the am I safe in saying that at the time the inspection staff would have been much smaller than it is today, and there was probably no more than one or two senior members, maybe three or four senior members of the staff and apart from that, more junior members?

A. You may be right in that, but I have no recollection of the staff structure of the inspection area.

Q. Would you agree that in general, the entire staff of the Central Bank was probably much smaller in the mid-seventies to mid-eighties, compared to what it is today?

A. I am not quite sure if that's right. If you want to talk in terms of the entire staff. My recollection is that in the seventies, the staff numbers were between 600 and 700. I am not sure if they are much greater now.

Q. As the Governor, you would have had a Deputy Governor reporting to you, is that right?

A. No.

Q. Who would have reported directly to you?

A. The General Manager, what was then called the General Manager.

Q. I see. Is that the office now described as being the Director General?

A. So I understand.

Q. And underneath the General Manager, you had, I take it then, the Deputy General Manager?

A. That is so.

Q. And underneath the Deputy General Manager, would there have been the heads of the various functions?

A. That is so.

Q. And within those various functions, you then have the more senior officials within those functions and then perhaps a vast array of more junior staff?

A. Yes.

Q. Even today I think, the senior executive management of the Bank is no more than about twenty or thirty strong, that is from the Governor down to the heads of functions, such as the Head of Banking Supervision, the Head of Personnel, Head of Research and so forth, and can I take it that in your time it would have been perhaps, either the same or slightly smaller?

A. I think in round terms you are probably correct.

Q. Now, in approaching the issues that the Tribunal has identified for consideration in these sittings, one of the factors that has had to be borne in mind is that judgments about actions taken in the 1970s can't be made by using information that has only become available as a result of inquiries carried out in the nineties, and indeed in this millennium. That is not to say that the Tribunal won't wish to look for the views of people involved in events in the seventies and the eighties, taking into account any benefits they may gain from hindsight, but I want to look at these events from two points of view. From the point

of view of hindsight and from the point of view of the information that would have been available to people making judgments or making decisions in the seventies and the eighties.

So if I could firstly look at what appears to have emerged as a result of evidence given to this Tribunal and as a result of findings made by other Tribunals, so as to ensure we are ad idem as to the factual position.

I think the main thing that emerged concerning this aspect of this Tribunal's work from the work of the McCracken Tribunal is that within Guinness & Mahon in the seventies and in the eighties, there was a bank-within-a-bank.

Would you agree with that?

A. I have heard that term used.

Q. What was happening was that large deposits were being made with Guinness & Mahon by Guinness Mahon Cayman Trust and by Guinness & Mahon's other offshore subsidiaries. Some of these deposits were coming in, as it were, directly from the offshore subsidiaries but some of them seemed to have come in off the street in College Green, although appearing to come from offshore subsidiaries.

The management and the administration of the interests of individual Irish residents in those deposits was conducted from within Guinness & Mahon to the extent that those individuals would have received bank statements from

Guinness & Mahon on notepaper or stationery printed by stationers in Dublin, and put through machinery in Guinness & Mahon so as to enable the various balances to be printed onto it and sent out to people in this country. So that within Guinness & Mahon, there were a number of individuals who were operating in perhaps a small way, but in money terms, in a substantial way, operating a service akin to the service Guinness & Mahon was providing to its own customers, but on this occasion, limited to the funds that had been apparently placed offshore with GMCT. Does that accord with your impression perhaps gained from newspaper accounts of what was going on?

A. Perhaps even the word "impression" is too strong a term as far as I am concerned.

Q. But in any case, would you agree with me that the operation of activities like that, whether you call it the operation of a bank-within-a-bank or not, would be in breach of the banking regulations governing the operation of banks in this country?

A. Yes.

Q. I think Mr. O'Grady-Walsh, who was involved in some of the supervisory activities indicated that anyone associated with the conduct of those activities could not be seen to be a fit person to be involved in banking in this country. Would you agree with that?

A. Would I agree that he said it?

Q. Would you agree with the view?

A. Well, if Mr. O'Grady Walsh said that I'd have no hesitation in accepting it.

Q. Not only were these activities conducted within a bank, within a licensed bank in this city, but considerable steps or a great amount of care seems to have been taken to ensure that those activities did not come to the attention of the authorities. Would you accept that that is an activity which, if anyone was found to be associated with it, would disqualify him from having a senior position in a licensed bank? I am using the term "disqualify" in a very anecdotal way.

A. Yes, I would.

Q. Now, the Tribunal has been informed by the Central Bank, and indeed in the evidence I think, certainly two Central Bank witnesses, that the supervision process is based on a degree of cooperation between the bank being supervised and the Central Bank. You'd agree with that?

A. I would, yes.

Q. And that the touchstone of that cooperation is that the Central Bank can rely on information relayed to it by the directors and by the officials of the bank being supervised?

A. I would qualify that as a private citizen, so to speak, by saying that they must exercise their judgement in regard to that information, not accept it blindfolded, but there is only so far they can inquire into these matters.

Q. If you were exercising a statutory function as a

supervisor, as a regulator, as a guardian and the person being supervised and enjoying the benefit of quite a valuable privilege or licence, knows that the supervisor is depending on the information and is relying on the accuracy of the information being relayed to him, then that usually brings a degree of responsibility to the responses of individual citizens responding to supervisors, doesn't it?

A. Certainly.

Q. And of course the supervisor must make a judgement as to whether the person providing the responses is to be relied on, whether his responses are whether they portray a degree of incompetence, a degree of insouciance, or whether they are craven or misleading or misrepresent the true facts, isn't that right?

A. Yes, in other words, in short, whether they stand up.

Q. But they could fall down on, let's put it this way, on two different sides of the line. Somebody's responses might be unreliable because he was incompetent or insouciant, but somebody's responses could also fall down because he was craven or deceitful, isn't that right?

A. Yes, that is so.

Q. And the degree of reliance you'd place on a response would depend on a judgement you might exercise which mightn't result in your saying that somebody is deceitful but that nevertheless, although you knew he was competent, you couldn't rely on his responses, isn't that right?

A. Yes, that is so. Could I qualify my answers to these

questions by saying that I would imagine these questions being put to me, if I never had any connection with the Central Bank, you know, I am speaking as very much, as a lay person in replying to you, because I was not involved, you know, in the inspection process.

Q. I appreciate that you are speaking as a lay person, Mr. Murray, but I think that the Tribunal would attach some weight to your answers, having regard to your long experience as a civil servant and your position as a Governor of the Central Bank, would you accept that?

A. Yes, that is so, and could I, since I made my earlier intervention, make it clear that I am not qualifying in any sense the answers I gave, but I didn't give them qua ex Governor.

Q. Now, there are two main issues that I want to address with you in connection with the time that you served as Governor. And I am concerned mainly with the information that was available at the time and not the information that we now have. I accept that to this extent, that one of the questions that may have to be addressed at some stage is whether the things that were ultimately discovered about Guinness & Mahon's bank-within-a-bank might have been discovered or brought to light at an earlier point if inspectors or supervisors had taken a different course. That's a general point I make at this stage, because it's something I'll come back to. I just want you to bear it in mind in the context of the questions I am going to

ask.

I am going to give you a book of documents, Mr. Murray, it may not be necessary to refer to any of them in any detail, but I just want to be sure that if you want to refer to anything that I may mention from the reports, that you have an opportunity of reading the hard text.

Now, we know that in 1976

CHAIRMAN: Just for the guidance of the witness, Mr. Healy, I think you indicated there were two issues that you did propose to address with him in some respects, it might be well just to set those out.

Q. MR. HEALY: The two matters I want to mention, Mr. Murray, are the extent to which the issue of tax avoidance or tax evasion or the other, I suppose, the tax avoidance or tax evasion activities being conducted by Guinness & Mahon could have been further investigated in 1976 or 1978 or even up to 1982, and whether secondly, the fact that the Central Bank perceived that a director of the Central Bank may have been associated with those activities was something which should have been brought to your attention? Those are the two matters that we have addressed to some extent in relation to the two written documents that were provided and we went through at the outset.

Now, the question of offshore activities first appears to

have come to light in 1976 and was mentioned in the 1976 Inspectors' report. Prior to the completion of the report, there appears to have been a meeting between Mr. Daly, Mr. Byrne, and Mr. Rockett on behalf of the Central Bank and Mr. John Guinness, Mr. Maurice O'Kelly, Mr. Des Traynor and Mr. Michael Pender as directors of Guinness & Mahon. The minute of that meeting is the first document, in fact the only document, in Divider 1.1. It's the last item mentioned in the minute, on the second page of the minute. Do you see the heading "Offshore Activities"?

A. Yes.

Q. And that minute reads: "Mr. Daly said that he was somewhat concerned about the significant offshore activities engaged in by the bank", that's the supervised bank "through its subsidiaries. It would appear that the main object of these companies was to assist in tax avoidance. Mr. Traynor denied this and said that these subsidiaries were all deposit-taking institutions who offered full banking services. Their main income was derived from executor and trustee business."

If you then pass on to Folder 1.2 which contains extracts from the report which was obviously completed sometime later in that year, and if you go to the foreword, which is the third page in the leaf

A. I beg your pardon, I didn't catch the reference there?

Q. If you go to Leaf 1.2 and then go to the third page which

is headed "Foreword".

A. Yes, I have that, thank you.

Q. In the penultimate paragraph the report states: "The staff of the bank appeared reluctant to give information and as a result, most queries were answered by the directors. We received all the information and explanations which we requested."

And then if you go onto the next page, it's not the next page of the report, but it's the next page in the leaf, and it contains an extract from the report, page 6, under the heading "Offshore Subsidiaries."

The report states: "The bank has three wholly-owned subsidiary banks operating in offshore tax havens. These are:-

Guinness Mahon Trust Limited.

Guinness Mahon (Channel Islands) Limited.

Guinness Mahon Jersey Trust", and the amount of the deposits in these various offshore subsidiaries is given.

The report goes on: "We are satisfied from our conversations with Mr. J. D. Traynor that a major part of these companies' activities is the receipt of funds on which taxation has been avoided. .

Later on, at page 16 of the report I am sorry, before you go to page 16, Mr. Murray, I should have drawn your

attention to page 9, which is the second next page in the leaf. And once again under the heading "Offshore Subsidiaries", the report states: "The bank is, in effect, offering a special service which assists persons to transfer funds on which tax has been avoided to offshore tax havens. The possibility of the bank abusing its position as an authorised dealer in providing this service cannot be ignored.

In view of the delicate nature of these matters, we did not pursue the matter further."

There is, in fact, one further reference on page 16 of the report, on pages 15 and 16, sorry, and I don't want to go into the details of these two pages, but what's contained on page 15, is a description of the activities, but there is a part of that description to which I want to draw your attention, and it's in the, if you like, the second paragraph, beginning "The directors...,".

"The directors of the bank were initially reluctant to give information about the activities of these companies to the Central Bank because of the fears that the information might be conveyed to the Revenue Authorities. With regard to cases where loans by Guinness & Mahon (Dublin) were secured by complex back-to-back arrangements of deposits in these companies, we were given sight of copy security documents but were requested not to note the names in which the deposits were held. This we agreed to do.

No files or records relating to customer transactions with these companies are retained in Dublin. The bank fears that the retention of such files would give ground to the Revenue to claim that the companies are managed by Dublin, and also individual files might come into the hands of the Revenue Authorities."

Lastly, if you go to page 16 and the numbered sub-paragraph 2 which is, in fact the second paragraph on that page.

"We have been assured by Mr. Traynor that no funds from Ireland have been transferred to the Cayman Islands since the 22nd June, 1972. Deposits held by the Cayman company have, however, increased by 4.7 million to 14.3 million during the 12 month period to the 31st March, 1976. We have been assured that this increase has been obtained through deposits from the United States and Jamaica. We have no evidence to support this information. "

Now, it would appear from that report, Mr. Murray, that there was, at the very least, a considerable degree of sensitivity in Guinness & Mahon concerning inquiries relating to these matters. Would you agree with that?

A. I would.

Q. And that the sensitivity extended to a reluctance to make documentation or evidence available?

A. That is so.

Q. Following that inspection, a letter was sent to Guinness &

Mahon, the letter was sent on the 9th September, 1976, and it's the next document, it's in leaf number 1.3, it's the first document in that leaf. If you want to go to the fifth page of the letter you will see that it's from the Governor, it's from you. Now, I don't know whether you drafted the letter. I assume that as you were not involved in the inspection, you did not draft the letter?

A. That assumption would be correct.

Q. Can I inquire then why a letter of this kind, which is a fairly lengthy letter, and refers to a number of matters of serious concern emerging from the examination, was sent out as being from the Governor?

A. I am not sure if I understand

Q. Why would a letter come out I presume that inspections are held all the time? Does every letter following an inspection come out from the Governor's office with the Governor's signature on it?

A. I would sorry I would be surprised if they had. To my knowledge, I don't recall any other letter arising from a bank examination that was issued over my name. Your question is why this particular letter? Well, I have no recollection at this stage, but I could surmise that the senior bank staff involved thought that the various issues arising from this examination were serious enough to warrant, what I might call, a Governor to Chairman letter.

Q. So the purpose of sending the letter out, over your

signature, was to convey to the supervised bank the seriousness with which the matters referred to in the letter were viewed by the Central Bank?

A. That is so.

Q. You don't recall any lengthy discussion concerning these matters?

A. No.

Q. Now, I want to draw to your attention a number of other matters arising from our reports in our minutes. I don't intend to go through them in detail because they have been mentioned time and time again over the past week. If I put anything to you that is in any way inaccurate, I feel sure that counsel for the Central Bank will correct me.

There was a meeting on Tuesday, 8th February, 1977, between Mr. O'Grady-Walsh and Mr. Daly on the part of the Central Bank and Mr. Traynor and Mr. O' Kelly of Guinness & Mahon. That meeting resulted from an exchange of correspondence which had commenced with your letter of the 9th September, 1976?

A. Mm-hmm.

Q. In your letter, you sought response, the response of the Bank to a number of issues, of which offshore tax havens was only one. There was an exchange of correspondence and the various matters raised in your letter were dealt with in correspondence, but one matter was not dealt with in correspondence, as Guinness & Mahon appear to be reluctant to commit themselves in paper in relation to it and

requested a meeting and it was that meeting which was minuted at Divider 1.4.

Now, at that meeting, Mr. Traynor emphasised that the funds I can refer you to the passage if you like,

Mr. Murray, but I am not sure it's going to be of huge assistance and may simply delay us. It's

paragraph numbered paragraph 5 on the second page of the leaf. And in the last sentence the note reads:

"He" meaning Mr. Traynor I think "Emphasised that the funds were not placed on deposit for the purpose of tax avoidance or evasion." Which would seem to indicate that there must have been some discussion as to whether the activities involved ought to be classified as avoidance or evasion. But Mr. Traynor, in any case, protested that neither was involved.

Now, the matter again came up for consideration in 1978 as a result of a request from Mr. Traynor, that in calculating the free resources ratio of the bank, of the supervised bank, back-to-back loans, the back-to-back offshore loans should be treated as non-risk assets that, in other words, they should not be treated as loans for which the bank would have to account by additional capital. The Central Bank refused to go along with that. At a meeting at which the matter was discussed, Mr. O'Grady Walsh indicated that having received the proposal, he would consider it. He got back to Guinness & Mahon, rejected the proposal, but

put on the agenda for discussion at a later date what he called the "tax aspect" of those activities, and at that later date, the matter was mentioned once again, and it appears that a recommendation was drafted or minuted in what looks like February or March of 1978, and in that minute, Mr. Byrne wrote, "From the..." Sorry, this minute, I will refer you to it, it's at Leaf 2.3. It's the only document in the leaf. It's headed "Recommendations". Have you found it?

A. I have, yes, thank you.

Q. The heading is "Loans by Guinness & Mahon Limited which are 'Secured' by cash deposits in Guinness Mahon Cayman Trust Limited and Guinness Mahon Channel Islands Limited."

"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, from the fact that the bank takes such extreme precautions to keep the existence of the deposits secret from the Revenue Commissioners, sorry, 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 a tax" and then the word "evasion" is written in first "to a tax evasion scheme." That's written in or typed in by Mr. Byrne. And then it would appear that Mr. Daly, and this is only Mr. Byrne's, I suppose, educated guess, wrote in the word

"avoidance".

"Should this be the case and the 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."

Do you see the asterisk after the word "situation"?

A. I see it, yes.

Q. And that seems to refer to a note at the bottom of the page which is in handwriting and is as follows: "If tax implications were to arise, it may be that the non-risk character of the loans in question would change and a risk of loss for the bank" meaning presumably the supervised bank "would emerge."

Now, what that minute seems to indicate to me is that by this point, or by this time, the Inspectors were not happy to accept Mr. Traynor's assertion that neither tax avoidance nor tax evasion was involved.

That one inspector, as he has confirmed in evidence, was satisfied that what was involved might well be tax evasion as opposed to tax avoidance, although another inspector clearly disagreed. But what I suggest is that by this time, there was a debate in the Bank amongst the inspecting

staff as to what was going on, as to whether it was tax avoidance or tax evasion, and clearly the only inference to be drawn from the fact that such a debate was taking place, was that no member of the inspection staff accepted Mr. Traynor's assertion or protestation that neither was going on, would you agree with that?

A. No.

Q. What view would you take of what was happening in the Bank?

A. First of all you talk about a debate within the inspecting staff. Now, I don't know what evidence you have for that.

Q. Well, what I am suggesting is that one member of the staff, and we know this from evidence, was clearly of the view that the activities might well involve tax evasion.

A. I have no difficulty in accepting that that is his present position. But that's far from saying that there was a debate within the inspecting staff who numbered maybe twenty or whatever

Q. Maybe that's an unfortunate word on my part. We can pass away from it. Do you agree that one member of the inspecting staff, as he has confirmed in evidence, at the time felt it's not that he feels, this is his view now, he has confirmed that at the time his view was that evasion was the appropriate way to characterise the activities?

A. I would like to say something about that other than in response to a question or being confined to a question.

Q. Feel free.

A. I was surprised, to put it mildly, to hear the member of the inspecting staff say what he did when he was before you. This was an extremely important issue. The consequences, you know, for the Central Bank, and for the licensed bank in particular, would have been quite significant if tax evasion were involved. Now, if his view at that time was that tax evasion was involved, I think two things follow.

One, that if his supervisor amended the record to put "avoidance" in place of "evasion", I think that the member of the inspection team was bound to have pressed the matter further, not to have allowed it to virtually sink beneath the surface. I think that he should have recorded his views in a separate note or brought it to the attention of a more senior member of the staff. I think that it would have been preferable also, if the supervisor, instead of amending the document in this way, should have let the record stand and expressed his views separately on this tax aspect.

The reason I am mentioning this is that had the approach I am suggesting or somewhat similar approach, been adopted, the issue of tax evasion would have come up clearly and unambiguously before the senior staff of the Bank, and I have no doubt, given their past record in these matters, that they would have brought it to my attention.

Q. You have, to some extent, anticipated where I was going,

Mr. Murray, in that what I was seeking to what I was inquiring to know is whether if the matter had been identified, and I certainly felt it had, but be that as it may, you are of the view that it hadn't, that if it had been identified as being an issue as net as that, it should have come right up as far as the Governor?

A. Yes, but you use the word "identify". I don't know what precisely you mean by that. Certainly I wouldn't regard the erasure of one word and the substitution of another as necessarily identifying the issue of tax evasion.

Q. I am using "identify" in relation to what you have indicated what ought to have happened. If it had been identified in the way you have described, it's something you believe should have gone right up to the Governor?

A. I would be amazed if it hadn't.

Q. So the situation we have at the time therefore, was that one member of staff had used the word "evasion" and another member had used the word "avoidance", and from there on, the issue was characterised within the Central Bank as one of avoidance, is that right?

A. Not alone on that, but on subsequent occasions too.

Q. And the Bank took, still took a strong view on the issue, notwithstanding that what was involved was a perfectly lawful activity tax avoidance?

A. They were concerned about the effect of that lawful activity on the quality of the bank's assets, and not alone that, but also I am sure, they took into account what this

approach, how the approach by the licensed bank to these issues I have lost my sentence, sorry

Q. You were saying that the view they took was that tax avoidance was something that might have an impact on the bank's assets and therefore on the prudential position, is that right?

A. Yes, that is so.

Q. What the note says is that "The Central Bank would be placed in a very embarrassing position should the Revenue Authority ever become aware of the situation. " Could I suggest to you that that doesn't indicate to anyone reading the minute that what was intended was merely a concern for the bank's assets but rather for the Central Bank's position and the embarrassing position in which the Central Bank might find itself if this matter were to become known to the Revenue Commissioners?

A. If I might comment, since I would never write a note on those lines myself, I cannot comment.

Q. Is my view a reasonable one on the basis of what's contained in the minute?

A. Could I have the precise reference again?

Q. Take your time reading it. It's Leaf 2.3 and it's the first document and the first paragraph beginning: "From the information available, it would appear...".

A. Yes. I am frankly at a loss to understand what was in the mind of the person who wrote that sentence.

Q. Would you agree with me that you have expressed a view as

to how this matter should have been proceeded with, the view that you express in evidence a moment ago, would you agree with me that a senior supervisor or a more senior member of the Bank staff reading that document at the time it was written should have formed a similar view, should have said "Look, there is something here involving tax avoidance or tax evasion, I cannot make head nor tail of it, we better look into the matter and pursue it further."

A. That may well be the case, but I think to some extent, that's being wise after the event. There were several prior references to tax avoidance in this documentation, prior to this particular note, and given the difficulty that some people have in distinguishing between the two issues and the extent to which evasion is often used when avoidance is the correct term, I wouldn't be altogether surprised if, unfortunately, the nuance involved here escapes the attention of any supervisor.

Q. Well, the supervisor by whom the note is written has given it as his evidence, that he was well aware of the distinction between avoidance and evasion, and that as a chartered accountant, well aware of that distinction. He used the word "evasion" to mean something other than something savoring of illegality and indeed criminality as compared to avoidance. I am just saying that's what his view was. He wasn't using it in any way which might have, or which could be characterised as loose or casual?

A. I didn't suggest that the man who wrote the note was

confused about this. You prefaced your remarks that you have just made by saying that "the supervisor", but the man

Q. I am sorry, I beg your pardon, I was using that to mean Bank Supervisor. The Inspector

A. You aren't talking about the people who read what he wrote?

Q. What I am suggesting is that the people who read what he wrote should have taken the view that you took a moment ago, that this was a matter of considerable seriousness and one of the problems identified by the person who wrote the note, even if any part of the note is unclear, one part is absolutely clear, he is concerned about precautions being taken to keep things secret. Now, anybody looking at the note who saw that couldn't have been in any doubt but that there was a concern on his part that the bank were taking precautions or the supervised bank were taking precautions to keep this matter secret, and that that was one of the factors which had prompted him to take the view that perhaps tax evasion was involved. What I am suggesting is the view you have canvassed a moment ago is the view more senior people in the Bank should have had when they read that note?

A. We may be at some cross-purposes here. I am not saying that if I read that note, I would have formed certain views as to what really was involved here. What I was saying was that the man who wrote that note and was convinced that

evasion was concerned, should have pressed his point home in some other way and furthermore, that the man who supervised that report or that document so to speak, insofar as we are talking about supervising a document, that he should have realised the seriousness of what was involved and let the note stand in its original form and record his own views of disagreement.

Q. He didn't do that, obviously?

A. I am not saying he did.

Q. But one assumes that he mustn't have done that?

A. That's right. I am saying he should have.

Q. But you have, if you like, you are in the position of a supervisor, if you like. You are looking at the note and I am suggesting that anybody else looking at the note must have reached the same view or should have reached the same view as you have now expressed, that he shouldn't have been happy to have seen somebody simply allow his "evasion" to be crossed out and "avoidance" being put in, without the matter being further ventilated or canvassed by higher up officials?

A. I thought I had answered that in an earlier reply. But just to recap. This was a series of documentation in which the word "avoidance" had been used unambiguously. Given that and the extent to which the terms are often confused, I think it possible that a third party, so to speak, reading this, might well have assumed that it was just one of those confusions that arise and not pressed the

matter further.

Could I take advantage of this slight pause to say that I don't feel called on to defend or excuse or accept anything in this particular area. To some extent, my answers are a layman's answers. I think there is a different point of view, not necessarily the correct point of view, but an admissible point of view.

Q. Do you think it was reasonable for the Central Bank to expect a bank to desist from tax avoidance or desist from advising in tax avoidance schemes?

A. Yes, to the extent that insofar as its assets were related to or sprang from tax avoidance schemes, they might have raised questions regarding the validity, or the worth of those particular assets.

Q. How could that affect the worth of the assets if they consisted of cash-backed securities? If a security if a loan is cash-backed, it's either cash-backed or it's not cash-backed, isn't that right?

A. Yes, that is so.

Q. The taxpayer may suffer but how can the bank suffer?

A. Well, I am not too sure about that.

Q. During the time that the Bank, the Central Bank that is, were relying on an assurance from Mr. Traynor that the offshore activities would cease and would run down, the Central Bank appeared to have only limited access to documents in Guinness & Mahon. Do you think that it's acceptable that inspectors carrying out a supervisory role,

should accept any limitation on their right to inspect documents?

A. In principle, I think you are correct. But I have no doubt that there are certain circumstances where for a variety of reasons, they have got to accept what is available to them.

Q. I am sure that there are many occasions when an inspector will, as you say, perhaps sometimes for practical reasons, sometimes for other reasons, make do with the documents he has got and perhaps will make a judgement that the documents he has got are going to give him as good a picture as he might get if he pressed hard enough, but do you think that the context in which evidence or access to evidence or material was being restricted should affect the view taken by an inspector where there is a background as to whether tax avoidance or tax evasion is being carried out is being engaged in?

A. Your view on that might well be coloured to the extent to which you accepted the tax avoidance thesis.

Q. You accepted that tax avoidance was going on and you weren't getting access to documents or getting as much access as might seem appropriate, wouldn't you still have a concern on your reckoning, though not, I confess, on mine, that the prudential position of the bank was likely to be affected?

A. You'd have a worry on that score, certainly.

Q. Would you have an even, or should have a greater worry

where the person that you are relying on for this information is an individual that, to judge from these documents, you were not giving a hundred percent credit to. You weren't believing everything he said?

A. I think that would be part of the picture. The two issues went together.

Q. Yes. In the context of Central Banking and supervision, isn't the credit that you give to the person who is making representations, a vital part of the process?

A. That is so, yes.

Q. And could I suggest to you that there is perhaps some room for the view that too much credit was given to Mr. Traynor. He was the leading spokesman for the Bank during all of these negotiations, or these dealings.

A. I would have a difficulty with fully accepting that. I think to some extent, the records never tell the full story. There are nuances I wouldn't say understandings as such, but there is the spirit in which things are accepted or not accepted, and insofar as the Bank is concerned, the Central Bank, I think that one has to rely to a large extent, on the experience of the examiners and their judgement as to whether, on balance, the position had perforced to be accepted as was given to them.

Q. Would you agree that, and this may have been the climate of the time, that the documents, while conceding they don't tell everything, portray to some extent a degree of tentativeness on the part of the inspectors?

A. Insofar as they were far from happy with the picture that they saw and in fact, pressed for fairly strong action.

Q. Do you think that there was a degree of tentativeness in their approach in the sense that I have just canvassed, that they were inclined to accept Mr. Traynor's assurances while at the same time accepting his rejections about what he was going on with or carrying on with?

A. I couldn't give you an answer to that, I am sorry.

Q. Would it be unreasonable to suggest that Mr. Traynor was an individual about whom one should have had some real concerns as a Managing Director of a bank?

A. There were certainly reservations, but I take it that the Inspectors and the supervising staff, senior staff, formed the view that in the overall, and given the other measures that they were pressing for, that the outcome could have been a lot worse.

Q. Is there a problem in Central Banking in general that, even if you identify, if I can use this expression, a defect in the management of a bank, whether it's in terms of the organisation of the management or an individual involved with whom you are unhappy, that if you identify some defect or if you have some criticism, that you have the problem I think identified by one witness yesterday, that if you take too strong an action, you may provoke some sort of a crisis in that bank or perhaps even in other banks? Is that a factor operating on the mind of a Central Banker?

A. It's, I would call it a dominant consideration.

Q. Does it mean therefore, that somebody conducting a supervision exercise, where he identifies an activity which is causing him some concern and he wishes to bring it to an end, that frequently he may have to opt for the lesser of two evils and tolerate the continuance in position of an individual whom he suspects, in the hope, in the hope that nothing will go wrong on the prudential side?

A. Yes, I would accept that.

Q. And would you accept that, and this is certainly with the benefit of hindsight, I am asking you to express a view on this, that if Central Banking is to be truly, a truly reliable form of regulating financial institutions, that the regulators must be able to operate in a climate where they can, firstly, have complete access to a bank's documentary profile, that could be hard text documents, computers or whatever nowadays, and that they should have no reluctance in looking for any document they want, regardless of how uncomfortable it may be to ask for it?

A. I think that is the ideal certainly.

Q. Would you agree that where an inspector is carrying out an on-site inspection, and he identifies a degree of reluctance on the part of bank staff, I am not talking about the historical position now, to assist him, that that in itself should prompt him to take a very serious view of the management or the, what's the word that's used nowadays, the style of management of a bank?

A. It should certainly put him on his guard.

Q. In this case, the fact that bank staff were reluctant to give information was something that the one of the inspectors who gave evidence felt he couldn't identify as either inability or unwillingness. Is that something that should have been pursued to the point where, it should have been taken up with the directors?

A. The directors of the Bank?

Q. Yes, why are staff reluctant to provide them with information?

A. Not necessarily, I think, no.

Q. Could I suggest to you that would have been one very simple way of getting a lot more information about this bank than the inspectors ever got from the directors?

A. It might be a simpler approach. Whether you'd have got results, I couldn't say.

Q. The information that has become available to the Tribunal and given in evidence, is that a number of individuals, members of the bank staff, were involved in the activities which I have described as a bank-within-a-bank. Could I suggest to you that if the bank's supervisors had pursued those members of staff who were reluctant to give information or pursued the reason for their reluctance, that that is something that might have unearthed a lot more information?

A. I couldn't say whether it would or not.

Q. Could I suggest to you that it is something which you should recognise as a putting up of the shutters in a bank

when bank staff do not provide you with information, for whatever reason?

A. I think that's putting things too strongly.

Q. If a member of the staff of a bank is reluctant to give a regulator information, and the regulator doesn't know the reason nor the reluctance, whether it's inability or unwillingness, wouldn't you agree that he has a duty to establish whether it's one or the other, because unwillingness would be a most serious matter, wouldn't it?

A. Are we talking in general here?

Q. In general, but with particular reference to the fact that in this case, the staff were reluctant to give information?

A. My recollection of reading the reports is that while, the junior staff may have been reluctant, that the Inspectors took up the matter with the executive directors.

Q. That's true. But I am asking you to focus on the fact that junior staff were reluctant to give information. That in itself, I suggest to you, is another feature of this inspection which should have prompted deeper inquiry?

A. I am not sure if you are not placing undue emphasis on the position of the junior staff. Again, I am speaking in general. I could well imagine circumstances in which, for the wrong reasons, the junior staff become nervous in circumstances, particularly if there were, and I think this was the case in instance, a first inspection by the Central Bank.

Q. Yes. I think on the second inspection, the situation was the same, it was noted by the Inspectors, that once again, there was a reluctance on the part of junior staff. Let's forget about the first time, the second time round, don't you now have a reputation of the same, shall I put it, questionable management style?

A. Well, I am not in a position to add to what I have said really. Not having been involved in bank inspections myself, I really can't add to what I have already said.

CHAIRMAN: Well, I think you did say, Mr. Murray, that a reluctance should put the Inspectors on guard, and I suppose if that reluctance was repeated, the degree of forewarning was greater?

A. That is so, that is so. But could I emphasise that to some extent, all this was reflected, maybe not a hundred percent reflected, in the inquiries that the Central Bank staff pursued.

Q. MR. HEALY: You were right that it was reflected, in that it did appear in the documents that they produced, but as the Sole Member has said, would it not have been incumbent on some more senior official to wonder why, on the occasion of the second inspection, the staff were once again reluctant? That they should, in other words, have been put more on their guard the second time around?

A. Well, given the extent to which tax avoidance was identified at the first inspection, it wouldn't at all

surprise me if some members, at least of the senior staff in the licensed bank, weren't junior staff at this time, so to that extent it wasn't surprising. I am not for a moment suggesting that it wasn't an issue which shouldn't have been taken on board by the Central Bank staff, I am only trying to hazard a reason as to why there may have been this reluctance on the part of the junior licensed bank staff.

Q. Can I come to the second matter, Mr. Murray, and that's the fact that in, I think it was the '78 report, when the Inspectors were examining this matter, they identified documentation or they examined documentation which led them to identify as one of the ten major loans backed by "Deposits held in Cayman/Guernsey trust companies", a loan to a person, Mr. Ken O'Reilly-Hyland, who was then a director of the Central Bank. That document is the last document in Folder 3.1 and it's also on the monitor to your right.

A. It's I beg your pardon, it's the last document on 3.1, is that right?

Q. Yes.

A. Yes.

Q. Now, I think what you have, Mr. Murray, is a page setting out at Items 1 to 17 the names of all of the borrowers, the balance outstanding on their loans, and the various deposits in Cayman or Guernsey. On the overhead projector, as you will see on the monitor in front of you,

just to your right, you will see the Tribunal has obscured all of the names bar that of Mr. O'Reilly-Hyland. Your document may in fact contain all of the names, but you would have been at least entitled to examine that document in the course of your role as in the course of your service as Governor. So I don't want to mention any of those names other than that of Mr. O'Reilly-Hyland.

Now, when this matter was drawn up with Mr. Byrne, when he was giving evidence, he indicated that he was well aware that Mr. O'Reilly-Hyland was a director of the Bank at that time, and indeed he had been a director for some five years or thereabouts by 1978. Were you aware of that? Are you aware of those dates, that Mr. O'Reilly-Hyland had been a director from in or around 1973 to about 1983?

A. 198?

Q. From 1973 until in or about 1983, he served two terms.

A. Yes, I wouldn't have remembered them of my own accord, but I accept the dates you mention.

Q. So that in 1978 he had been a director of the Bank for nearly five years. And as I indicated, the Inspector by whom this report was reviewed in giving evidence said that having seen the document, he recognised that Mr. O'Reilly-Hyland was he recognised him as a director of the Bank. He said that he did not identify the matter or give it any particular headline. He did not address it as an issue in his report. He felt his job was to set out the facts. And the report went further up the line.

Now, it did not come to your attention, isn't that right?

A. That is so.

Q. From the evidence you have already given?

A. Yes.

Q. And I think you have indicated that you certainly would have preferred if it had come to your attention?

A. Yes, that is so.

Q. Do you agree with the Tribunal that it is something that should have been brought to your attention?

A. I said in my written submission that I thought that this raised issues of nuance and judgement. I think that it mightn't have been as obvious to the Bank staff as it would have been to me, that the Governor should have been aware of this particular aspect relating to one of the directors of the Bank. In other words, he wasn't they weren't in my shoes, so to speak.

Q. The directors are appointed by the Minister, isn't that right?

A. That is so.

Q. The Governor is appointed by the President on the recommendation of the Government, isn't that right?

A. Yes.

Q. Although the Board of the Central Bank is slightly different to that of a commercial concern, in that the Governor is the only executive member of the Board, isn't that right?

A. That is so.

Q. And has a lot of Board functions delegated to him by the Board?

A. Yes.

Q. Nevertheless, the Board is the representative of the shareholder, the Minister, isn't that right?

A. Yes.

Q. And in as much as the Governor has a lot of functions of the Board delegated to him, he has to, as it were am I right in thinking that he has to take the place of the Board more often than the Chairman would in the case of a commercial concern?

A. Well, you'll excuse me if I fail to answer that, having had no experience of Chairmanship of commercial concerns, but I take the spirit of what you are saying and I think you are right.

Q. The description of the Head of the Board, if you like, or the Presiding Officer of the Board, and I take it that the Governor presides at Board meetings?

A. That is correct.

Q. So he is the Chairman of the meeting?

A. That is so.

Q. Of the meeting of the Board of directors. Unlike the Chairman of a company, certainly when he is an non-executive Chairman, the Governor is his title is different to that of a Chairman of an ordinary company. He is not merely the Presiding Officer of the meeting of

the Board of Directors of the Bank, he has greater responsibilities than that?

A. He is not Chief Executive of the Bank, but he still has basic responsibility for the executive functions of the Bank.

Q. Anybody appointed to any Board, whether of a commercial concern, and certainly a person appointed to the Board of the Central Bank, would be bound to be conscious of or should be conscious of potential conflicts of interest, isn't that right?

A. Yes.

Q. While these matters may now be articulated in manuals and circulars on ethics and good practice in management, you don't need any manual or any circular letter to know that you mustn't put yourself in a position where your duty to a statutory body such as the Bank could be seen to be in conflict with some other activity you are involved with, isn't that right?

A. I accept that.

Q. And the problems where conflicts of interest are concerned is not that somebody may be involved in two activities which are in conflict but that they may be perceived to be involved in two activities which are in conflict, and that their actions in the one case may be misunderstood as being influenced by their other activities, isn't that right?

A. That is so.

Q. Now, in this case, the Bank had taken, by 1978, had taken a

certain view of the activities of Guinness & Mahon's offshore subsidiaries. And the evidence given by, I think Mr. O'Grady Walsh, and other witnesses is that, or at least one other witness, is that an assurance was obtained from Mr. Traynor, and that by 1982, the Bank believed that Mr. Traynor was acting in compliance with that assurance. Now, you had left the Bank by 1982.

Between 1978 and 1980 or 1981, I certainly put it to one witness that Mr. Traynor wasn't wholly in compliance with his assurance but we will leave that out of it for a moment. The fact is that Mr. Traynor was operating in circumstances in which the Bank understood itself to be monitoring his assurance, isn't that right?

A. Could I trouble you to repeat that question?

Q. Of course. Between 1978 and 1980 or '81, the Bank took the view that Mr. Traynor could continue to do what he did, what he was doing with these companies as long as he was winding them down and as long as he was taking no new business of this kind, would that be a fair summary?

A. That is so.

Q. But the activity was nevertheless one about which the Bank had expressed some serious concern?

A. But surely to the extent, for example, that it refused to treat these back-to-back loans as equivalent to cash loans and therefore implications you know for the risk asset ratio, they were expressing their concerns.

Q. Yes. They were expressing their concerns, and they were

relying on an assurance.

A. Yes, that is so.

Q. But the concerns they had expressed went beyond prudential concerns. You must be aware that they leaving aside the question of tax evasion, you must be aware that the Central Bank took the view that this activity was potentially unethical, that it was not in the national interest, these were rather more serious concerns, weren't they?

A. Yes, those were the words used I think in an opening document, opening the discussion circle, so to speak.

Q. And looking at it from the point of view of a disinterested third party, a hypothetical disinterested third party, couldn't there have been a perception that the Bank, the Central Bank that is, were prepared to accept Mr. Traynor's assurance notwithstanding any other concerns they might have had, because one of the individuals perceived to be involved in this activity was a director of the Central Bank?

A. Yes, it would want to be a very critical hypothetical third party to take that line.

Q. Could I suggest to you that if anybody was asked to look at this from the outside, would take the view that where the director of the bank that is monitoring the licence is prepared to rely on an assurance concerning the cessation of a particular activity, that a person associated with that bank should not have been associated, and I am perhaps

going too long on that question. I think I will start it again.

The assurance that was accepted by the Central Bank was accepted by the Bank as a whole, isn't that right?

A. It was accepted by the executive staff, senior staff of the Bank, and to that extent, was speaking for the Bank as a whole.

Q. Yes. And Mr. O'Reilly-Hyland was a member of the Bank's Board of Directors?

A. That is so.

Q. And could I suggest to you that it's inappropriate that a bank whose Board of Directors one of whose directors is involved in an activity which gave rise to these concerns should be accepting such an assurance?

A. Once again I am very sorry, could I trouble you to repeat that question?

Q. Should a bank accept should the Central Bank accept an assurance or should it have accepted assurance from Mr. Traynor that he would cease an activity which is giving rise to concern where one of the persons accepting the assurance, Mr. O'Reilly-Hyland, was himself involved in the activities?

A. Yes, but he wasn't involved personally in the acceptance of the assurance.

Q. Ah well, Mr. Murray now, what point was there in having him on the Board of the Bank?

A. This issue never came before the Board.

Q. That's the point I am making. It didn't come before the Board. I am suggesting to you there can be no doubt but that it should have come before the Board, and it's not just a critical third party who would have taken the view I am canvassing but that any responsible and reasonable person would have taken the view that that matter involving a director of the Bank should have been brought to the attention of the Governor?

A. As I told you, I certainly accept that it should have been brought to my attention. The fact that it wasn't, I have no explanation for that beyond pointing out that the existence of these loans to the Central Bank director were certainly not highlighted in the Inspectors' reports.

Perhaps they should have been, and to that extent perhaps it was a fault in the reports.

Q. Well, do you agree therefore, that it's not just a case of your preferring that the matter should have been brought to your attention, do you now agree that it should have been brought to your attention?

A. Yes.

Q. Thank you.

CHAIRMAN: Mr. Murray, I am conscious you have had quite a long time in the witness-box. I anticipate that the questions that remain from the couple of other barristers or solicitors involved will be quite limited and there may be something to be said for dealing with them now, but if

your own preference would be to leave the short balance of your evidence until after lunch, I will have regard to your views?

A. That's very kind of you, Mr. Chairman. I am quite happy, at least "happy" is the wrong word, I am quite prepared to stay on.

Mr. Chairman, there is I am not sure whether the rest of the examination will touch on the position of this individual director of the Central Bank Board, to whom we have been referring, but there was one aspect of that to which I wish to refer.

CHAIRMAN: Yes, by all means, Mr. Murray, if you wish.

A. Right. I am going on yesterday's paper, which you know, to some extent, isn't a bad thing to go on. And I noticed that the director in question took the view that he should have been informed of the views of the Central Bank about this particular loan. I wish to refute that categorically. The Central Bank had no responsibility to the director in question. I would be surprised if he hadn't plenty of his own tax advisers who could have put him in the picture as regards this loan, and to suggest that we were falling down in our responsibilities by not drawing our concerns to his attention, is outrageous.

I notice in passing that he claims to have advised the Minister for Finance that sorry, I will rephrase that,

he claims to have advised the Minister for Finance of his position in regard to a member of the Lloyd's syndicate, and in that context of his offshore banking activities.

This he may well have done, but the man he advised was not the man he named. Mr. Colley, who he named, was not Minister for Finance in 1973.

Q. MR. HEALY: If I can assist the witness. I think, Mr. Murray, and I am certainly prepared to be corrected by you, I have seen Mr. O' Reilly-Hyland's Warrant of Appointment and it was certainly signed by Mr. Colley.

A. Well, then this is why I expressed less than certainty about the dates you mentioned in regard to his period of service, because if he took up office in '73, on the basis of the Warrant of Appointment signed close to that date, then it surely

Q. I think we may both be I think the Warrant of Appointment, I am informed by one of my colleagues, was dated the 8th March of 1973. And the Government changed I think on the 14th March of 1973.

A. I see,, so I am confused, I beg your pardon. The point anyway was not one of substance.

Q. Could I just take up the point of substance with you, and it's this: Clearly any person acting as a director of the Central Bank shouldn't allow a perception to arise where the Bank could be where he could be seen to have a conflict of interest in the discharge of his duties, isn't that right?

A. Yes.

Q. Now, wouldn't it seem reasonable for Mr. O'Reilly-Hyland to wish to be alerted to any matter that could give rise to such a conflict of interest or such a perception that would enable him to take the appropriate action?

A. I stand over my previous comment.

Q. It's just that you suggested that his assertion was an outrageous one. I think

A. Did I use the word "outrageous"? I am not sure.

Q. I think you did.

A. Well, I stand over that too.

Q. But could I suggest to you that it seems to me quite reasonable that a director should want to be alerted to some material, such as the material we saw in the overhead projector a moment ago, which might give rise to a criticism that he was in a position where he was likely to be exposed to a conflict?

A. As a matter of general issue, I have no difficulty with that, but in regard to taxation matters, I think that Mr. O'Reilly-Hyland was better served in that issue than many another individuals on the Central Bank Board.

Q. This wasn't a taxation matter, Mr. Murray. This was a view expressed by the Central Bank. I am not concerned whether the view was right, wrong or indifferent. The fact is that the Central Bank had expressed a view. They had characterised these deposits as being in some way unsatisfactory. We will put it no more than that. They

had sought from an individual involved in operating those deposits, an assurance, and without going into the matter in detail, they were prepared to rely on that assurance.

Now, in those circumstances, do you think that the bank that was prepared to rely on that assurance, should have told one of its directors that they felt that he was involved?

A. No.

Q. I understood you to tell me a moment ago that you felt that you should have been informed, and could I suggest to you what point was there informing you if you didn't inform him?

A. I had my own statutory responsibilities. But I will come back to the point that I characterised the point at issue in regard to these back-to-back loans etc., one critical aspect of them anyway as relating to taxation, and it was quite clear from the very beginning of the Central Bank inspection that tax avoidance was identified as an issue and, so, and I gather from the reports, now, here I have to I am a bit hesitant, that they were so identified in discussions with the at least the possibility was identified in discussions with Guinness & Mahon.

Q. That's true.

A. So insofar as there were tax questions arising out of, or the possibility of tax questions arising out of these banking activities, I have no doubt but that Mr.

O'Reilly-Hyland's tax advisers would have alerted him to any possibilities that might arise.

Q. Thank you.

CHAIRMAN: Anything arising, Mr. Hogan?

MR. GALLAGHER: No questions, Sir. Thank you.

CHAIRMAN: Mr. Hogan?

THE WITNESS WAS EXAMINED BY MR. HOGAN AS FOLLOWS:

Q. MR. HOGAN: Mr. Murray, my name is Hogan, I am a solicitor representing the Central Bank and Mr. O'Grady-Walsh.

There is just two or three things I'd like to raise with you, if I could?

As Mr. Healy has brought out, the Governor of the Central Bank acts as the Chairman of the Board of Directors of the Bank, which the members of the Board are appointed by the Minister for Finance, would it be correct that these would be typically senior people, business people, trade unionists or people of standing in the community?

A. That is so.

Q. And in terms of the expectation that any director would be alerted to questions of conflict of interest, the kind of person appointed could be expected to have some alertness to that, to be aware of the issue?

A. Yes.

Q. And do you, as the Governor, would have expected any

director who perceived a conflict of interest in relation to any matter coming before the Board, to have advised you of that?

A. That is so.

Q. There were formerly, but there may not be now, what were called "banking directors", that is persons who were representatives of the associated banks and others on the Board of Directors?

A. Yes, that is so.

Q. And would it be correct that at the time that you were the Governor, there would have been a couple of directors who were also individually directors of the Bank of Ireland, Allied Irish Banks or other banks like that?

A. On the Board of the Central Bank?

Q. Correct, yes.

A. Yes, that is so.

Q. And if matters arising arose relating to those banks, about either their other interests would have been known or you might have expected them to withdraw from the meeting if a matter particularly affecting a bank was being discussed?

A. That is right in principle, though I must confess that I don't recall any occasion when it did arise, but I am not ruling out that it could have arisen.

Q. So the area of conflict of interest was one to which the Bank was alert? It was not a matter of indifference to the Bank?

A. Oh, certainly not.

Q. You said I think, that banking supervision would be a matter of judgement and of balance, of nuance, in that issues might arise that were not completely satisfactory, but that looking at an institution in the round, the Bank might take a view of it as what was to be done.

A. Yes, perhaps I should make it clear that in most cases, the issues that arose clearly were very specific concrete issues. But that that didn't rule out that occasions might arise where judgement and nuance was involved.

Q. Right. But it seems fairly clear that, from the records, that whatever reservations or misgivings the Bank might have had about Mr. Traynor, things were looked at in the round and he was seen as one of a number of directors in whom the Bank had, in general, confidence?

A. Yes. You mean one of a number of directors on the Board of Guinness & Mahon?

Q. Correct.

A. Yes, that is so.

Q. And Mr. Healy put to you a point, perhaps I could just touch on it again, which is that if in some supervised institution, there was something unsatisfactory, some unsatisfactory aspect of its affairs, that the Central Bank might accept that situation, I think as he put it, in the hope that matters would be in the hope that nothing would go wrong. Could I just query that phrase, "in the hope". It seems to me that in making a balanced judgement

on a supervisory issue, the Central Bank would have had to have a reasonable expectation of how things might transpire, rather than had a hope?

A. I think that is so, and could I just add to that, that as Mr. Healy did say to me, in all these issues, in all issues relating to banking inspections to a greater or lesser extent, the Bank Central Bank was faced with an either/or situation, there was rarely an in-between one.

At least an in-between one has to be adopted because it was either/or, you know if they pressed matters to the ultimate, and forced the closure, you had one very undesirable situation, to put it mildly. On the other hand, you clearly had to couldn't accept the position as was disclosed to you on inspection and you had to do one's best to work within those two very basic parameters.

Q. Could I refer to the subject of tax avoidance and tax evasion just for a moment, which is, the papers you have seen indicate that the possibility of tax evasion being a basis of the Guinness & Mahon offshore structures was raised in 1976 or in 1978. And there are some references in the papers to "evasion", and there is some reference in fact, more references to "avoidance", and the question was put as to whether, you know, a more serious view of the matter could have been taken with the benefit of hindsight. And could I put it to you that Mr. O'Grady-Walsh said in his evidence yesterday, that he did not have a personal view as to what was the appropriate

characteristic, he accepted the view within the kind of a hierarchical structure within the Bank, that avoidance is what would seem to be, but that whatever it was, he made the point that he was not happy with it however it might be characterised?

A. Yes, that is so.

Q. And the outcome of those papers in February 1978, which Mr. Healy took you through, was that the free resources ratio, at Mr. Traynor's request for a zero rating for the back-to-back loan was not accepted by the Bank and the inspection report then suggested, I believe, that the activity should be wound-down, and ultimately I think, could I put it to you that the Bank said to Guinness & Mahon that the structures were not in the national interest and were inappropriate, so there was, I think, a record of a serious view in fact being taken on the structures by the Bank?

A. That is correct.

Q. And lastly, with respect to Mr. O'Reilly-Hyland and his position, could I put to you what Mr. O'Grady-Walsh said, that he had no recollection of raising the matter with you, but thought it possible that he would have done. Could I ask you, do you think it possible that he could have done that and that there is simply not a recollection of that having happened?

A. I would accept that it would be quite possible that he did mention it to me, and I accept equally that it would be

equally possible that I didn't remember it.

Q. And could I put to you also just one point Mr.

O'Grady-Walsh made in his statement to the Tribunal

yesterday, and it isn't germane to the conflict of interest

point and the point you made about what Mr. O'Reilly-Hyland

said. I will just quote, if I may, from

Mr. O'Grady-Walsh's statement.

"I should say that the unfavourable view with the Banking Supervision Department of the Central Bank formed of the Guinness & Mahon offshore tax avoidance activities related to Guinness & Mahon's business as a licensed bank and its participation in that activity. It did not constitute any form of comment or opinion about the activities or business affairs or taxation affairs of any individual customer of that bank about which the Central Bank would have had no function."

I think the point he was trying to make, I will just put it to you, Mr. Murray, was that the Bank was concerned with Guinness & Mahon as an institution, not necessarily with any individual customer of Guinness & Mahon?

A. That is so.

Q. Whether or not that individual customer was a director of the Central Bank or not?

A. Well, I will qualify the last issue, insofar as I have already said that I think the Governor would wish to know of any aspect of a director's activities, you know, on

which, let's put it neutrally, there might be debate, or a comment, or a question.

Q. Right. Thank you Mr. Murray.

CHAIRMAN: The last thing, Mr. Murray, somebody listening to the evidence relating to Central Bank matters this week may have obtained a position that the role of a non-executive director in the Bank was somewhat distant and unexacting, and that comparatively few matters were referred to the Board meetings. Would that be fair or unfair?

A. I think it mightn't be correct, Chairman, whatever about being fair and unfair. I think that from a statement that the Tribunal will get from the Central Bank, the Board's functions in regard to the central issues we are talking about, and that is the supervision of the banking system, they will have had significant input or had in the past, in considering and agreeing the various conditions that would be attached to licences, for example. I think I have said that, I recall few, if any instances in which issues arising out of the Bank inspections came before them, that was part, in accordance well delegated responsibility, you know, given to me and by me to my staff, but there were many other issues that came before the Board. They had originally I think weekly meetings. In my time, I think I am correct in saying, it changed to fortnightly meetings and these did consider issues of substance, and in fact, one of the major issues towards the end of the period that

the Tribunal is concerned with, that is '78 and on, was the future exchange rate policy. I remember many a long discussion with the Board on that issue.

CHAIRMAN: Well, you have had an opportunity, Mr. Murray, of considering the quite lengthy Statement of Evidence that we'll be dealing with in the afternoon, and you will be content, from your own wide experience, to accept that that accurately sets forth the Board position as well as other divisions of responsibilities in the Central Bank?

A. Yes. Thank you.

CHAIRMAN: Thank you for your assistance. Two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00PM:

MR. HEALY: Mr. Martin Keane.

MARTIN KEANE, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HEALY:

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

Q. MR. HEALY: Thank you very much, Mr. Keane. You are already sworn and you gave evidence to the Tribunal some time ago concerning your knowledge of the dealings Mr. Traynor had at the time I think it was with Mr. Foley, on a specific level, and your knowledge in a general way of the operation of the accounts which have come to be known

as the Ansbacher accounts.

A. Yes.

Q. The evidence you gave at the time concerned your knowledge of accounts then operating in the Channel Islands I think, Guinness Mahon Channel Islands entities of one kind or another and Guinness Mahon Cayman Trust on the other side, isn't that right?

A. Well, it is mainly in relation to the Channel Islands.

Q. Pardon?

A. My evidence was mainly in relation to the Channel Islands.

Q. Mainly in relation to the Channel Islands, that's right. I think at that time the Tribunal indicated that it wished to deal with one or two other matters but that they were being postponed until such time as the Tribunal came to deal with Central Bank issues.

At the time that in the 1970s and in the 1980s that Mr. Traynor was in position as an executive and ultimately I think effectively as either chief executive or joint chief executive of the bank, you were in a fairly junior position in the bank, is that right?

A. That's correct.

Q. And you reported mainly to Mr. O'Kelly, isn't that right?

A. That's correct, yes.

Q. Because an official at the bank who, at the time, was working or reporting mainly to Mr. Traynor left the bank, you were slotted in, I think, to deal with a number of

issues concerning mainly Guinness Mahon Channel Islands on behalf of Mr. Traynor?

A. That's correct.

Q. And you will recall that at the time I think you gave evidence in relation to your knowledge of the operation of the bureau system which was at that time in its infancy, I suppose, it was initially in a fairly limited mechanical way, records were kept by Mr. Ru Leonard of the interests of individual customers of Mr. Traynor on their offshore accounts, isn't that right?

A. That is correct.

Q. Mr. Traynor kept these records initially and then ultimately Mr. Collery took over the keeping of these records?

A. Yes.

Q. Sorry, I said Mr. Traynor kept them initially, I should have said Mr. Leonard, I beg your pardon. In any case, you agreed with Mr. Leonard and subsequently Mr. Collery?

A. Yes.

Q. Then as the bank became computerised, so did the keeping of these records also become computerised?

A. Correct.

Q. That is when the system came to be known as the bureau system or it may have been called that later on. It is the bureau system we are using to describe where the records were kept either manually or in computerised form concerning the offshore entities.

A. I understand.

Q. And the interests of the various Irish customers in those offshore deposits. During that time, do you recall visits to the bank either by the Central Bank or by any other external scrutineers I suppose I am really referring to the bank's auditors.

A. Well the bank's auditors would have been in on an annual basis and I would, I recall the Central Bank inspections in the late seventies but only in a I am not sure just reading about so much of it now I can recall but I couldn't have told you the dates.

Q. Yes. During the seventies and the eighties, loans in Guinness & Mahon were backed by offshore deposits, if I can put it that way, the fact that they were so backed would not be described in so many words in the bank's internal security documentation, isn't that right?

A. That's correct.

Q. And a code word was used "suitably secured" to indicate that the backing was an offshore deposit?

A. That is what I understand, yes.

Q. And we have heard other witnesses give evidence of what that coded reference meant. It meant that you had to go to Mr. Traynor to find out any more about the backing or securing of a particular loan, isn't that right?

A. Correct.

Q. Now, you were not the individual involved in operating the bureau system.

A. Not at all.

Q. But you were aware that it was Mr. Leonard or Mr. Collery who was operating it.

A. Correct.

Q. And you were aware of the expression "suitably secured" as a coded way of describing the backing of a loan by an offshore deposit?

A. In a general sense.

Q. In a general sense, of course. And we have heard from other witnesses that they would have been aware of that in a general sense, although the details was something that they would have to go to, I think Mr. O'Dwyer said mainly to Mr. Traynor, possibly also to Mr. Collery or Mr. Leonard.

A. Correct.

Q. Now, where an external auditor came to examine the books of a bank and he looked at a loan file and he came across, we will say, after 1976 which is from when the bank I think first began to take minutes of Credit Committee meetings, he might come across the expression "suitably secured", that would tell him very little about the securitisation of a loan, isn't that right?

A. Very little.

Q. So he would have to ask somebody. Now I understand that when he would ask that question of any member of the bank staff, what he would be told would be, "You have to go and talk to Des Traynor about that".

A. Are you asking me if I knew that was the case?

Q. Yes.

A. In a kind of a general sense I think probably yes, I wouldn't have dealt with the auditors on loans.

Q. Did you ever deal with the auditors in relation to any matters that involved the offshore deposits recorded on the memorandum system?

A. In terms of the security

Q. Any aspect of it.

A. I don't recall. I don't recall. It wouldn't I mean, in the normal way, the auditors would be doing the audit of the loan book. They deal with the banking people, the loans people. In the normal way, I would have dealt with the auditors on matters which, like some of the equity investments which the bank held which I was involved in. So I have no recollection of dealing with the auditors on that

Q. Do you ever recall being present at any meeting at which Mr. Traynor was being interviewed by any official of the Central Bank or at which any matter arising on a Central Bank inspection was being ventilated?

A. I can only think of one incidence.

Q. Mm-hmm.

A. And I am almost certain it was the I just have a tiny doubt as to whether it was the Central Bank and not the external auditors of the bank, I am almost certain it was the Central Bank. I can't recall who was there outside of

Mr. Traynor and the purpose, and I think it was probably in the early 1980s, it was certainly post the operation of the bureau system.

Q. Mm-hmm.

A. And I have an impression that I was either called to that meeting at short notice or just asked to attend with

Mr. Traynor, and the purpose of the meeting seemed to be to satisfy the auditors or Central Bank people as to the true, the cash backing, that the bank actually had control of the cash backing on the individual loans.

Q. Mm-hmm.

A. And I think Mr. Traynor, my recollection of the meeting was that Mr. Traynor had a printout of the, from the bureau system which would have listed all of the accounts and I recall that because it is the only time in my whole career in Guinness & Mahon that I actually saw it. And I think the, as I remember it, the process took the form of certain loans being called out saying "X, Y, Z, can we see the backing deposit on that?" And Mr. Traynor would go to the printout of the bureau system, identify the deposit and then subsequently would produce the relevant hypothecation letter executed from either Cayman or Guernsey. That is my recollection.

Q. Would he make those documents available to the Central Bank or would he simply answer questions

A. He showed them to them but my recollection is that they didn't keep them. He just it was a relatively short

meeting I think. They went through a sample, I think, of loans just to satisfy themselves that the bank actually had control of the cash backing.

Q. At the time, do you think or well at the time were you aware that the printout that Mr. Traynor had from the bureau system was a document that had been generated in Guinness & Mahon by either, I suppose, it had to be either Mr. Leonard or Mr. Collery?

A. Yes, I think so.

Q. Yes, and you recall it was a short meeting and you don't know whether that document was handed to the Central Bank or whether queries were maybe answered from the document?

A. I think queries were answered from the document.

Q. Do you know whether any documents were given to the Central Bank inspectors?

A. I don't believe so.

Q. Yes. Did Mr. Traynor indicate to the Central Bank inspectors that the document from which he was providing the answers to the queries, was a document that had been generated in Guinness & Mahon?

A. I don't recall.

Q. Well I suppose isn't it fair to assume that if he had said that to them, they would have said, "Well then, where is the Cayman bank being run, from here or the Cayman Islands?"

A. I suppose so.

Q. So one has to assume he musn't have given them that or

musn't have told them that is where the information had come from, downstairs in another room or whatever?

A. If you say so.

Q. Yes. Was that the only occasion you remember such a discussion?

A. That is my only recollection.

Q. Now, as a junior employee I can't imagine it was a very comfortable experience for you to be present while that activity was going on.

A. I wouldn't have described it as comfortable or uncomfortable; it was very straightforward and business-like.

Q. Surely you would accept that even as a junior employee you must have been aware that the bureau system wasn't something that was entirely regular?

A. Well I just knew the bureau system existed. I don't think I had a view on it whether it was regular or irregular at the time. I find it difficult to cast my mind back on what I thought 20 years ago, Mr. Healy.

Q. Was the bureau system operated in a completely open way so that every employee knew exactly what was going on?

A. No, it was not.

Q. I understand from other employees that it was operated in quite a covert way.

A. I think the only people who had access to it were Mr. Collery and Mr. Leonard and Mr. Traynor.

Q. It is not only that a small number of people had access to

it, but its existence, although known to a number of people, was not something that was advertised?

A. I think that's correct.

Q. And indeed it was many, many years before external or internal auditors actually learned not only how it operated, but of its actual existence.

A. I can't answer that, Mr. Healy.

Q. Well, I think you do know, you left the bank in '88, is that right?

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

Q. You would only know from a newspaper reports, I suppose, that the matter only surfaced in the records of any internal audit or external audit in 1989, so although the operation was being conducted for well over, I suppose, ten years at that point, it had never come to the attention of an internal auditor, isn't that right?

A. I don't know, Mr. Healy. I mean

Q. During your time it never came to the attention of an internal auditor as far as you know.

A. As far as I know, but I wouldn't necessarily get copies of the internal auditor's report.

Q. From the information that I have been provided with, it had never come to the attention of an internal auditor?

A. If you say so.

Q. Yes. What I am saying is the operation was being conducted in a way that although known so far as its existence was concerned to many employees, was nevertheless being

conducted in a covert way?

A. Well, covert, I suppose, is probably, that is your word. I think it is, it was fairly secretive.

Q. Yes. And if Mr. Traynor wished to give information to any Central Bank inspector at any time concerning, if you like, the actual backing of individual accounts, he would have to have access to the balances generated on the memorandum account, wouldn't he?

A. He would.

Q. Because there would be no way of knowing from time to time in 1978, in 1979, in 1982, in 1985 and in 1988, even though you left around then, the only way he could have known on any one of those occasions whether an account was backed by and if so by how much, was by accessing the memorandum accounts?

A. I believe that's correct.

Q. And that information he obtained inside in the bank itself?

A. Correct, I believe.

Q. And it could be accessed by simply examining a printout.

That is your evidence.

A. No. I am just saying he presumably would get a printout, yes.

Q. Yes. Thanks very much

MR. CONNOLLY: No questions.

CHAIRMAN: Anything, Mr. Hogan?

MR. HOGAN: No questions.

CHAIRMAN: Mr. Gallagher?

MR. GALLAGHER: No questions.

CHAIRMAN: Mr. Schubotham.

MR. SCHUBOTHAM: No questions.

THE WITNESS THEN WITHDREW.

MAURICE O'KELLY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. O'Kelly, I think you have furnished a statement or Memorandum of Evidence for the assistance of the Tribunal, isn't that correct?

A. Yes, I have, yes.

Q. And I think you have that with you in the witness-box?

A. I have.

Q. And the format it takes is that it responds to various queries which were raised with you by the Tribunal, isn't that correct?

A. Correct, yes.

Q. And what I intend doing is to take you through the queries and your responses and then to return to clarify certain matters which may arise if that is all right with you?

A. Fine, yes.

Q. And I think to begin with, and to put matters in context, I think it is correct to say that you suffered a serious

stroke on the 18th of November of 1992, isn't that correct?

A. That's correct, I did.

Q. Yes, and your memory suffered significantly and is still impaired, is that correct?

A. Well, I used to think a lot of my memory now it is very spotty.

Q. Yes, and that I think I think you were treated in Saint James Hospital by a doctor there and you have furnished the Tribunal with a medical report from that doctor. I don't wish to open that in public.

A. Sure, yes, yes, it doesn't matter really.

Q. Yes, now I think that you then respond to specific questions raised in a schedule to a letter sent to you by the Tribunal dated February of this year, isn't that correct?

A. That's right, yes.

Q. And I think the first query was for your recollection of the meeting of the 20th of May of 1976 which took place in the course of the Central Bank's on-site inspection of Guinness & Mahon.

A. That's correct, yes.

Q. And I think your response to that is that you have no special recollection of this meeting, that it would be one of a series of meetings over a number of years which would follow similar agendas, is that correct?

A. Yes, that's correct.

Q. And you go on to say that the bank would target likely

borrowers but would be obliged to charge a 2 percent margin whereas the associated banks, while operating in the same field, were able to charge a margin of 1 percent, is that correct?

A. Yes, I think you are really coming to the strategy of the bank. We were a very small bank, you know, and to make the bank any way profitable, we had to charge a 2 percent margin during the course of the funds and the lending of the funds while the associated banks like Bank of Ireland or AIB could probably do the same business at three quarters of a percent or 1 percent.

Q. Yes.

A. So I mean

Q. You didn't have as much volume as they did?

A. Not as much volume or access to the market.

Q. Yes. I think that's dealing with certain matters which were raised at the meeting of the Central Bank dealing with such matters as property involvement, subsidiary and associated companies, guarantees and matters of that nature, isn't that correct?

A. Yes, but it was all part of the one problem. I think, like, our strategy changed to facilitate the charging of an extra margin. We were trying to establish good relationships with certain individuals and companies.

Q. Yes.

A. That we considered to be good borrowers from the bank.

Q. Yes.

A. That was we facilitated them by giving them quick decisions etc.

Q. Yes.

A. Without basic security being put in place at the time.

Q. I think what you say to the Tribunal is that the strategy of the bank, that is Guinness & Mahon

A. Yes.

Q. to facilitate this business was to establish good personal relationships with customers and to provide very quick decisions?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And in the circumstances it was difficult to provide a balanced portfolio. This is where the Central Bank were raising issues with you about your exposure in particular areas of the market.

A. Yes, of course. We couldn't always do business with a manufacturing company.

Q. Yes.

A. Very frequently in those days an imbalance arose through loan obligation being secured by property and it was really a question of not doing that business or doing that business with clients of the bank that we felt were well, valuable clients of the bank.

Q. Yes, and I think you say that very often the decision rested solely on the reputation and integrity of the

borrower and the bank had to take that risk. Very often the word of other directors was taken as sufficient.

A. That is certainly correct.

Q. Yes, what the Central Bank had been concerned about in this specific matter you were dealing with was that you had a bit of an exposure on the property side I think, isn't that right?

A. Oh indeed, yes. The Central Bank were always drawing this to our attention.

Q. Yes, and you have informed the Tribunal that as far as you were aware, the strategy of deposits did not crop up at this first board meeting, that is in response to the particular queries being raised by the Central Bank.

A. You are talking about the board meeting of the Bank after

Q. Yes.

A. Yes. No, it wasn't discussed. I have no recollection of it being discussed.

Q. You don't? I will come back to deal with that later. I will just go through the

A. Sure.

Q. The response first.

A. Sure.

Q. I think the second query which was raised with you was you were asked for your knowledge, direct or indirect, of the documents which were shown to the Central Bank regarding the manner in which back-to-back loans were secured. And

you reply that you have no knowledge, direct or indirect, of documents being shown to the Central Bank, is that correct?

A. That's correct, yes.

Q. The third query then was that you were asked for details of all discussions between officers or officials of Guinness & Mahon, and decisions made by Guinness & Mahon as to the manner in which Guinness & Mahon intended to deal with the concerns of the Central Bank as recorded in the 1976 Examination Report and in a letter from the Governor of the Central Bank to Mr. John Guinness dated the 9th of September 1976.

A. Yes.

Q. Your response to that query is that "this must have been discussed but I have no special recollection. Mr. Guinness's letter would probably have been drawn up by Mr. Traynor and signed by Mr. Guinness. I have not seen a draft but I cannot recollect." Is that correct?

A. I have not

Q. Not that you may have seen?

A. Not that I may have seen.

Q. But you can't recollect?

A. I can't recall exactly. I have no recollection of that but I am sure I saw it

Q. Yes, yes, now I think the next query was you were asked for your recollection of the meeting with the Central Bank on the 8th of February 1976 and at which the late Mr. J

Desmond Traynor appears to have outlined the activities of Guinness & Mahon's offshore subsidiaries and the purpose for which funds were placed with its subsidiaries.

A. Yes.

Q. And your response to that query is: " This conversation would have taken place on a number of occasions. I remember that this point was discussed time and time again at these meetings but I would have no special recollection of any meeting as against any other meeting."

A. Yes, well, my recollection is that it did crop up quite frequently.

Q. Frequently?

A. Yes, and from my point of view, it hinges on my relationship probably, and friendship with Des Traynor. I was very close together, I regarded him as being a man of absolute integrity and I would have taken his word on anything.

Q. Yes.

A. The operation of GMCT was one of those.

Q. But I think what you are saying here in this response is that it arose on a number of occasions, you can't remember any one specific meeting from another, is what I think you are saying, is that correct?

A. Yes, we were always discussing

Q. Yes, I think the next query which the Tribunal raised with you was whether you considered that the explanation furnished by the late Mr. Traynor accurately reflected the

workings of the Guinness Mahon Cayman Trust and Guinness Mahon Channel Islands subsidiaries and the purpose, the purposes for which loans were or funds were placed with them?

A. Yes.

Q. Sorry, your response is: "At the time I considered it accurate and adequate. I did not know at that time that the foreign deposits were being used to secure loans at home. As far as I am concerned, the reputation and integrity of the customer was the governing criteria."

That was the borrowing customer I take it you mean.

A. Yes. It seems rather strange to even say that now, but I didn't actually know the particular situation at the time.

I thought that we were lending to individuals who were considered to be very good for the loan which they were taking from the bank. In that context, the words on loan documentation that frequently appears is "suitably secured".

Q. Yes.

A. It may seem a bit naive but I always thought "suitably secured" meant that we were satisfied with the security of the borrower rather than the upstanding integrity of the borrower.

Q. I think you come on to deal with that in your Memorandum and perhaps I will deal with it, then you say that I think at paragraph 6 of the Memorandum sent to you, you were asked for your recollection of a meeting with the Central

Bank which took place on the 23rd of March 1978 and at which Guinness & Mahon requested that the backed loans should be considered non-risk for the purpose of calculating Guinness & Mahon's free resources ratio.

A. Yes.

Q. And I think you respond to that, your response so that is:

"The date, the 23rd of March 1978 is incorrect, I think that it should be the 25th of January 1978" I think you take that from the documents which the Tribunal sent to you, is that correct?

A. Yes.

Q. And I think you are correct in that?

A. I am.

Q. And you say that, "I understand the reason for the Central Bank's decision and I understand the reason for the Central Bank's significance and was in agreement with it. Other than that I have no recollection." Is that correct?

A. Yes, I thought that they were right.

Q. Now, query number 7 is, you were asked for your understanding of the matters which caused the Central Bank to refuse Guinness & Mahon's request to treat the backed loans as non-risk.

And your response so that is: "I agreed with this the Central Bank was correct in its decision. I may have discussed it with Mr. Traynor but I have no recollection."

Is that correct?

A. Yes, I think that is absolutely right. I thought the

Central Bank were absolutely right.

Q. Query number 8 is, you were asked of your recollection of the meeting on the 13th of September 1978 prior to the finalisation of the Central Bank's 1978 Report at which it appears that it was indicated that the Central Bank was considering whether to require Guinness & Mahon to wind down its backed loans and you respond: "My recollection is that the Central Bank were to make a decision on this matter."

A. That's correct.

Q. I think that is correct?

A. Yes.

Q. Then query number 9, you were asked for your role in the preparation of your knowledge, direct or indirect, of the list of backed loans provided to the Central Bank in the course of the 1978 on-site inspection and in particular the omission of a number of significant loan backed loans from the list which included loans to Central Tourist Holdings Limited and to Mr. Peter Sutherland, and I think your response is: "I have no knowledge whatsoever of these matters."

I take it that you had no role to play in the preparation of the list

A. In fact, I did.

Q. Did you?

A. Yes. My memory is severely gone by the board.

Q. Yes. We will deal with that in a moment so.

A. I did

Q. I think you inform the Tribunal that you are a personal friend of Peter Sutherland and "I did not know that he had a loan. I am amazed at the recent evidence." But we will come to deal with that in a moment and I think you can rectify that situation.

A. Yes, okay.

Q. I think paragraph number 10 of the Memorandum you were asked for details of all discussions between officers or officials of Guinness & Mahon and all decisions made by Guinness & Mahon as to the manner which Guinness & Mahon would deal with the concerns of the Central Bank, that the activities of Guinness & Mahon, including the provision of backed loans, were contrary to the national interest as recorded in the 1978 Examination Report, and in correspondence from the Central Bank dated the 1st of December, 1978.

Your response is that "this may have been discussed. In fact. I am sure it was, although I have no special recollection, other than the fact that we disagreed with the Central Bank's interpretation of the activities as tax avoidance."

A. Mm-hmm.

Q. Now I think the next query

A. I think that date, I think 'avoidance' was in the minutes but 'evasion' was altered to 'avoidance' "... which gives rise to tax avoidance".

Q. Well, I will come back, we will take up some of these matters, Mr. O'Kelly, if that is all right with you?

A. Sure.

Q. I think query number 11 you were asked for your recollection of the meeting which took place on the 7th of March 1979 and in the course of which it appears that the Central Bank agreed not to pursue the matter of backed loans on foot of the assurance given by Mr. Traynor that there would be no increase in the level of backed loans and that he expected there to be a gradual reduction in their level. You reply: "I can recall this meeting, it was a very friendly meeting and the outcome was friendly. I am sure that the matter was discussed as part of the bank's strategy to get customers."

Then query number 12 is, you were asked for details of all discussions between officers or officials of Guinness & Mahon or decisions made by Guinness & Mahon in 1978, to suspend the use of the term "suitably secured" to identify loans backed by offshore deposits.

And you respond: "I have no knowledge of this.

Mr. Traynor, Mr. Furze used a phrase such as "suitably secured" which now I presume meant that the back-to-back facilities existed."

Then query number 13 you were asked of your knowledge, direct or indirect, regarding information provided to the Central Bank in the course of its 1982 on-site inspection

of Guinness & Mahon in relation to backed loans and in particular, number 1, the matters which appear to be referred to in an exchange of internal memoranda, memoranda between Miss Deirdre Devane and Mr. Pat O'Dwyer dated the 23rd of August 1982 and the 26th of August 1982, and I think you were sent those two documents and just to explain Miss Devane was asking Mr. O'Dwyer for the top 20 loans and the response from Mr. O'Dwyer was including them but indicating as agreed that he was intentionally not providing, excluding the back-to-back, the offshore situation.

Your response is: "I never saw the internal memoranda referred to. I have no knowledge of them as they appear never to have been circulated.

The second matter which was then raised was on this particular inspection, the quantification of backed loans at approximately 2 million and you say: "I have no knowledge of this. I would not have known the details although I may have been aware of the total and thirdly, the identification of a director of the Central Bank as a recipient of a backed loan of, whatever the sum was, 400 or 500?

A. 518.

Q. Yes. You say: "I have no knowledge of this. I did not know that there was such a loan."

Then query number 14, you were asked for your recollection

of a meeting with the Central Bank which took place on the 12th of January 1983 and in which the late Mr. Traynor appears to have stated that there was no increase in the level of backed loans since the assurance which he gave the Central Bank in 1979 at which he further appears to have agreed to provide the Central Bank with a list of backed loans.

And your response is that you do not remember the meeting.

And the final query then was you were asked for your knowledge, direct or indirect, of any list of backed loans provided by the late Mr. Traynor or by Guinness & Mahon following the meeting of the 12th of January 1983. That is the meeting of the Central Bank.

You say: "I have no knowledge of this. I would have knowledge of the granting of loans but I would have no knowledge of any back-to-back facilities. I always considered that I had seen all decisions re the granting of loans but the letter discloses three of which I had no knowledge." Is that correct?

A. Well that is what I said but, in fact, I know that I did have knowledge of

Q. Of one at least?

A. Yes.

Q. Of one at least.

Now, if I could then go back, Mr. O'Kelly, in 1976, in 1978 and in 1982, I take it over those years you were a director

of Guinness & Mahon, is that correct?

A. Yes.

Q. And Mr. John Guinness, in 1976, was the Chairman of Guinness & Mahon, is that correct?

A. That's right, yes.

Q. Mr. Traynor was the Vice-Chairman, is that correct?

A. Yes.

Q. To the best of your knowledge.

A. Yes.

Q. And Mr. Traynor, in that year and in the following years, was the chief executive of Guinness & Mahon, is that correct?

A. Probably was, yeah. We had a peculiar management structure by modern standards. I am not sure when Des became Chairman, whether he was also a chief executive. I was, when I was first persuaded to join G&M back in 1971, it was really as corporate finance director but we had three managing directors, myself, Des and William Ford.

Q. Yes.

A. Which was very complicated but in fact William Ford looked after legal matters and property matters.

Q. Yes.

A. I dealt mainly with corporate, corporate finance matters and Des had, at that stage, started GMCT and he was involved in that bank, and all three, if you like, made management decisions and we all had weekly meetings of the business board of the company.

Q. Yes.

A. Though, in fact, I think at that stage we were all called joint managing directors of the company or something of that nature.

Q. Very good. Whilst you were all called joint managing directors, you had different functions?

A. Different functions. Some functions were altered. Des dealt as the Chairman etc.

Q. Yes, and can I take it that when you joined, you joined as a board member, as an executive board member, isn't that correct?

A. It is very complicated. I started with the company, with a company called Cooperate Investments, I dealt with amalgamations, takeovers.

Q. Yes?

A. And it was Des who persuaded me that G&M would take over that company in '71 and that I would join the company.

That gave rise to this title, if you like.

Q. Can I take it that when you joined, that Guinness Mahon Cayman Trust was a wholly-owned subsidiary of Dublin?

A. I wouldn't know exactly you are talking about that year '71, whether it was already incorporated or whether it was after I joined in I am not quite sure, July '71 I joined.

Q. Around that time.

A. Around that time.

Q. Around that time would it be fair to say?

A. Yes.

Q. And after you joined the Channel Island subsidiaries were created, would that be fair to say?

A. That is correct, yes.

Q. And can I take it that you would have been aware that discretionary trusts were being established in these offshore locations?

A. Well, I would be aware that that was part of their business, the setting up of discretionary trusts. It is not something that I ever got involved or ever knew much about.

Q. I am not suggesting that you were involved in any day-to-day way, but you would have been aware in broad management terms.

A. In broad terms, yes.

Q. Can I take it that again in broad terms you would have been aware that Irish residents were borrowing money from Guinness & Mahon? Well you would have been aware that Irish residents would have been borrowing money in any event?

A. Oh, yes.

Q. And can I take it that you would have been aware in broad terms that there were situations whereby Irish residents were borrowing and that these borrowings were being secured in some way from these offshore subsidiaries?

A. I wasn't aware of that until '78.

Q. Right. Was that at the time that a query was raised by the Central Bank and you attended a meeting with Mr. Traynor

and Central Bank officials and the system was explained to the Central Bank?

A. No, it didn't occur to me because the meeting at which the system was explained with the Central Bank, it occurred it was explained to me because I asked about it because I had gone seven years regarding "suitably secured" as just being that Des was happy that we should lend to this particular client or if the client was introduced by myself, that I was happy that the client was very good for this amount.

Q. Yes.

A. I was not aware that the words "suitably secured" up to '78 included, I am not sure if it always included but that it did include back-to-back

Q. Back-to-back arrangements?

A. Yes.

Q. And what prompted you to inquire in 1978 about it?

A. I don't think I inquired. I think it must have come up, there must have been some loan application or something gave rise to it in '78. It probably was at a board meeting.

Q. Yes. Can I take it that then in 1978 you and, you at least, if not other executive directors or probably non-executive directors might have become aware that the term "suitably secured" was being used to indicate that there was a back-to-back arrangement in respect of loans?

A. I don't think there always was, but it represented probably maybe 70, 75 percent of the loan, approved loans which

carry the accommodation "suitably secured".

Q. "Suitably secured". And did this come as a surprise to you?

A. Did it come as a surprise to me? It certainly did because I thought our strategy was to identify high worth individuals or companies who would be prepared to borrow at 2 percent over the course of funds because I thought that was a strategy on our part. And indeed it was a strategy on our part.

Q. Yes.

A. It was to provide a very quick speedy service which the client could also, the service which the client could obtain from the clearing banks but it mightn't be as quick and as speedy and it mightn't enable the client to do business with an auction or whatever. It was that kind of service.

Q. Yes. Can I ask you what was your reaction or your first of all what was your view when you found out that "suitably secured" in most instances indicated a back-to-back arrangement?

A. Well, I suppose my main feeling was of surprise I would think.

Q. Yes.

A. But otherwise, I mean I had no objection to the fact that they were, that there was additional backing for the loan.

Q. No, no, I can understand from the point of view of the bank, the fact that you would have a back-to-back

arrangement would be very good from the bank's point of view, isn't that correct, there would be a rock solid security in position?

A. Yes, but we didn't always provide the money. Des would, or the Cayman Trust would have always provided the money. The client may have had money out there which is quite legitimately earned in the context of having been earned by some deal but the obligation in those days and unless my memory is at fault, the obligation, the Central Bank obligation was to remit those funds back to Ireland, if you earned say 300,000 abroad, you were expected to remit those back to Ireland within a certain period of time. I can't recall what it was but it might have been three months or six months.

Q. Yes, but I can understand from the bank's point of view it was good to have solid security, or accessible security but from the point of view of what might have been going on, did that raise any questions in your mind as a director?

A. I don't know what you mean by what might have been going on.

Q. Well, may I ask you this, Mr. O'Kelly, were you a chartered accountant yourself?

A. Were I?

Q. You are.

A. Yes, I am.

Q. Yes. Were you qualified as a chartered accountant at the time in 1978?

A. I was qualified a long time before then.

Q. Did you have some familiarity with taxation matters?

A. I passed it in the finals and after that I had no interest at all.

Q. And did it ever occur to you to ask a question about a resident, an Irish resident borrowing from Guinness & Mahon and having a back-to-back arrangement which concerned an offshore subsidiary of Guinness & Mahon?

A. The question is did it ever occur to me to query this?

Q. Yes.

A. After '78?

Q. Yes.

A. No, I don't, I don't remember ever saying why, or inquiring as to why they had the funds abroad. Is that the question you might be interested in, as to why they had money abroad?

Q. No?

A. No.

Q. Wondering how good the security was in those circumstances.

A. I never inquired. Why would I inquire?

Q. Well I am asking you did it ever occur to you that there might have been anything to question about it?

A. Not really.

Q. Very good. Now, you certainly attended a number of meetings with Central Bank officials and Mr. Traynor, isn't that correct?

A. Yes.

Q. And at one of those first of all, as a result of the first on-site inspection in 1976, the Governor of the Central Bank wrote to Mr. Guinness as Chairman of Guinness & Mahon, isn't that correct?

A. Yes.

Q. Can I take it that the Governor's letter would have been brought to the attention of the Board of Guinness & Mahon?

A. Oh surely, yes.

Q. And the Governor raised certain matters, some of them you have dealt with, such as exposure on property, profitability and matters of that nature, but the Central Bank informed Guinness & Mahon that it had concerns about the use of Guinness & Mahon's offshore subsidiaries in tax havens, isn't that correct, to support borrowing?

A. I can't recall. You are saying the Governor of Central Bank did raise

Q. The Governor of the Central Bank did identify it.

A. If he identified it, it was something that was being already done apparently because loans were being described as "suitably secured".

Q. Yes.

A. So I presume it is, it goes along it was those loans that the Governor was referring to.

Q. The Governor was referring to loans which had, activities which had been identified in an inspection report, of course, which would not have been furnished to Guinness &

Mahon, it was a Central Bank document, but he was drawing the attention of Mr. Guinness to this and saying that the Central Bank were concerned about this. That was one of the issues raised in the letter. There were many other issues relating to prudential matters.

A. Yes.

Q. Now can I take it that as the letter would have been brought to the attention of the Board of Guinness & Mahon, there would have been a discussion at the Board of Guinness & Mahon about how to respond to the Governor of the Central Bank?

A. Well, I presume there was, but I can't recall.

Q. And there is, among the matters the Governor raised with Mr. Guinness, was that the Central Bank wished to have a guarantee put in place by London, by the parent company, for the liabilities of Dublin. That was one of the matters the Governor wanted and that was done?

A. Yes, London were requested

Q. Yes. So Mr. Guinness then responded to the Governor and dealt with the various matters which had been raised by him such as profitability, exposure and property, capital adequacies and matters of that nature?

A. Sure.

Q. But the one issue which was not committed to paper by Mr. Guinness was the concern the Governor had expressed about the use of tax havens. And what Mr. Guinness said in the letter was that he didn't accept or believe that the

Governor had a proper understanding of the sense or the Central Bank had a proper understanding and they wished, Guinness & Mahon wished for a meeting to discuss the issue.

A. That's right, yes.

Q. So can I take it that that issue must have been discussed at the board meeting of Guinness & Mahon?

A. That issue or the meeting with the Central Bank?

Q. The meeting with the Central Bank to discuss the issue.

A. I don't know, I can only recall that at a meeting of G&M I presume that it was requested that the Chairman and Des would meet the Central Bank to discuss this matter.

Q. Yes, but this wasn't the Chairman and Des who met the Central Bank to discuss the matter.

A. Well, the Chairman wrote the letter.

Q. The Chairman wished to have an opportunity, Mr. Guinness wished to have an opportunity to discuss the matter.

A. Mm-hmm.

Q. Now, Guinness & Mahon did not commit themselves to paper in this response.

A. No.

Q. Can I take it that a letter from Guinness & Mahon signed by the Chairman in response to a letter from the Governor carried the full authority of the Board of Guinness & Mahon? We can take that as so?

A. I presume so, yes.

Q. Now, I am going to hand you just I am going to hand you,

just for ease of reference, a book of documents, you have seen them, they are just the documents the reports and the minutes of the various meetings.

A. Right.

Q. And I will refer you to specific

A. I won't be able to turn over

Q. Perhaps we can give you some assistance there. First of all, if you go to, perhaps if the Registrar would give you the documents individually as I call them out it might be easier.

A. Okay.

Q. Tab 14 is a minute of the meeting of the 8th of February 1977 to discuss matters adverted to in recent correspondence between the Governor and Mr. John Guinness following an inspection. And I think that in attendance at that meeting were Mr. Traynor and you on behalf of Guinness & Mahon, and Mr. O'Grady-Walsh who was then the deputy general manager of the Central Bank and Mr. Daly who was the reviewer of the Inspection Report.

A. Yes. (Document handed to witness.)

Q. Then the following matters were discussed: The first one was involvement in property. We needn't concern ourselves with that.

A. Okay.

Q. The second one was involvement in affiliated conditions. The third one was profitability. The fourth was capital adequacy.

And the fifth was tax havens.

A. Yes.

Q. And under that, Mr. Traynor outlined in some detail the operations of the bank's subsidiary companies in the Cayman Islands, Guernsey and Jersey. He stressed that they were basically trust companies but that a proportion of the assets being managed were deposited with trust companies themselves. The three companies in question had banking status. He also emphasised that the funds were not placed on deposit for the purpose of tax avoidance or tax evasion.

Then Mr. Daly, who was obviously the author of this note, goes on: "Mr. O'Grady-Walsh and I discussed this matter subsequently and agreed that we should talk to Guinness & Mahon again concerning this matter at a later date."

Do you remember a meeting where Mr. Traynor informed the deputy general manager and a senior inspector of the Central Bank that what was the business being conducted by this offshore subsidiary which did not involve tax avoidance or tax evasion?

A. I don't think that was said.

Q. You don't think that was said?

A. Well I have no recollection of it being said.

Q. This is an official document of the Central Bank now.

A. But where does it say that?

Q. Look where it says, "The three companies in question have

banking status. He also emphasises that the funds were not placed on deposit for the purpose of tax avoidance or evasion."

A. Yes.

Q. What do you understand that to mean?

A. Well, exactly what it says, the date of that was '77. I have no reason not to believe it.

Q. Do you remember Mr. Traynor informing officials of the Central Bank?

A. I don't remember but I see the minutes, then I presume he must have said it.

Q. Do you accept that he said it?

A. I don't recall it.

Q. You were present but you accept first of all, Mr. O'Kelly, do you accept he said it?

A. I have difficulty in remembering what happened 7 days ago never mind what happened 21 years ago, I don't recall but I am sure it was said.

Q. And you were present at the meeting?

A. And I was present at the meeting. I already said that I was present at the meeting.

Q. Very good. Do you have any doubt but that you were present at these meetings?

A. I have no doubts that I was present at the meeting because I don't think it would be said that I was present if I wasn't.

Q. Now, there was then, if you go, I think the next document I

would like you to look at is Tab 2.1. It is another note of a meeting, this was held on the 25th of January 1978. (Document handed to witness.) And it was a meeting where you and Mr. Traynor attended on behalf of Guinness & Mahon and Mr. O'Grady-Walsh and Mr. Daly on behalf of the Central Bank. And this meeting really arose from Mr. Traynor's request that the back-to-back loans would be considered by the Central Bank as being non-risk for the purpose of calculating the free resources ratio.

A. Um-hum.

Q. Yes, and can you remember that meeting in general terms?

A. Well, I have read it, I can understand it, yes.

Q. And if we look at the penultimate paragraph it says "that in conclusion, Mr. Traynor said that this bank has loans of 4 million which were secured by deposits placed with the bank's Cayman Island subsidiary."

He wondered if the Bank" that is the Central Bank

"He wondered if the bank would consider these loans as non-risk for the purpose of calculating the free resources ratio. Mr. O'Grady-Walsh said that he would certainly consider the matter. The meeting then concluded."

It goes on: "I rang Mr. Traynor on the 23rd of March and mentioned to him that the bank had considered the question of the above loans and decided that they should continue to be regarded as risk assets. I also said that Mr.

O'Grady-Walsh may wish to discuss the tax aspect of these

loans at a later date."

A. Mm-hmm.

Q. Apart altogether from the meeting, can I take it that you would have some general recollection of a discussion about the free resources ratio?

A. Sure, I do remember.

Q. And this was of some importance to Guinness & Mahon, because if these particular loans could be considered taken into account by the Central Bank as being non-risk

A. Non-risk, yeah.

Q. they could have avoided the necessity for Guinness & Mahon to introduce further capital

A. Further capital, yes.

Q. So can I take it that this was a matter which was discussed at the Board of Guinness & Mahon?

A. Yes.

Q. And that the Board must have had an explanation given to them, or it, by Mr. Traynor, or somebody, of how these loans were backed?

A. I can't remember a discussion but I thought that Mr. O'Grady-Walsh was right, that is not to say that the Central Bank was incorrect.

Q. Can I first of all ascertain that there must have been an explanation given to the Board to send you and Mr. Traynor off to negotiate with the Central Bank or to try and persuade the Central Bank to take them into account as being non-risk.

A. Another meeting?

Q. No, this meeting.

A. But I mean, I wouldn't have argued it, Des might have argued it. I thought that the Central Bank were correct.

Q. What I am saying is for the two of you to go off and meet the Central Bank to discuss this issue, there must have been a consideration of it at a board meeting of Guinness & Mahon?

A. No, I am sure there was. I mean the arrangement of the meeting was discussed by the Board.

Q. Yes?

A. Yes, oh I am sure it was, yes.

Q. And it would have suited Guinness & Mahon, understandably, if they could have had these loans considered as being non-risk, isn't that right?

A. Well, it would have suited them but it would have been incorrect.

Q. I will come to that in a moment. I know that is your view. I want to ascertain why that is your view in a moment. I first of all want to establish the facts that it was discussed at a board meeting of Guinness & Mahon, to the best of your knowledge?

A. Yes.

Q. And therefore the Board of Guinness & Mahon, as of January of 1978 or thereabouts, must have had a knowledge of the back-to-back arrangements in broad terms?

A. I am sure they had.

Q. The Central Bank rejected the particular request because the Central Bank had concerns about the tax aspects or implications of these back-to-back arrangements.

A. I am not sure if that was the reason for them. If you say it was, it may have been.

Q. Why do you think the Central Bank was correct in rejecting them as being non-risk assets?

A. Well, the Central Bank would have been looking to us to establish that the security for them was correct, was all right. And I thought, it is very early '78, I thought to seek to have the security part being backed by a deposit in the Caymans or Guernsey or wherever was quite wrong.

Q. Why is that?

A. Because it didn't leave the person making the deposit, one hadn't got freedom in relation to the funds in relation to agreeing that those funds could be frozen until the loan was repaid.

Q. So it was your understanding so that the back-to-back arrangement did not relate to funds which had in fact been deposited with Dublin by either Cayman or Guernsey, is that correct?

A. Not until later in '78. This was January '78.

Q. I see. So later in '78 you ascertained then funds were lodged in Dublin, is that correct?

A. I became aware of the situation that many of the loans, not all of the loans, were backed.

Q. Yes, and that the money was actually physically deposited

in Dublin?

A. In Cayman.

Q. No, there was never any money deposited in Cayman, Mr.

O'Kelly. Let's be clear about that.

A. If you say so, fine.

Q. Well do you say there was?

A. Are you getting me to say that there was no money ever lodged in Cayman?

Q. I am asking you what money was lodged in Cayman?

A. I left G&M in the end of June '85 and I was told that by '89 there was something like, something like 36 million or something of it in a back-to-back nature.

Q. Yes, yes.

A. So therefore there had to be money outside of Dublin.

Q. I will come back to ask you about the bureau system in a moment but...

A. I know nothing about the bureau system.

Q. But I will ask you about it in a moment, Mr. O'Kelly.

A. You can ask me if you like.

Q. In any event, later in 1978 you became aware that there was not only a back-to-back arrangement but a physical back-to-back arrangement in Dublin in respect of many of these loans, is that correct?

A. Yes, I became aware that "suitably secured" really meant that there was backing for the loan, yes.

Q. Yes, mm-hmm. And what view did you take of that?

A. What did I think of it?

Q. Yes.

A. My main thought was that it was part of a tax avoidance scheme, that I wouldn't have felt that it was correct.

Q. That it wasn't correct?

A. Mm-hmm.

Q. Yes, tax avoidance scheme. Yes, and I just want to be very clear and you gave a very fair answer there, Mr. O'Kelly.

A. Mmm...

Q. There can be little doubt that if there was tax evasion going on here, it was, we don't have to discuss it, isn't that correct, that would have been

A. I think we do because the line between avoidance and evasion is very narrow. Do you know what the line is between avoidance and evasion?

Q. No, because they are not terms of art.

A. The point is, I don't want to take up the time of the Tribunal with this nonsense, but the fact is in the mid seventies when you were very young, therefore you wouldn't have knowledge in the mid seventies but in the mid seventies, people in government service in the Department were leaving to join the private firm of accountants, they were qualifying as chartered accountants and they were tax partners. I can tell you quite definitely that the head partners in all the leading tax firms in Dublin from '73 to '85 probably were the tax partners because it was like some gigantic game which was being played between the accountancy firms and the Revenue.

Q. Yes?

A. So the accountancy firms, through their tax experts, would bring into being Scheme A. Scheme A would work and it would be tax avoidance not evasion. Within two or three years the accounts, the audited accounts for those companies would be filed and the people in the Civil Service who were inspectors would become aware that this loophole existed. Legislation would be introduced and that loophole would be blocked.

Q. Yes?

A. Tax experts would then go around in circles devising some new scheme. So that time factor was rife in '78. I am not saying that it is not rife nowadays but it was greatly rife then and again I would stress that the psychological attitude to those people engaged in it, you know, was different than it might be in the year 2000.

Q. Yes, I accept that. And one has to look at the climate of the time. I accept that.

A. Yes.

Q. But

A. So one, it arises from the fact that you and I are talking about tax avoidance and tax evasion and all I am saying is that the line between tax avoidance and tax evasion is very narrow, where some scheme is tax avoidance and you slip overboard and it becomes tax evasion. The gap is very narrow.

Q. Yes, and that I understand. Perhaps I will ask you about

it in a moment. What exercised the mind of the Central Bank, even if they designated the activities in respect of these offshore deposits being used to back borrowings here in Dublin, was that it would have been unethical for a bank, inappropriate and unethical for a bank to not engage in giving advice to a customer about what might amount to tax avoidance, but in participating in a tax avoidance scheme itself. Would you accept that?

A. I would agree but the line is very fine and the fact is that, you know, Guinness & Mahon were a small bank. The fact is that banks that are very much larger than Guinness & Mahon are involved in schemes of one sort or another that involved taxation

Q. Perhaps I can come to a particular I suppose and one can understand there is a fine line to be drawn between tax evasion and avoidance at its edges.

A. Sure.

Q. Would you agree with me that perhaps a test which one might apply in considering whether something had the appearances of tax evasion would be the degree of secrecy which might surround it?

A. Well, looking back and considering your statement, I possibly would but I don't think I would have considered that at the time. I don't think I would have said that anything that is secret is automatically that you are evading tax.

Q. I am not suggesting that it is automatically so but that in

the minds of the people engaged in the activity, it could indicate that there was some concern here because if it was avoidance, well you had to take your chances with the Revenue in arguing it anyway, isn't that correct?

A. I am sure it is.

Q. Now, if funds were obscured from the existence of the Revenue, as was happening and obscured from your existence, in fact, as an executive director of the bank up until 1978, that you didn't know what "suitably secured" meant?

A. Yes, yes it could be argued that I should have inquired, I should have you know, it could be argued that it could have been my fault.

Q. I am not pursuing that particular

A. I mean, I wasn't particularly interested in that particular aspect of it, my confidence in Des was so great.

Q. Yes, well there can be little doubt with the benefit of hindsight, no matter how great your confidence was it was totally misplaced, wasn't it, Mr. O'Kelly?

A. Without pursuing a psychological analysis of Des Traynor, I think I find it difficult to answer that question.

Q. Okay. How can you find it difficult, Mr. O'Kelly?

A. Well, I always think that in this case, I wouldn't say there was justification, but I can understand why his career moved in certain directions.

Q. Well perhaps you can enlighten us at a later stage.

A. Maybe I will.

Q. Maybe you will?

A. Maybe I won't.

Q. But it must have been totally misplaced when you, as you say, you did not know about the bureau system, is that correct?

A. I didn't know about the bureau system, but I mean when you say my confidence was misplaced, you are really saying should Des have brought me up-to-date with all the ramifications of Guinness Mahon Cayman Trust, Guinness & Mahon Guernsey and the clients thereof, or should he not?

Q. Oh no, I am not, I am not asking you about that or asking that that should have happened.

A. Mmm

Q. But the operation of the bureau system, when did you first become aware of that?

A. I didn't become aware of that.

Q. Never?

A. When I left Guinness & Mahon in '85, never knew of a bureau system in relation to Guernsey or Channel Islands or wherever.

Q. Mr. Martin Keane reported directly to you didn't he?

A. Not in relation to those matters.

Q. But he reported directly to you.

A. He worked with me in the early stages in the bank. After that he report to Des. He didn't report to me.

Q. And Mr. Martin Keane, Miss Deirdre Devane, Mr. Ru Leonard, Mr. Pdraig Collery and Miss Margaret Keogh all knew about the bureau system sorry, and Mr. Pat O'Dwyer, the loans

officer, all knew about the bureau system, or the existence of it?

A. If you say so, fine.

Q. Sorry, that is the evidence they gave.

A. Okay, they knew, yes.

Q. And you, as the managing director of the bank, did not know of the existence of the bureau system of the bank.

A. No.

Q. You didn't?

A. No.

Q. And your joint managing director whom you have great confidence in did and who set it up, on the evidence, isn't that correct?

A. He organised it?

Q. Set it up, on the evidence.

A. Yes, well I was not aware of it but I understand that it was set up.

Q. Yes, that is the evidence. And the expression of a the expression "bank within a bank" has been used and perhaps Mr. O'Grady-Walsh from the Central Bank put it at its simplest yesterday when he spoke about the bureau system as being a second set of books being kept.

A. I read that this morning, yes.

Q. And isn't that what was happening in Guinness & Mahon?

A. That there was a second set of books?

Q. The bureau system was a second set of books.

A. Well, as I understand it, it must have been but I

understood my understanding of was different, I thought that clients had money in the Cayman or wherever and that they gave instructions to Des if they wished any payments to be made in Dublin or that, so I didn't I was not aware that there was a second set of books being kept in Dublin or a bureau system in Dublin.

Q. You know now there was a second set of books being kept in Dublin.

A. I am aware of it, yes.

Q. And wouldn't that piece of information alone inform you that your confidence in Mr. Traynor was misplaced?

A. I think I have already made it clear that my confidence was slightly misplaced but it doesn't alter the regard in which I held Des. That's all.

Q. At the time. At the time.

A. The regard which I held Des at the time.

Q. Yes. Very good. But there can be little doubt that if the Central Bank knew that there was a second set of books being kept, whoever was responsible for it would have been rightly removed from banking in this country?

A. If the Central Bank knew

Q. Knew that there was a second set of books being kept, they would have rightly removed anybody involved in that activity from a supervised bank?

A. Well, I think it is really rather more the purpose than the keeping of the second set of books. I think if it was for the purpose of tax evasion, then they would remove, yes.

Q. Mr. O'Kelly, let's stop and think about this for a moment.

You are a chartered accountant. You were a joint managing director of a licensed bank in this state. Can there be any situation where the keeping of a second set of books could ever be justified to the Central Bank?

A. Well, I could answer that by saying, was it necessary to keep a second set of books?

Q. I beg your pardon?

A. Was it necessary to keep

Q. No, I asked you a question, Mr. O'Kelly, can you conceive of a situation where it could be appropriate for a licensed bank to effectively keep a second set of books or to operate the affairs of a bank which was not licensed by the Central Bank from inside Guinness & Mahon?

A. Well I think that would be keeping not licensed by the Central Bank, yes, it would be wrong then if you were, if you were operating a bank without a license, that would be correct, yes.

Q. And if you operated a bank with records that did not record or reflect the true position of the bank, wouldn't that be, to put it mildly, be inappropriate?

A. Well I presume these entries were recorded in the books of Guinness Mahon Cayman Trust.

Q. The books of Guinness & Mahon, the record was being kept on the bureau system in Dublin.

A. Mm-hmm.

Q. And copies were sent to Guinness Mahon Cayman Trust.

A. Correct, but wouldn't the Guinness & Mahon Cayman balance sheet reflect that?

Q. The books that were being operated in Dublin were not disclosed to the Board of Guinness & Mahon.

A. Correct.

Q. And were not being disclosed to the Central Bank.

A. Correct.

Q. Can there be any justifiable explanation for that, Mr. O'Kelly, or are you justifying it?

A. No, I am just saying were these entries included in the balance sheet of Guinness Mahon Cayman Trust? Were they reflected in the consolidated accounts?

Q. Well, you tell us. It was a wholly owned subsidiary. You must have seen those accounts.

A. I understood that they were, I understood that the balance sheet of Guinness Mahon Cayman Trust was consolidated in the balance sheet of Guinness & Mahon.

Q. Yes, and you say, and I am at a loss now and a little bit confused, you are saying that what was being recorded on the bureau system was being accurately reflected in the balance sheet of Guinness Mahon Cayman Trust, is that right?

A. Well, I presume it was.

Q. Well how do you know?

A. I knew nothing of this system that you are talking about.

Q. Mr. O'Kelly, let's be simple about this.

A. Sure.

Q. Are you arguing that the keeping of secret records in Guinness & Mahon in respect of Irish residents having offshore facilities was appropriate for a licensed bank?

A. I don't think it was appropriate and I don't think it was necessary.

Q. Leave out necessary, this is what was happening.

A. Well, my answer is still the same; I don't think it was appropriate and I don't think it was necessary.

Q. And anyone engaging in that activity should not have been involved in banking, isn't that correct, in this State?

A. Yes, I would say they would be disqualified from being in banking or being on the board of a bank which was licensed, yes.

Q. Now, apart from board meetings, could you explain the physical layout of Guinness & Mahon and how the joint managing directors operated? Did you each have a separate office?

A. No. We shared a room.

Q. You shared one room. And were there you each had a desk in the one room?

A. Yes.

Q. And that was on which floor of Guinness & Mahon?

A. Top floor. Well not the top floor, the dining-room is on the top floor. The second top floor.

Q. The second top floor. Can I take it you each had a secretary?

A. Yes.

Q. And the secretaries were in a different room, is that correct?

A. They shared the same room, yes.

Q. They shared another room?

A. Yes.

Q. And under that floor that you and the other joint managing directors were on, I think there was a boardroom, is that correct?

A. There was several rooms.

Q. Or several meeting rooms?

A. Yes.

Q. And under that was the banking hall, is that correct?

A. No. There was a first floor then underneath that.

Q. Was a first floor and then underneath that was the banking hall?

A. Correct.

Q. Where were the computerised records kept?

A. They would have been kept through a corridor through the banking hall, you went through the banking hall down a corridor and then you came into the computer room.

Q. I see. And how many members of staff approximately would there have been in Guinness & Mahon in '76 to '82 or thereabouts?

A. I have no idea. I suppose

Q. Roughly?

A. Roughly I suppose there were about 39, 40 I would say, something like that.

Q. So it was numerically quite a small operation?

A. Oh yes.

Q. And there are records, at least, kept from 1976 of meetings of the Credit Committee. Were there Credit Committee meetings or was there a Credit Committee prior to 1976 to the best of your knowledge?

A. Well there were meetings but they weren't called Credit Committee meetings, and then in '76 they weren't called Credit meetings and the designation of those, who would attend, arrived, etc..

Q. And can I take it that you attended perhaps not all but many Credit Committee meetings?

A. Many, yes.

Q. And at Credit Committee meetings, can I take it that a loan or an application for a loan might be put up to the meeting?

A. Yes.

Q. And there might be a discussion about it and then it would be decided whether or not to offer the facility.

A. No, that is not correct, no. Only from that meeting would a recommendation arrive.

Q. I see.

A. And that would go to the board meeting which was held every Tuesday.

Q. It would then go to the Board.

A. Yes.

Q. And you, of course, would have attended the board meetings?

A. Yes.

Q. And was it the Board then that took the final decision?

A. Yes, they would approve or not.

Q. Yes, and would the document which you have seen of one case anyway, using the words "suitably secured" go to the board meeting?

A. No.

Q. What would go to the board meeting, just a list?

A. No. You would have whatever the security would be stated.

Q. We are talking about boards meetings of Guinness & Mahon?

A. Yes, yes absolutely.

Q. Yes?

A. Yes.

Q. The term "suitably secured" occurs quite frequently.

A. Not in Guinness & Mahon.

Q. Yes, it does. On the documents that have been furnished to the Tribunal by Guinness & Mahon, Credit Committee meetings the term "suitably secured" occurs reasonable frequently.

A. I wouldn't have thought are they not in relation to well I haven't studied them then, I can't make any reply to that, I would be surprised if many loans through the bank of Guinness & Mahon contained the words "suitably secured".

Q. No, the Credit Committee meeting of Guinness & Mahon would record that it was "suitably secured".

A. Well, that decision would go to the Board.

Q. That decision would go to the Board?

A. The Board would make the decision.

Q. Yes, yes. Now up to 1978 you say that you had no understanding of what the words "suitably secured" meant, is that correct?

A. In relation to the Cayman loans?

Q. Yes.

A. Yes.

Q. You understood that they just meant that the person you were lending to was good for it.

A. Yes.

Q. Or was a good risk.

A. That was all part of the strategy that we were trying to procure of attracting worthwhile loans and worthwhile clients.

Q. And what actually happened in 1978 for it to come to your attention? What was the event in 1978?

A. Oh I can't recall. There wasn't any particular event, just that I became aware of the fact that "suitably secured" in many cases represented a back-to-back loan that was secured by money that was in the Cayman.

Q. So when you obtained this piece of information which was news to you

A. Um-hum.

Q. did you ever wonder or inquire as to how this was recorded in Guinness & Mahon?

A. I don't think I inquired but my understanding always was that books in GMCT reflected this and they were consolidated in the accounts of G&M which then was

consolidated in the London accounts of Guinness & Mahon and Co.

Q. When you say consolidated, I am asking now for the actual documentation relating to each loan which was described as "suitably secured". How was that recorded or did you inquire or wonder how that was recorded in Guinness & Mahon in Dublin?

A. Where G&M had, where we had made the loan?

Q. Yes, sorry, yes, where you had actually made the loan.

A. How do you mean how had we recorded it? Hadn't we recorded it in our loan book, I believe, in the balance sheet?

Q. No. I am asking you, there was a loan file.

A. Right.

Q. In respect of each loan granted, I take it?

A. Right.

Q. There was never any record on the loan file of what the actual security was, that is the back-to-back nature.

A. Right.

Q. The only document which existed was the Credit Committee note or memorandum and the words in parenthesis "suitably secured".

A. On the board meeting?

Q. No, on the loan file in Guinness & Mahon bank.

A. That was approved by the Board.

Q. Yes.

A. Yes.

Q. Now that was all that existed on the records of Guinness &

Mahon, on the official records of Guinness & Mahon.

A. Correct.

Q. And that may have been then reflected in the bureau system, are you with me, Mr. O'Kelly?

A. No, I don't see how that would go to a bureau system. It was a loan approved at a board meeting at G&M in relation to a G&M loan. I don't see how it would go to a bureau system.

Q. Do you have any idea of how the bureau system worked even now, Mr. O'Kelly?

A. I have no idea. I understand that you are telling me that it worked in relation to GMCT but we are talking about loans advanced by Guinness & Mahon.

Q. Which were backed by deposits of GMCT and Guernsey, Mr. O'Kelly.

A. If they were backed, that was fine, the money was there but in the books of Guinness & Mahon it merely reflected that a loan was made to X company.

Q. Yes.

A. That's all.

Q. And where was the security recorded? Where was the security recorded? You are saying that it was recorded as "suitably secured".

A. The same category as a personal loan. If I give you a personal loan of 100,000 and it is reflected in the books, it just appears as a personal loan in the bank's loan books.

Q. Mr. O'Kelly, are we talking about the same real world, may I ask you, because we have seen from all banks that when a facility letter is furnished in respect of a loan, the true nature of the security is specified or should just bear with me, Mr. O'Kelly - is specified on the facility letter. That is normal banking practice.

A. Right.

Q. It covers two eventualities. It discloses to everybody what is happening, and it also enables the bank which wishes to act on the security to have a record and something to prove that they have the security. Now, that as I understand it as a layman, Mr. O'Kelly, is how banks operate. Am I right or wrong?

A. There are loans which are called unsecured loans. There is no security for them. The person may give his personal signature and he may sign for that loan. You may come in to AIB tomorrow and borrow 20,000, you just sign that you will pay the 20,000 to AIB.

Q. I know that.

A. That is the

Q. That is not what was happening here. That is Mr. O'Kelly

A. I mean are we talking about loans that were made by Guinness & Mahon Cayman Trust or are we talking about loans that were made by Guinness & Mahon?

Q. We are talking about loans that were made by Guinness & Mahon, and Mr. O'Kelly, Mr. O'Kelly, now you were

furnished with the documents, the Central Bank documents, you attended meetings with Mr. Traynor where he told the Central Bank how this system worked. Now, Mr. O'Kelly, just bear me now, you know that Guinness & Mahon in Dublin lent money to Irish residents, isn't that correct?

A. Surely, lent a lot of money.

Q. You knew in 1978 that the term "suitably secured" meant something different to what you understood it to mean up to then, isn't that correct?

A. Yes, it meant that there was security for the loan.

Q. Just bear with me. Just answer the question for a moment.

We will take it step-by-step. So between 1976 and 1978, when there were memoranda of Credit Committee meetings, you went along believing that the term "suitably secured" meant that the person you were lending to was good for it.

A. Exactly.

Q. Now, let me just point out to you that other people who attended the Credit Committee meetings and other people working at a lower level in Guinness & Mahon seemed to have had a different knowledge to you, because they knew what "suitably secured" was. But we will proceed on the basis that you didn't.

A. Possibly they did because of the work they did.

Q. So in 1978 you knew, you found out, you found out that Guinness & Mahon lent money to Irish residents and that the "suitably secured" meant that the loan by Guinness & Mahon in Dublin was backed by deposits of Cayman or Channel

Islands, isn't that correct?

A. Yes.

Q. I am asking you this: Dublin's loan to an Irish resident was being guaranteed or backed by offshore deposits, isn't that correct?

A. In our bank, yes.

Q. I am asking you how was that recorded or did you inquire as to how that was recorded in Dublin?

A. In Dublin? It was recorded as a loan.

Q. I am asking you about the security document.

A. The loan was secured, I mean.

Q. That was a lie. That was an absolute lie, wasn't it?

A. We were dealing with back-to-back. You are telling me that it was changed, the wording was changed to back-to-back.

Q. Des Traynor told the Central Bank.

A. Yes.

Q. And you were at the meeting.

A. I know, but what I am saying is that it was recorded in the books of Guinness & Mahon Dublin as a back-to-back loan.

Q. It never was?

A. Well, it came to the Credit Committee and was approved on that basis.

Q. So therefore can I take it that every time the term "suitably secured" was used, that it was indicated to the Credit Committee that there was a back-to-back situation?

A. I understand it was never used after 1978.

Q. I know that.

A. Therefore "suitably secured" was not used.

Q. You therefore assume that the security was not used. Did you not know that it continued to be, that it was continued practice?

A. That we advanced personal loans that were back-to-back?

Q. Yes.

A. And were so designated.

Q. Not designated. The term stopped being used. Why?

A. Why?

Q. Yes.

A. I have no idea why. I mean I wasn't told why. I mean, from the point of view of the Credit Committee, from the point of view of myself, the only thing is was the loan good? Would the loan be repaid?

Q. Now, if Mr. Traynor agreed with the Central Bank not to continue to this practice

A. Yes.

Q. And if you agree with the assertion made by Mr. Traynor that there was no tax evasion or no tax avoidance going on here.

A. I don't think I ever said that, did I? I said the line between tax evasion and tax avoidance was very narrow.

Q. You didn't agree with Mr. Traynor?

A. No, I didn't agree.

Q. Did you ever say to the officials of the Central Bank when Mr. Traynor made this assertion that there is no tax avoidance, "I don't agree with you, Des."?

A. We had many discussions with the Central Bank in relation to the words "tax evasion" or "tax avoidance" and you can see from the minutes of the Central Bank or minutes of the meetings with the Central Bank that the word is altered from "evasion" to "avoidance", to "tax avoidance".

Q. Yes.

A. So we knew that their view was that it was tax avoidance.

Q. May I ask you this, you said that you had many meetings with the Central Bank.

A. Many meeting.

Q. To debate the issue as to whether avoidance or evasion was what was occurred here.

A. That cropped up frequently.

Q. Frequently?

A. Yes, but they agreed again, as far as I remember, I can remember seeing in the minute that the word is altered to 'tax avoidance', I can see it quite clearly.

Q. When did you see that minute? Was it when we showed it to you or did you see it before that?

A. I am sure I saw it before that. No, I didn't see it before that. I just saw a pile of papers there.

Q. Was it the papers that the Tribunal sent you?

A. Yes.

Q. Yes, and were you told that the Central Bank were viewing it as tax avoidance after your various debates with them or discussions or raising of issues?

A. We discussed it many times, but my final conclusion, if it

ever reached finality because the discussions extended over a period of years, but my final conclusion was that the Central Bank did accept that the word, the correct word was "tax avoidance".

Q. Um-hum. Were you aware that Guinness & Mahon, I think you may or may not be aware of sorry, you had debates with a number of officials from the Central Bank, it may be too strong to describe them as debates, but they were discussions.

A. Over the years.

Q. Over the years as to whether it was evasion or avoidance, is that correct?

A. Yes, it cropped up at several meetings, yes.

Q. Can I take it there were a number of officials from the Central Bank, that they thought that it was evasion that was going on?

A. A number of officials there were a number of meetings and there were one or two different officials at it, but I can't say that there were, there were several representatives of the Central Bank who disagreed with this view, but it is very academic, a very academic issue.

Q. Mr. O'Kelly, it is hardly an academic issue. This was a very, very serious concrete issue, wasn't it?

A. I know the issue is concrete but the discussions that took place on it were quite academic.

Q. I see. There is at Tab 3.2 a minute of a meeting which was held on the 13th of September 1978 with officials from the

Central Bank which you attended with Mr. Traynor. And if I go to the third page of that particular minute, I think those present for the Central Bank were Mr. Daly, Mr. Byrne, Mr. Fitzgerald and the minute reads: "Mr. Daly said that the Central Bank was not happy with the extent of the bank involvement in tax avoidance schemes. The bank felt that such schemes were not in the national interest. 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."

Do you ever remember Mr. Traynor using that type of expression?

A. I don't know if that actual word used would have been "unhappy". It would make him not very happy, it would make him very unhappy.

Q. To me reading that, it is a rather sort of threatening sort of language, would you think?

A. No, I wouldn't think so. Why would you think it was threatening?

Q. What business was it to communicate to the Central Bank whether Mr. Traynor was happy or unhappy, would you describe it as menacing?

A. Mr. Daly raised the subject.

Q. I see.

A. And Des Traynor said he was regarded as being unhappy, or not very happy.

Q. "He added that it was not correct to say that the bank was involved in any tax avoidance schemes."

A. Yes.

Q. That wasn't true, that wasn't your view.

A. Well, I don't know.

Q. That wasn't your view.

A. Des may have correctly held that view. The point is that, you know, you are talking about tax avoidance schemes. Now tax avoidance schemes are okay, it is tax evasion schemes that are not okay. Tax avoidance schemes are okay.

Q. Not for a bank to assist in the

A. No. They can carry out instructions, that is the point.

Q. Isn't that right?

A. The bank can't in a tax avoidance scheme it is very important to realise that because that is the reason that he said that he was not very happy.

Q. Mr. Traynor said that there was no tax avoidance or any tax evasion in relation to these matters. And then the final paragraph of that minute is, "... request that the branch managers of the associated banks advise customers to deposit funds in their branches of the U.K. for the purpose of tax avoidance and asked if the bank was also considering taking actions in those occasions. Mr. Daly said he was unhappy with tax avoidance schemes generally."

A. My goodness, the situation of the associated banks and the avoidance of DIRT tax, I mean that has been public knowledge in the last two years, people are talking about

that all the time.

Q. Absolutely. Were you saying to the Central Bank so, "Look, other fellows are doing this sort of thing, why can't we do it?. Why don't you get off our back?"?

A. I was saying merely that there should be a level playing field. That if the associated banks were doing it, then perhaps, perhaps the associated banks should also be doing it. I was merely making the points that the associated banks were engaging in the schemes as well which they were at the time and which they were up to 12 months ago as you know.

Q. Very good. There was no DIRT tax in 1978 first of all, but leave that aside

A. We are not talking about DIRT, we are talking about taxation avoidance is what we are talking about here.

Q. How could it be tax avoidance for an Irish resident to go off and put their money in a branch in the United Kingdom or somewhere outside the jurisdiction?

A. It is if it doesn't return the interest.

Q. If you return the interest?

A. If he doesn't return the interest.

Q. Yes, and if you disclosed the matter?

A. Yes, it wouldn't be. But why would he go to the U.K. and deposit money?

Q. Exactly. Sure isn't it what you are describing there, Mr. O'Kelly, isn't it the clearest example of somebody engaging in tax evasion?

A. Through the associated banks?

Q. Through any bank, absolutely.

A. What I am saying

Q. What you are describing there is pure tax evasion, isn't it?

A. It may be. It didn't matter. The point is you could earn interest in England and return it in your bank return in Ireland. I am not saying that it is, I am just saying that there is a probability. Why would you deposit money in a bank in England and then return it back here?

Q. Exactly. Exactly. That is the point.

A. Or in the Cayman Islands or in Guernsey. All we are saying there, as recorded in the minute, I am not sure if the wording is correct, all we are saying is that bank managers of the associated banks advised us that the that has become common knowledge in the last six months or in the last year in Ireland.

Q. I see. You were looking for a level playing field.

A. I was suggesting that a level playing field would be appropriate.

Q. Yes, so that Guinness & Mahon could engage in similar activity?

A. If the legislation was introduced, yes.

Q. Oh sorry, were you suggesting to the Central Bank that they should make recommendations that there be legislation there?

A. I just said the playing field should be levelled.

Q. Yes. Didn't you know and didn't you attend meetings and didn't you know that the explanations were being given to Central Bank officials that the conduct of the business for Irish residents in respect of the offshore subsidiaries of Guinness & Mahon had to be kept secret for fear the information fell into the hands of the Revenue Commissioners here?

A. Are you saying that I, did I say that?

Q. Didn't you know that?

A. Did I know that?

Q. Yes.

A. No.

Q. You didn't?

A. No, it was not something to which - like how can I explain this? I didn't really apply a lot of time or thought to this particular aspect of the bank's affairs. I regarded it not as, as not being really in my the operation of Guinness Mahon Cayman Trust fell very much in Des Traynor's, that was his baby, if you like, and therefore I was not, to any great extent, concerned with it. Obviously if the Central Bank raised the issue and if there were meetings with the Central Bank which I was attending, then of course I would discuss it with them. But it really wasn't of huge importance from my point of view.

Q. Now, I know it wasn't your area of interest or expertise in the bank, I understand that, you were dealing with corporate finance, I understand that. But you were a

director of this bank. You had responsibilities as a director.

A. Sure, I had, yes.

Q. And the Central Bank were raising an issue with you and I accept that it was an area that Mr. Traynor carried responsibility for within Guinness & Mahon but the Central Bank were indicating something to you that there was activity being engaged in here which was not in the national interest.

A. Well, it was definitely of the national interest. The definition of the national interest changed from one year to another and also from one body to another. You are saying that it wasn't in the Central Bank's

Q. It wasn't just me saying it to you, it was the regulatory authority saying to you as a licensed bank what you were doing was not in the national interest. This is a serious thing to be saying.

A. Sure, you might say that that the Minister for Finance, when the tax was 70 percent of income, was not engaged in activities that were in the national interest. Time has shown in the modern era that the decisions that were made then by the Minister for Finance are not in the national interests but it is clear that a lower taxation regime produces a result that is more in the national interest.

At that point in time in '78 or '79, maybe a Minister for Finance thought raising the level of taxation in Ireland was the correct thing to do, was justifiable. All I am

saying is that opinions on these matters vary from generation from generation from year to year.

Q. You are not entitled to cherry pick when the Central Bank tell you something as a licensed bank?

A. The Central Bank did not tell us. If you look at that minute they are not telling us. They are not telling us it is tax evasion. They are saying that they don't

Q. Sorry, go on.

A. You can read it there exactly what they are saying.

Q. Yes, and the Central Bank went on to inform Guinness & Mahon that the activity they were engaging in was not in the national interest. Now, are you saying that it is open to a licensed bank to disregard the views being expressed by the Central Bank and to decide for themselves what they should do and have no regard to the view of the regulator?

A. No. What we are saying is that, this was a discussion and then the bank was saying that they felt that it wasn't in the national interest and it was considering whether to require G&M to wind down its activity. Now they never did. They never did. Des offered to wind it down and they accepted that but they never asked G an M to wind down their activity.

Q. Because Mr. Traynor pre-empted them by offering an assurance that they would be wound down, isn't that correct?

A. Yes.

Q. And of course he didn't comply with that.

A. That's obviously correct, but I mean my point about this particular minute, and you are suggesting that I should have done something about it or whatever you are suggesting,.

Q. Did you ever think, or did you ever take a view that perhaps Mr. Traynor wasn't an appropriate person to be involved in the position he was in the bank?

A. I certainly did not.

Q. Very good.

A. I certainly did not. Not at that time. Until I left the bank as joint managing director of 1985 I certainly did not consider that.

Q. You thought that he was.

A. And I would suggest also that I was joined in that manner by many other people because I don't think somebody that becomes a chairman of a company as large as Cement Roadstone has that view held about them generally.

Q. In 1978 you found out something that there were loans being cash-backed by foreign deposits in Guinness & Mahon and you had never been told about it before that, isn't that correct?

A. I was told that they were suitably secured, that was

Q. You were not told that they were cash-backed by foreign deposits, is that correct?

A. No, no shall I

Q. Sorry, I am just trying to establish the sequence. You attended a number of meetings with the Central Bank where

some discussion arose as to whether the back-to-back nature of these particular loans was either the bank assisting or engaging in either tax evasion or tax avoidance, isn't that correct?

A. Yes.

Q. Mr. Traynor told the Central Bank that there was neither tax evasion nor tax avoidance going on, isn't that correct, according to the minute?

A. Tax avoidance is referred to. Yes.

Q. He said both in another minute. You can take it that he

A. Not in this minute.

Q. In a previous minute that we had looked at. Whatever about tax evasion, did you not share Mr. Traynor's view about the question of tax avoidance in respect of these particular activities, isn't that correct?

A. I did not share the view about tax avoidance in these particular loans?

Q. You believe that there may have been tax avoidance going on here?

A. I believed it was likely but why do you think that I didn't refer, I didn't agree with his views?

Q. Sorry, his view was that there was no tax evasion and no tax avoidance. Your view was that there might have been tax avoidance going on, isn't that right?

A. I said it already.

Q. Yes.

A. I said I agreed with the Central Bank.

Q. Yes, that is all I am trying to clarify but

A. But tax avoidance is different.

Q. I am only

A. I am just trying to get the record straight as well.

Q. You also were of the view, which was the same view as the

Central Bank, that for a licensed bank to assist in tax

avoidance would be inappropriate if you don't go as far

as the Central Bank to say that it would be unethical but

it would be inappropriate?

A. Yes, it is splitting hairs, yes, but that is correct.

Q. Now, even armed with that or those pieces of information,

should it not have caused you to at least question

Mr. Traynor about what was going on here, as a director of

Guinness & Mahon that is, and try to get to the end of it?

A. Well, he had already said to the Central Bank that his

intention was to wind down this type of that was a

statement made by him and I accepted that.

Q. I understand that Mr. O'Kelly. I am more concerned about

your position as a director of Guinness & Mahon now, you

had responsibilities towards the shareholder which was

London, I think, in the circumstances?

A. Sure.

Q. You had responsibilities to that shareholder in respect of

the running of Dublin, isn't that correct?

A. Yes.

Q. And what did you think about a joint managing director who

shared a room with you, so things must have been done very secretly, who hadn't informed you that there were cash-backed loans which you believed were just unsecured loans?

A. How would I be aware of that at the time?

Q. No. You became aware of it, you became aware in 1978.

A. Yes, I was disappointed. I felt let down, yes.

Q. All right. Now, can I take it that you would, you shared the view of the Central Bank that for a bank, a licensed bank to be assisting or engaging in tax avoidance schemes was inappropriate, and you now were of that view, whether you were right or wrong, it was the view you had.

A. It was a very fine point, yes.

Q. It was the view you had.

A. Yes.

Q. Can I take it that again you must have been disappointed in Mr. Traynor over that?

A. When something was not wound down when subsequently it was not wound down?

Q. When you found out it was going on you were at least disappointed in him?

A. That was a long time afterwards, that was a long time afterwards. I left G&M in June of 1985.

Q. I know that. I am talking about when you were there. Now, you now know that a bureau system was created and existed on the premises of Guinness & Mahon in the time you were there. You now know that.

A. Yes.

Q. I take it that that is a matter which further disappoints you?

A. There are many matters in life that further disappoint me I can assure you.

Q. In your role as a director of a bank now, I am trying to ask you serious questions about this.

A. I am trying to answer seriously but it is all a long time ago and it doesn't seem terribly important to me now but shoot ahead.

Q. But can I take it that your view would now be, maybe it is not, that Mr. Traynor was an inappropriate person to have held a position of seniority in a bank?

A. Well, I think I would decline to answer that question if you are putting it to me.

Q. Why?

A. Because I am declining.

Q. Do you not agree with it?

A. I am just declining to answer that question.

Q. Why?

A. Because I don't feel it necessary to give you a reason why I am declining to answer it.

Q. Well, I am asking you for your reason, Mr. O'Kelly, because you were a director of this bank at this time and you participated in some of the activities surrounding these affairs. So if you don't mind, Mr. O'Kelly, we will have your answer.

A. I decline to answer.

Q. Are you refusing to answer the question?

A. I am refusing to say whether I was disappointed or not, disappointed with Des. I don't see why it is necessary.

Q. You are refusing to answer the question as to whether Mr. Traynor was an appropriate person to have held a senior position in the bank at that time. Are you refusing to answer that question?

A. Yes.

Q. Why?

A. I don't think I have to give a reason.

Q. I am asking you for your reason, Mr. O'Kelly. Why are you refusing to answer the question please? What is the lawful basis on which you say you should refuse to answer that question?

A. You are asking me for a view about a particular person who was a friend of mine and you are asking me to give my view and I am declining to give my view.

Q. You were a director of the bank I am asking you in that context, Mr. O'Kelly.

A. You are asking me in my capacity as an ex director of the bank.

Q. Yes.

A. What is my view of Des?

Q. Of a director who behaved in that manner.

A. What do you define as "that manner"?

Q. Now, Mr. O'Kelly, we will go back to the question, and if

you wouldn't mind just answering the questions instead of engaging in argument. Mr. Traynor did not inform you until 1978 that there were being loans made to Irish residents by Guinness & Mahon which were backed by cash deposits which were purported to be in offshore subsidiaries of Guinness & Mahon, isn't that correct?

A. Yes.

Q. You have informed the Tribunal that you were disappointed when you found that out?

A. Yes.

Q. A meeting was held with a meeting was held with Central Bank officials, or meetings, where the cash-backed nature of the loans was considered from the point of view of their tax implications, if I could use it in that sense.

A. Tax avoidance was the word used by the Central Bank.

Q. Well, you have informed us that discussions took place as to whether it was evasion or avoidance but even leaving it and bringing it to the position we find it in this minute as the word 'avoidance' being used. Very good.

Mr. Traynor informed the Central Bank that there was no avoidance going on, isn't that correct?

A. Yes.

Q. You didn't agree with that view, you have just told us.

A. Yes.

Q. The matter must have been discussed at a board meeting of Guinness & Mahon before the meetings with the Central Bank, isn't that right?

A. I have no recollection that it was, but it may have been.

Q. What was the view of the Board of Guinness & Mahon as to whether these cash backed loans were tax avoidance or not?

A. I have no recollection of any such meeting where it was discussed.

Q. In any event, the view of the Central Bank coincided with your view that there was tax avoidance going on here, and that it was inappropriate for Guinness & Mahon as a licensed bank to be engaged in such activity, isn't that right?

A. Well I think it is a question of advised as well.

Q. I beg your pardon?

A. That is what they were saying.

Q. They may have said?

A. They said advice and arranged by the bank.

Q. Oh sorry the difference between?

A. The bank by the bank customers and their financial advisors, not the bank's financial advisors.

Q. Yes. Well perhaps you didn't know it or perhaps this just emerged but in many instances the financial advisor to these individual clients or customers was Mr. Traynor himself, but that is neither here nor there for the moment. So you now knew in 1978 also that Mr. Traynor had been engaging in activities in Guinness & Mahon which you would have considered to be inappropriate activities for the bank to be engaging in, isn't that correct?

A. I said that I agreed with the Central Bank, the Central

Bank were saying that it was inappropriate.

Q. And you agreed with that view?

A. Yes, I agreed with that, that it was inappropriate.

Q. Yes. Did it cause you to have any concerns about, and I understand in the area of personal friendships, but your duty as a director sometimes would involve you having to make decisions or form an opinion which may cut across personal friendships, isn't that right?

A. I am sure they do but it is not very frequent.

Q. I see. But could it be, Mr. O'Kelly, that it was personal friendship and respect for Mr. Traynor as a person, as a friend of yours, which would have perhaps acted more on your mind than your considerations of what I should do as a director here, what is going on here is inappropriate and I should take steps?

A. Yes, I would agree that my personal friendship with Des Traynor would have influenced my decision, yes.

Q. Very good. And is it in that context so, Mr. O'Kelly, that would you prefer not to answer the question as to whether you felt that he should be removed from the Board at that time?

A. It could be, yeah. I don't think, as a director, I would have agreed with you either.

Q. Yes, but there are times if you lay out before a board like a board has responsibilities, doesn't it, and you lay out the information before the board and you perhaps take legal advice on the matter, it might and perhaps on

occasions has to cut across the question of personal friendships but you were a close friend of Mr. Traynor's at the time, would that be correct to say?

A. I was always a close friend of Des.

Q. It would have been perhaps the real matter which would have influenced you was your friendship, it would have been

A. I don't agree but it would have been a factor in my decision making, yes.

Q. You didn't consider informing the Central Bank inspectors, did you, that you agreed with their view and you thought that what was going on was inappropriate, because they, as the regulator, then might have had to form a stronger view of the person who was engaging in the activity?

A. No, I didn't inform the Central Bank but they knew all the facts.

Q. Well, let me just tell you that what gave comfort to people in the Central Bank was the fact that other directors and yourself included and yourself most importantly, were, in effect, supporting the view of Mr. Traynor, as the Central Bank saw it of course?

A. Well, I can recognise the fact that from their point of view, they may have placed emphasis on the fact that I and others

Q. Yes.

A. went along with it. Looking back over all these years, 23 years, you could say well, you know, maybe I should have met with the Central Bank on my own or maybe the Central

Bank should have rung me and met with me on my own but these meetings did not take place.

Q. I know, I know, and I understand that and I understand how painful it is and when a personal friendship is involved.

But I think you can see that the situation had reached some sort of, well I won't use the term "crisis" but it had crystallised at least by 1978 to you that there was something somewhat amiss, would that be fair to say?

A. It didn't seem important in 1978.

Q. Right. I suppose we have the benefit of looking at this in great detail many years from the event and

A. Hindsight is a

Q. Absolutely and a tribunal has to look at matters with the benefit of hindsight, Mr. O'Kelly.

A. Absolutely.

Q. But even with the benefit of hindsight now, this is why I understand the personal friendship, but I think you have perhaps gone as far as to indicate that you certainly, as a director, would not have approved of these type of activities, would that be fair to say, yourself?

A. I am just saying if you say so, that is okay, you say away.

Q. But is that your view?

A. No, it is not my view. I am not saying yes or no. I am just refusing to answer the question.

Q. Are you a director of a company at the moment?

A. I am. I a director of a company at the moment.

Q. Yes.

A. Yes, I am a director of several companies at the moment.

Q. And you understand your duties as a director?

A. Yes I do, yes.

Q. And do you understand or did you understand then or sorry perhaps I should ask you now, do you understand that nowadays auditors rely on information which is supplied by directors of companies?

A. Yes I do.

Q. And act upon it?

A. Yes.

Q. And the importance of how, to the best of the ability of a director, to ensure that information which is given to auditors is accurate?

A. Absolutely.

Q. And can I take it that you would also have understood at the time that the Central Bank would have relied on information being supplied by directors of banks?

A. Yes.

Q. And that they should have been entitled to act on such information as being as accurate as and complete as the directors could possibly do?

A. Yes, but there is the Central Bank wouldn't know which directors were responsible for which areas of responsibility, that is more important to those directors' views than other directors.

Q. May I ask you this so: You didn't know about the bureau

system, but can I take it that as a director of the bank, you should have known about it, you should at least have been informed about what was going on in the bank?

A. Yes, certainly as a director, as an executive director you should certainly be informed of everything that is going on, as an executive director.

Q. Could there be any doubt but that the Central Bank should have been informed about it, the existence of the bureau system?

A. If I should have known about it they certainly should have known about it.

Q. And by omission, the Central Bank were being lied to, isn't that correct?

A. By whom?

Q. By or mislead, perhaps I misused the term, I will use a more neutral term, misled by whoever knew about it in Guinness & Mahon, isn't that correct?

A. I am not sure if they had direct contact with everybody in I don't know how many knew about it

Q. Mr. Traynor?

A. By Mr. Traynor, that he should have told them? Yes, I would say that the Central Bank should have certainly been made aware of every activity of the bank and

Q. Let me say in fairness to other people in Guinness & Mahon, one can very readily understand people in a more junior position who are carrying out jobs referring inspectors of the Central Bank further under the line to Mr. Traynor, one

can certainly understand that, of course, that is their job and they have to go on with it. So you would agree that the Central Bank should have been informed about the bureau system?

A. Should have what?

Q. Should have been informed about the bureau system by Mr. Traynor?

A. By their contacts and conversations.

Q. And can I take it that you would not, as a director, have approved of a situation where information, not just about the bureau system that the Central Bank did not know about, but in respect of back-to-back loans, where information about such back-to-back loans was being deliberately or intentionally withheld from the Central Bank?

A. I wouldn't approve of information being withheld from them but I don't think that it was.

Q. I see. Well, you haven't seen all the evidence, but when the Central Bank asked for 20 loans from Guinness & Mahon, Mr. O'Kelly, they were furnished with certain loans, but many loans were withheld from the Central Bank which certainly came in the category.

A. They should have been

Q. Which should have been. Now I take it that you would not have approved of such activity?

A. The size, was it?

Q. And an amount.

A. Yes.

Q. You wouldn't have approved of that.

A. I wasn't aware of that.

Q. You wouldn't have approved of such activity.

A. No, I wouldn't have approved of their omission.

Q. Yes, and the ones that were removed were the offshore ones from the information from the Central Bank.

A. Without the Central Bank knowledge, were these back-to-back now?

Q. Yes, they were back-to-back without the Central Bank knowing about them, they were not furnished?

A. So the Central Bank did not agree that the back-to-back ones would be omitted.

Q. No, no, the Central Bank knew about some as you yourself did in 1978?

A. Yes.

Q. There was the question then of winding down the operation as the assurance had been given?

A. Right.

Q. And on the loans which had been disclosed to the Central Bank there was, with the odd blip, a winding down to an extent over the next couple of years?

A. Right.

Q. When the Central Bank came to do their 1982 inspection.

A. Right.

Q. And asked for the top 20 loans, there had been many other loans either created or in existence which would have fallen into the category of the top 20 and which would have

been back-to-back loans.

A. And they were

Q. And they were intentionally

A. omitted.

Q. Omitted from information furnished.

A. And those are still in existence?

Q. I don't know where they are but in 1982 that was the situation.

A. From the date in '82

Q. Yes, they were in existence.

A. Were they were in existence? They should have been

Q. And I take it if you had known that that sort of activity was going on, you would have, you would have had to take serious action?

A. I would not have approved of that. These were lists of loans made by the bank and rated accordingly.

Q. I don't specifically wish to go into the question of "suitably secured" and whether or not you signed any loan facility other than to say that you did sign the, I think the Credit Committee memoranda in the case of the loan to Mr. Peter Sutherland, isn't that correct?

A. Yes I did, yes.

Q. Yes, there is no criticism.

A. I did.

Q. You did sign that?

A. I know Peter. I thought I would remember but I didn't.

Q. Thank you, Mr. O'Kelly.

MR. CONNOLLY: No questions, Sir.

MR. GALLAGHER: I have some questions Sir I don't know whether you wish me to ask them now.

CHAIRMAN: I am prepared to do so. It is not likely to be terribly long I take it.

MR. GALLAGHER: I would say about ten or fifteen minutes.

CHAIRMAN: Yes.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GALLAGHER:

Q. MR. GALLAGHER: May it please you.

Mr. O'Kelly, I appear for Guinness & Mahon and I have a few questions to ask you if I may.

A. Surely.

Q. One thing, and this may be my fault that I am not clear on, is you say in 1978 you learned what "suitably secured" was, and did you learn at that stage that it involved a cash backing of loans?

A. I learned that "suitably secured" meant that there was backing for that, if we granted that loan there was backing for that loan, yes.

Q. And the backing took the form of cash deposits, is that correct?

A. I understood it to be money on deposit, yes.

Q. And up until that time you believed that "suitably secured" meant that the borrower was a person of integrity, a sound

borrower, is that correct?

A. No, as I tried to convey earlier, I thought, like, I know it was part of a policy that we pursued from '72 of trying to lend on an unsecured basis to people that we felt were, you know, of considerable influence and means.

Q. Yes, I think

A. And that was a method of earning, you know, a higher percent than the associated bank could earn but it is very difficult for us, we were trying to meet the expense of running the bank so you are talking about 2 percent being on loans producing of 500,000 or 600,000 or something of that nature.

Q. I think what you said we were lending to individuals "I always thought the words meant we were satisfied with the standing and integrity of the borrower".

A. Yes.

Q. That is what you said.

A. Yes, sure.

Q. So up until you learned that they were cash backing deposits, you had understood the words "suitably secured" to mean that the borrower was a person of standing and integrity?

A. Yes.

Q. What was your reaction on learning that you were under a misapprehension for well nigh seven years as to what these words meant?

A. Well, I mean one was of disappointment. I think we did

make loans that were unsecured. I am not saying existing loans. "Suitably secured" meant that we didn't make loans without security on the reputation of the borrower.

Q. Why were you disappointed? Was it because you felt that you had been misled?

A. Why was I disappointed? It is hard to say. I suppose I was disappointed because I thought that we were building a bank which by contact with individuals we were building for the future, if you like, by establishing these contacts which would stand us in good stead in the future, one of those methods was by lending on an unsecured basis.

Q. But why would the discovery that loans which you had previously thought were unsecured were in fact very well secured be a matter of disappointment to you?

A. Because, you know, I thought that the relationship that we had established with the client, I mean varied with these loans, you know like I mean some were introduced by John Guinness, some were introduced by Des Traynor, some introduced by myself. I felt that our relationship with those clients was one for the future, having made itself, having made a loan on a unsecured basis that we would be likely to lend to that borrower in three years or five years time.

Q. The discovery that the loan was unsecured wouldn't affect your relationship in the future with that borrower?

A. It wouldn't affect your future relationship but it is one of slight personal disappointment to me.

Q. And did you investigate who had put in place the scheme that involved this cash backed deposit?

A. No, I didn't investigate it.

Q. So you learned that contrary to your belief, for seven years, that these loans were secured and you never asked who devised this scheme?

A. No. What we are talking about, a lot of those loans you must remember, I think you don't quite understand that they were introduced by the different people.

Q. Yes.

A. Some may have been introduced by John Guinness, some by Des.

Q. But would you not have found that all of the "suitably secured" loans had in common the fact that they were backed by cash deposits and did you at that stage investigate who had put in place that scheme of cash-backing deposits?

A. Not really, no. I didn't investigate.

Q. Are you seriously saying to the Tribunal, Mr. O'Kelly, as sole managing director in 1978, that you discover a system of securities you never believed existed and you never ask anybody who put this scheme in place?

A. Well, I was told in '78?

Q. Yes, you were, from the 13th of May 1976 you were sole managing director, Mr. O'Kelly.

A. I see.

Q. Are you seriously saying to the Tribunal as a sole managing director of a bank you never asked who had put this scheme

in place?

A. We would have approved the loan at the board meeting level

Q. That is not the question I am asking. Did you ever ask Mr. Traynor or anybody else who put this scheme in place?

A. No.

Q. Is that because you knew from the very beginning, Mr. O'Kelly, that "suitably secured" did mean cash-backed deposits?

A. No, it meant that in my view, it meant that the person was considered to be good for this particular amount.

Q. But the bank would hardly lend to somebody whom they didn't believe was good for the amount?

A. No, they wouldn't lend.

Q. So some borrowers had the designation "suitably secured" and other borrowers didn't.

A. Yes, I am sure that was the case.

Q. That was never taken to imply that those who didn't carry the designation "suitably secured" were not good for the amount?

A. No.

Q. Well it follows then that the designation "suitably secured" must have meant something more than those people whoever they were, were good for the amount?

A. It just meant that somebody like a managing, at managing director level was vouching for this particular person, considered them to be sound for this amount.

Q. You see

A. It was part of the policy of individual lending.

Q. You were on record in a large number of Credit Committee meetings approving loans for a variety of people, some of whom carried a designation "suitably secured" and others who do not.

A. Yes.

Q. And you told us you wouldn't lend to somebody who wasn't good for the amount.

A. Unsecured.

Q. Yes.

A. Yes.

Q. Isn't that correct?

A. Yes, surely.

Q. And the words "suitably secured" must have meant something to you?

A. It could mean lots of things. "Suitably secured", it could mean lots of things.

Q. If you thought that you were making an unsecured loan, why would you use the word "secured", "suitably secured", why would you use that word if you thought you were making unsecured loans to these people, why would you use the words "suitably secured" and in particular, the word "secured"?

A. If it was unsecured there would be no security. If it was "suitably secured" obviously the person that borrowed had indicated to the manager that he was dealing with, like,

that he was worth, you know, that he was earning in those days, 40,000 a year, 50,000 a year and had a house worth you know

Q. You are well aware, as a chartered accountant and a banker, that the word "secured" has a particular meaning, isn't that correct? It refers to a security of some sort.

A. Secured on a loan means that you had obtained security of a property or a land or

Q. Yes, so somebody who was "suitably secured" was somebody who provided some sort of security.

A. Well, I didn't regard it as that. I just regarded it as their net worth was so high that people considered them to be good for this loan.

Q. Yes. Do you recollect, when you were a joint managing director back in 1972, getting management reports before attending board meetings?

A. Before we had

Q. Before you had the Credit Committee, before that was set up, you would get management reports?

A. Yes, I can recall them.

Q. Yes, isn't that correct?

A. Yes.

Q. And those management reports would set out and identify various people who had money borrowed, isn't that correct?

A. Who had money borrowed?

Q. Borrowed from the bank.

A. Yes, I can't recall that but it is

Q. And some would have the designation "suitably secured" and others wouldn't.

A. I can't recall that. These were lists of people?

Q. Lists of people, yes.

A. I don't recall that.

Q. And at the back of the management report there was a section which indicated Cayman deposits.

A. Cayman deposits, yes.

Q. That is as far back as 1972, Mr. O'Kelly.

A. I have no recollection of that.

Q. And the Cayman deposits carried a code, there were individual deposits, the name of the depositor wasn't given but a code was given.

A. I have no knowledge of that but I mean, I presume the deposits in the Cayman had an account number, I don't know.

Q. Well if those monthly reports, or sorry, monthly reports, management reports exist, and they carried information at the back indicating they were Cayman deposits, that must have come to your attention at the time?

A. I presume so.

Q. And it would have come to your attention that these were individual deposits for which a name was not attached but a code was used.

A. But if there were such deposits, I mean, I am sure they were, if they were presented at management meetings I am sure then that Des Traynor probably said something about the individual borrower I guess.

Q. And if you matched up the coded deposit, the amount of the coded deposit to the borrowers who were designated "suitably secured", you would see the figures would match?

A. I don't follow that. The depositor in the Cayman would borrow the same amount, is that what you mean?

Q. No. The list of Cayman deposits which had a code, say the code was AE

A. Um-hum.

Q. And an amount was 100,000.

A. Right.

Q. If you looked at the borrowers from Guinness & Mahon which were also contained in the management report, you would be able to relate the person who borrowed 100,000?

A. To 100,000 deposit?

Q. To 100,000 deposit.

A. Yes, I am sure.

Q. Therefore you must have known if that was in the management reports in 1972, you must have known from the very beginning that "suitably secured" did relate to Cayman deposits and that's what was being referred to?

A. Well, I have no memory of that. I have no memory even of those management reports of which you talk.

Q. But if they do exist and contain that information, they are documents one, you would have received at the time as a joint managing director?

A. Oh I am sure, yes.

Q. And would you have considered them?

A. I would have considered them?

Q. Yes.

A. Well I mean, if if they have the designation "suitably secured" I presume Des Traynor, Des would have said something about the borrower, he would have said it is okay or whatever.

Q. But what I am saying is you would have looked at the management reports when you received them, isn't that correct? As a joint managing director, you would have had to look at the management reports.

A. The point is that the borrower, the borrower comes into the bank, the borrower that comes to the bank would probably have seen one of the managing directors, he probably would have seen William Ford, he probably would have seen Des Traynor or myself or alternatively he might have seen the Chairman, John Guinness, it could be any one of those four.

Q. Leave aside any particular borrower, management reports were considered by the management, managing directors, isn't that correct?

A. By the managing directors, yes.

Q. Yes, and if the management reports contained a list of Cayman deposits, each managing director would have been aware that there were Cayman deposits with the bank, isn't that correct?

A. I don't think each managing director would have been. I think Des would have had, I can't even remember the form but I mean, I think Des would have been

Q. Are you now saying, Mr. O'Kelly, that you would have received a management report if it would have contained information that there were Cayman deposits with the bank and you would not have known that at the time?

A. Oh yeah.

Q. You would have known it?

A. I would not have known it.

Q. Would you not know it?

A. Oh no.

Q. You would see in the management report Cayman deposits in the bank. That wouldn't convey anything to you?

A. If the word "suitably secured" was there, Des would say "this loan is okay".

Q. Can we forget for a moment the words "suitably secured". If at the back of the management reports there was a separate list of Cayman deposits

A. I can't recall that at all.

Q. You can't recall that?

A. A list of Cayman deposits at the back of the form, I can't recall those at all.

Q. If it was there, it would have had to come to your notice?

A. I am sure it would. It wouldn't be any concern to me. Des would have said, "Look, we have this deposit or whatever".

Q. But you would have known from 1972 onwards then that there were Cayman deposits.

A. That there were Cayman deposits.

Q. Within the bank?

A. I would always have known that there were Cayman deposits.

Q. I see. And you would, if you related the amount of the Cayman deposits to the people who were designated as "suitably secured", you couldn't but have noticed that the amounts were equivalent?

A. I wouldn't even have looked at that properly as part of my responsibility. The relationship between Mr. William Ford and Des and myself was one of trust. If somebody was putting forward a loan application and was saying he was satisfied with the security, then by and large that was okay.

Q. And can I ask you before the Credit Committee meetings were conclave meetings, Credit Committee meetings were introduced for the first time after you became sole managing director, they were introduced on the 19th of May 1976.

Prior to that you would have had what was known as conclave meetings?

A. Yes.

Q. Where the joint managing directors would meet and discuss matters?

A. With John Guinness, yes.

Q. And the records of a conclave meeting of the 9th of April of 1976 show a substantial borrowing that was secured by, backed by deposit in Cayman?

A. Right.

Q. And you must have been aware then as of 1976 that the bank was making loans that were backed by Cayman deposits?

A. But was the person resident in Ireland?

Q. Leave aside where the person was resident, the banks were making loans backed by Cayman deposits?

A. Well of course they were making loans backed by Cayman deposits but I mean there were borrowers who were not resident in the Irish Republic. There were borrowers in America and U.K.

Q. If we come to the Credit Committee meetings very shortly afterwards, there are Irish residents and Irish companies that are designated not only "suitably secured" but "suitably secured GMCT".

A. Well obviously the deposit with, there was a deposit with Guinness Mahon Cayman Trust.

Q. And therefore in 1976 you must have been aware that there were people who were "suitably secured" by Guinness Mahon Cayman Trust.

A. Yes, but also there were, there were deposits there legitimately held.

Q. I am not talking about whether they were legitimate or illegitimate at the moment.

A. Well, I am as well, because the point, the loans of which you speak, some of the loans which you speak may have been legitimately secured because the bank of Guinness and Mahon, having a deposit in the Cayman had been received

Q. The records at the time of Credit Committee meetings signed by you, Mr. O'Kelly, in 1976 show that for individual residents there were borrowings that were suitably secured

and the words GMCT are included in brackets after "suitably secured".

A. Well if you say so you may be correct but I have no knowledge of it.

Q. And it follows therefore whatever your recollection now that in 1976 you were aware that there were Irish residents who had borrowings backed by Cayman deposits.

A. Which were not approved by the Central Bank?

Q. Leave aside whether they were approved by the Central Bank.

A. That is very important whether they were approved by the Central Bank or not.

CHAIRMAN: Well maybe you could just address the question I know it has been quite a long spell obviously, Mr. O'Kelly, but were you - Mr. Gallagher is suggesting that these documents must have made it clear to you that they were Irish residents whose borrowings were being secured by Cayman deposits.

A. But the Central Bank might have approved of those, might have approved of that deposit.

MR. COUGHLAN: Perhaps if I could assist Mr. O'Kelly, the evidence from the Central Bank is they couldn't have approved of those particular deposits, so perhaps Mr. O'Kelly is proceeding on a false premises in his own mind. They couldn't have been approved.

Q. MR. GALLAGHER: And leaving aside any question of Central Bank approval, as of 1976 the documentary evidence establishes "suitably secured" Cayman, Cayman Trust, Grand Cayman Trust.

A. Mm-hmm.

Q. So you were aware then that they were being backed by Cayman deposits?

A. Well, all I can tell you, I have had this I don't want to plead ignorance on my memory, all I am saying to you is that I am sure what you are saying is correct and that I have no memory of that.

Q. Okay. Well it follows from that that it is incorrect to say that the first time you became aware of the backing of these loans by Cayman deposits was in 1978. That is not so.

A. You are saying in '76?

Q. I am saying it was certainly '76, in fact I am saying that it was '72 but the documentary record puts it beyond ye or nay because your signature is under these records in 1976.

A. Well, I have no comment to make on that because I don't know whether they are loans to which Central Bank application had been made or not.

Q. Well forget about the Central Bank, they are loans that are backed by Cayman deposits.

A. I don't think that we can with due respect, I don't think we can forget about the Central Bank.

Q. Well, if you can't forget about the Central Bank, I take it

that at the time when you would see "suitably secured GMCT" you would have checked whether or not the Central Bank had approved it?

A. I have no recollection even of seeing GMCT, so

Q. Well if you were concerned about the question of Central Bank approval, given that you have signed records showing "suitably secured GMCT", you would have checked at the time whether or not Central Bank approval existed.

A. I don't think I personally would have checked but I say I would have asked somebody, had a word within the bank, see if they approved of that.

Q. We know that no such approval did exist.

A. Do we?

Q. And if you had examined you would have found that out.

A. How do we know?

Q. We know that from the evidence that has been given to the Tribunal, no such approval existed?

A. Well, I didn't know, I don't know that. I would have thought the Central Bank might have approved occasionally of loans

Q. Mr. O'Kelly, if you asked you may have found that out. We take it therefore that you knew that there was no Central Bank approval?

A. I mean I can't answer that, I mean I don't know that there was no Central Bank approval but I can't remember the incident at all to which you are referring.

Q. And I must suggest to you, Mr. O'Kelly, it follows that you

knew all along about this system of cash-backed deposits,
securing loans to Irish residents and it wasn't just
Mr. Traynor, but you were aware of it as well.

A. I said that I was aware of it in '78.

Q. And you were aware of it long before '78, Mr. O'Kelly.

A. If you say so, but I have no recollection of that and I
can't accept it, but I mean I am just saying, telling you
that.

Q. And it is inconceivable as a managing director of a bank,
and as a chartered accountant, that you could have assumed
that the words "suitably secured" meant and only meant that
somebody was of good standing and integrity or good for the
money.

A. You are saying that?

Q. Yes,?

A. Well say away.

Q. Yes, and operating in the same room with Mr. Traynor over
the period of six or seven years you couldn't but have been
aware of what was going on?

A. John Guinness was informed.

Q. You couldn't but have been aware of what was going on?

A. You may say that but I don't agree with you.

Q. Do you agree that what was going on was fraudulent?

A. What, that everything that was going on was fraudulent?

Q. No, that this activity was a fraudulent activity.

A. Which activity?

Q. The activity of backing the deposits and then misleading

the Central Bank, amongst others, as to the existence of this entire system.

A. I don't think the Central Bank were ever misled.

Q. I see. And do you think that their belief that the system stopped after 1978 was that correct?

A. I was disappointed to find that it hadn't been stopped.

Q. And are you saying as a managing director of the sole managing director at that time that you were not aware that it hadn't been stopped?

A. I left the bank in '85.

Q. But after between '78 and '85, is it your evidence to this Tribunal you believed it had been stopped?

A. I don't wish to say anything other than it was one of the factors why I resigned, okay.

Q. I am asking you between '78 and '85, is it your evidence to the Tribunal you believed this system had ceased?

A. I believed that that system was being wound down.

Q. I see. So we may take it that you believed that it continued after '78?

A. Being wound down, it took a while to wind down. It would have taken a while to wind down.

Q. And it hadn't, to your knowledge, been fully wound down by '85 when you left?

A. Well, when I left in '85 it hadn't been wound down fully.

Q. So you are aware then that this system continued despite assurances given to the Central Bank?

A. I was not aware of whether the Central Bank, I mean as of

'85 when I resigned, the Central Bank still knew it was the position and it was up to them to resolve that.

Q. I see, and it was something that you felt ought to be wound down and the fact that it wasn't fully wound down was one of the reasons you left?

A. It was run, it was one of the reasons, yes.

Q. And therefore you must have regarded it as being wrong or dishonest in some way.

A. Well, I felt that we were, that I was in agreement with the Central Bank.

Q. Well if it was such as to be one of the reasons why you left, you must have believed it was wrong or dishonest in some way?

A. No, I felt it was wrong not to wind it down but it wasn't the main reason why I left

Q. Why was it wrong not to wind it down?

A. Because the commitment to the Central Bank had been given that it would be wound down.

Q. Back in 1978?

A. Yes.

Q. And we are now talking about seven years later that commitment to the Central Bank had not been honoured?

A. Well I don't say it hadn't been honoured but it hadn't been completely wound down.

Q. Mr. O'Kelly, if it hadn't been completely wound down, the commitment had not been honoured, let's not mince words.

A. The Central Bank were always aware of the position.

Q. I see. Are you saying that the Central Bank continued to be aware up until '85 that this system continued?

A. Yes, absolutely I am.

Q. You mentioned that you knew that Mr. Traynor operated a system whereby instructions were given to him by clients who then got money in Dublin, you were aware of that?

A. Well I mean what I am aware of?

Q. You said in your evidence that you knew that clients gave instructions to Des, and he got money for them in Dublin.

A. That they were able to withdraw.

Q. Money in Dublin and they were Cayman deposits?

A. Money was remitted to them for collection, yes.

Q. And if they were withdrawing money in Dublin, some record had to be kept of that.

A. Was it? I am sure it was, yes.

Q. You would know it would have to be, as a banker, some record would have to be kept?

A. The operations of Guinness Mahon Cayman Trust were conducted by Des, but the withdrawals or lodgements were his, not mine.

Q. Did you ever question him as to what records were being kept about these withdrawals?

A. Never.

Q. But you knew some records were being kept?

A. Of course they were.

Q. So while you may not have known about the Bureau System per se, you knew at that there was a system of record-keeping

managed by Des Traynor which accounted for these withdrawals?

A. Not managed by Des Traynor, kept in the Cayman Islands so

Q. It must have been Des Traynor who was keeping these if he was acting on the instructions and getting money for these people?

A. No, if somebody withdraws money from a bank, they ring the Cayman Islands or America and say "could you please remit 10,000 to this account." That is quite a simple thing.

Q. And are you saying that Mr. Traynor would have no record and keep no records of what was being done?

A. I don't know whether he did or didn't, but it was quite simple for those to be kept in the Cayman.

Q. I see. And you never inquired of him whether or not he was keeping records?

A. I never inquired of him.

Q. And you never investigated what system he was operating whereby he was able to give money to people who had deposits in the Cayman, you never inquired into that?

A. I never inquired or investigated.

Q. Notwithstanding commitments given to the Central Bank?

A. Notwithstanding commitments made, because the commitment made was to reduce

Q. Notwithstanding your obligations as a Managing Director?

A. I don't think, I don't think my responsibilities as Managing Director were being neglected.

Q. And notwithstanding your knowledge that to carry on any banking business in Ireland you required a license?

A. Opinions differ as to whether a separate banking business was being carried on.

Q. But you didn't know the answer to that?

A. Nor do you.

Q. And you shut your eyes to it, on your own evidence, because you asked no questions?

A. I didn't shut my eyes to it, the fact is that Mr. Traynor and I worked very closely together. He from day one had responsibility for GMCT, I did not occur any responsibility for GMCT, but I was quite happy that he carried on the activities.

Q. But you became involved with GMCT not only in approving loans but in the discussions or negotiations with the Central Bank?

A. Not in approving loans, these were loans to Irish residents.

Q. Yes, which involved your own signature "suitably secured GMCT", so you had that involvement, Mr. O'Kelly, and you also had the involvement of the discussions with the Central Bank?

A. The involvement of the discussions with the Central Bank?

Q. You were involved in the discussions with the Central Bank?

A. Yes, I was present.

Q. You were sole Managing Director and you were a very good close friend of Des Traynor?

A. I was.

Q. So close that your, that you will not condemn him in anyway before this Tribunal?

A. Well, if you like to produce a dead body, I would agree with you, but other than that I am not going to condemn Des Traynor.

Q. You knew he was operating a system of getting money for clients who had deposits in Cayman?

A. You are saying that, are you?

Q. You have told us that already.

A. Fine.

Q. And are you asking the Tribunal to believe that you didn't shut your eyes to what was going on, what was going on, or that you didn't know what was going on?

A. I have already given evidence to the Tribunal in relation to my discussions with the Central Bank. I mean I think I have made it quite clear as to what my attitude was.

MR. GALLAGHER: Thank you.

THE WITNESS WAS FURTHER EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Sorry, one or two questions if I may Sir and I won't take long.

I think, Mr. O'Kelly, you have just announced to a question from Mr. Gallagher, said that you were aware to some extent that Mr. Traynor was able to get cash for Irish residents from their Cayman deposits, if I could put it that way?

A. That Irish residents could withdraw from deposits that they had in the Cayman through Des.

Q. Through Mr. Traynor or through the bank?

A. Surely, yes.

Q. Through the bank. And I take it you knew that?

A. That people were in receipt of funds from the Cayman.

Q. Yes.

A. Yes.

Q. And that, of course, would have involved a foreign exchange transaction, wouldn't it?

A. A foreign exchange transaction?

Q. Yes?

A. Well, I presume so. I presume the money in Cayman was kept in dollars. I mean I am sure it was.

Q. The money in Cayman was kept in Guinness & Mahon in Dublin and in Guinness & Mahon in London, and in Dublin the deposits were kept in Sterling and in some currencies. If I just explain that to you.

A. Um.

Q. Now, an Irish resident was not entitled to withdraw from an Irish bank after 1978 Sterling, but before that was not entitled to withdraw a currency, if I could use it as a "currency", other than Sterling, without Exchange Control approval?

A. Right.

Q. So they had to obtain the money in Irish pounds?

A. So that Irish resident received Irish pounds?

Q. Yes.

A. Right.

Q. Yes. Now, the deposits, because they were designated as being offshore deposits, of course couldn't be in Irish pounds?

A. Um-hum.

Q. Isn't that correct? So an exchange control, or a foreign exchange deal had to be done, if the money was just coming straight from the deposits?

A. Right.

Q. But evidence has been given to this Tribunal by Mr. Collery, who operated the system within Guinness & Mahon, that accounts in the name of Amiens or Amiens Investments or a varied number of accounts designated as Amiens accounts, were used for the purpose of giving Irish money to Irish residents, and that he would then make a corresponding adjustment on the Bureau System to reflect a debit on the Cayman side?

A. Yes, I understand that.

Q. Yes. Did you know that was going on in Guinness & Mahon?

A. No, I thought the Cayman you know I understood the books in Cayman reflected the withdrawal.

Q. Yes.

A. Yes.

Q. But did you know how it worked?

A. No.

Q. The mechanics of it?

A. No, that somebody in Cayman, you know, rang or wrote to G&M and asked them to keep a certain amount of Irish money for so and so who would come in and collect it or to have it delivered to his bank or wherever.

Q. Yes, and we have one incidence or evidence of, in the course of this Tribunal of a man who was a TD, although not at the time, yes at the time, Mr. Denis Foley who went up to Mr. Traynor in the offices of Guinness & Mahon in Dublin and handed him cash?

A. Um.

Q. And there is no record in Guinness & Mahon of how that particular cash was dealt with, but Mr. Collery has explained to us, that the way the system would have worked is that an Irish resident who had an offshore deposit in a foreign currency, would have been in need of Irish money?

A. Um.

Q. This cash would have been used to satisfy his needs and there would have been a debit from his offshore deposit into a new deposit which was created on behalf of Mr. Foley, and that's how the money got offshore?

A. Forward transfer, yes.

Q. Yes, so a switch in other words?

A. Yes.

Q. Did you know that that is

A. No, I did not.

Q. I suppose at the least, it could be described in banking terms as perhaps reprehensible behavior; is that right?

A. I would say it probably is. Like very large banks operated, like, where you are paying US Dollars and you are collecting US Dollars here, so it is a system that has been used in banking circles but like

Q. The way it was being used?

A. Was reprehensible.

Q. Yes, would you agree with that?

A. Yes.

Q. It was being used to defeat the Revenue, Exchange Control Regulations everything; is that right?

A. Well, I think you know.

Q. In those circumstances?

A. Yes, yes, I have no objection to that.

MR. COUGHLAN: Thank you.

CHAIRMAN: Thank you. Mr. Hogan?

MR. HOGAN: No questions.

MR. COUGHLAN: I think, Sir

CHAIRMAN: Thank you.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: I think Tribunal needs to put

CHAIRMAN: A formal statement, I certainly don't propose that we have all the expense of a separate sitting on Tuesday solely for that, which would be counterproductive,

but I am thinking of the stenographer who has the better part of 170 pages to cover, I wonder might we

MR. COUGHLAN: At the beginning, I can read that statement into the record when the Tribunal gives notice of public sittings in due course.

CHAIRMAN: Yes. Very good.

MR. COUGHLAN: Yes.

CHAIRMAN: Very good. It will be necessary, I think then to recess for as short a period as possible to prepare some further modules of evidence, and the appropriate persons will be notified as soon as we are ready to presume.

MR. COUGHLAN: Phases of evidence.

CHAIRMAN: Quite.

THE TRIBUNAL THEN ADJOURNED