

THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY 6TH NOVEMBER,

2000 AT 10.30AM:

MR. HEALY: At the commencement of these sittings last week, I mentioned that further evidence will be given concerning the relationship between the Central Bank and Guinness & Mahon. You will recall, Sir, that the Tribunal last touched on this relationship in or around March of 2000. At that time, in the course of evidence given by a number of witnesses from the Central Bank, and from Guinness & Mahon and elsewhere, a considerable amount of time was devoted to describing what I'll call the wider Ansbacher operation.

In the context of the relationship between the Central Bank and Guinness & Mahon, the defining characteristics of that wider Ansbacher operation were what have come to be known as the back-to-back loans operation on the one hand, and the bureau system on the other.

The expression "back-to-back loans" was used to describe an arrangement whereby loans were granted by Guinness & Mahon where those loans were secured by Ansbacher deposits. The true nature of that security however was obscured by the use of coded language, and you will recall that the codes used to describe that type of security extended from the most familiar or most ubiquitous "suitably secured" to cases where the

word "unsecured" was even used to describe the existence of a security consisting of an Ansbacher deposit.

The "bureau system" is an expression used to describe what was originally a manual record, which later became a computerised record, of Ansbacher dealings involving the recording of Ansbacher transactions across individual accounts. This bureau system was operated within Guinness & Mahon by Guinness & Mahon staff on computer disks which were kept separately from the disks recording Guinness & Mahon's own customers' transactions on their own accounts in Guinness & Mahon.

The bureau system was actively concealed from regulators, both external and internal, for some considerable time. By that I mean it was concealed from the Central Bank, it appears to have been concealed from both an internal auditor in Guinness & Mahon and other agencies such as regular Companies Act auditors carrying out audits of the company from time to time for the purpose of filing annual accounts.

Evidence was given in March of this year with a view to establishing the extent to which the Central Bank was aware of or ought to have become aware of any of those features of the Ansbacher system. At the time of that evidence, the Tribunal was under the impression that the bureau system had only come to the notice of

outside agencies, in this case meaning Guinness Mahon & Co. in London, by virtue of the findings of an internal audit, a Report published in 1989. In fact, it now appears that as early as October of 1985, and almost certainly from an earlier date, the operation of the system was being discussed by Mr. Desmond Traynor with an executive director of Guinness Mahon & Company in London. The director in question, Mr. Bruce Ursell, had been associated with Guinness Mahon & Company in London since 1974. He was, of course, also a director of Guinness & Mahon Dublin from in or around February of 1983. At the time of the correspondence, which I have just put on the overhead projector, this man was acting as a director of Guinness Mahon & Company London.

This is a letter of the 17th October of 1985 from Guinness Mahon & Company London, to the late Mr. Desmond Traynor in Dublin. You will recall, Sir, that in 1986 Mr. Traynor left Guinness & Mahon, although as we now know, his association with the company was not completely severed and indeed he continued to have an office in a Guinness & Mahon building adjoining the bank's premises and continued to have the use of the services of the bank. Indeed, his secretary continued to be paid by the bank for about a year or so after he ceased to be a director of the

company.

This is a letter from Mr. Ursell, and I have deleted everything bar the part that's material to what the Tribunal is now canvassing and in which Mr. Ursell says:

"Dear Des,

Further to our conversation last week, I confirm that we would be very pleased for to you to continue in the role of Chairman of Guinness Mahon Cayman Trust for a period of at least three years from the end of your employment at Guinness & Mahon.

"We would be agreeable to you moving into the office previously occupied by Don O'Connor and having a computer terminal wired up to tap into the Cayman Bureau.

"We would also be agreeable to you taking your secretary with you and bearing the cost of this.

"It is understood that with regard to these last two items that it is likely that you will have an alternative office location within a period of 12 months and at that time it is very likely that the cost of both the secretary and the office will drop away.

"We will pay you a salary of $\frac{1}{2}$ 12,500 p.a. for this.

In addition, I understand you will receive a similar

sum in Grand Cayman. We will also pay the cost of your telephone.

"All of the above is subject to review of twelve months on both sides."

What the letter appears to indicate is that Guinness Mahon & Company London were well aware of the operation of what they describe, in fact, as the Cayman bureau, that is to say the bureau system operating within Guinness & Mahon, or the bank within the bank as it has been sometimes called in evidence, and from the letter, as I suggested a moment ago, it would seem that the existence and the operation of the activities of the Cayman bureau was known in 1985 and indeed perhaps for some considerable time prior to that date.

CHAIRMAN: Am I right, Mr. Healy, in surmising that this letter has become available as part of further documentation furnished to the Tribunal by the solicitors to Guinness & Mahon?

MR. HEALY: It's as a result of a continuing obligation on the part of Guinness & Mahon to provide the Tribunal with any documentation that came to its notice which might come within the ambit of an earlier undertaking or an order that this document came to the notice of the Tribunal.

Now, it will be recalled that in the course of evidence

already given at the Tribunal's public sittings, it became clear that in or around 1979, Guinness & Mahon, through the late Mr. Desmond Traynor, gave an undertaking to the Central Bank that back-to-back borrowing of a kind which the Central Bank found objectionable would be wound down by 1982.

Now, you will recall, Sir, that there was some considerable controversy concerning the nature of this back-to-back borrowing and in particular whether it constituted, in the view of the Central Bank, tax evasion or tax avoidance. For the moment I propose to use the neutral term "objectionable" to describe the type of borrowing as it is ultimately a matter for you, Sir, whether you regard the borrowing as having given rise to concerns that there was tax evasion as opposed to tax avoidance going on in Guinness & Mahon.

From evidence given at the Tribunal it would appear that whereas there were increases in that borrowing between '79 and '82, on the face of it the impression is given that by 1982 the borrowing had been wound down. However, in fact, back-to-back borrowing continued to be a significant feature of Guinness & Mahon's business after that date. In other words, the objectionable feature of Guinness & Mahon's activities continued to form part of its operation after that time although, again, this was actively concealed from the

Central Bank.

At the same time, evidence was given by the Central Bank from which it appeared that there may have been no active policing of the undertaking after that date.

Whether the Central Bank ought to have relied on the undertaking given by Mr. Traynor and whether the Central Bank ought not to have continued to scrutinize Guinness & Mahon's back-to-back activities after that date is a matter which will ultimately have to be decided by you, Sir.

The additional evidence which is now to be given concerns the extent to which Central Bank inspectors - after 1982 - may have come across Ansbacher issues in the course of inspections. You will recall that this was dealt with to some extent in evidence given by Mr. Adrian Byrne. After Mr. Byrne's evidence, a questionnaire was sent to all of those Central Bank staff who appeared to have been involved in inspections at Guinness & Mahon and arising from that questionnaire and other information made available to the Tribunal by the Central Bank, a number of statements have been made available to the Tribunal concerning, in particular, the 1988 inspection.

One of the officials involved in that inspection was a Mr. Terry Donovan. Mr. Donovan joined the Bank's

supervision department from the Currency centre in Sandyford at or around the time of the 1998 inspection of Guinness & Mahon.

CHAIRMAN: '88.

MR. HEALY: 1988 inspection of Guinness & Mahon, sorry.

The inspection was being led by Mrs. Ann Horan.

Mr. Donovan has made a statement to the Tribunal in which he asserts that a number of Ansbacher features arose, or at least came to his attention, in the course of his inspection and that he brought these to the attention of Mrs. Horan and also to the attention of Mr. Adrian Byrne. He has stated that he formed the view that it was possible that full information was not being provided to the Central Bank by Guinness & Mahon. He goes on to say that there were inconsistencies between information provided from different sources within Guinness & Mahon and specifically suggests that aspects of the operation of Guinness & Mahon which may have involved back-to-back loans were not being pursued because of the degree of sensitivity involved; that, in other words, aspects of the continuing operation of the back-to-back arrangements were not being pursued or not being scrutinised by the Central Bank.

Mr. Donovan acknowledges that at the time he was a very junior official, at least so far as inspections were

concerned. He had never worked in that particular arena before and he acknowledges that he may have attached a greater significance to documents he was examining than would have been attributed to those documents by an experienced examiner, and in particular by an examiner who may have been aware of the Central Bank's earlier dealings with Guinness & Mahon.

There is a marked conflict between Mr. Donovan's statement and the statement provided to the Tribunal by Mrs. Ann Horan, who has informed the Tribunal that she is disturbed by the tone and indeed as is clear from her statement, she is clearly disturbed by the content of Mr. Donovan's statement. According to Mrs. Horan, Mr. Donovan suggests that she may have unwittingly ignored his stated concerns regarding the activities of Guinness & Mahon, or possibly that she may have deliberately tried to keep references to 'Hypothecated Deposits', that is to say back-to-back borrowing, out of the report due to sensitivities concerning Guinness & Mahon. Mrs. Horan rejects any suggestion either that she was ignoring Mr. Donovan's stated concerns or that she deliberately kept information out of the Inspection Report.

Mr. Donovan has also indicated that he brought his concerns to the attention of other members of the staff at the Central Bank, including Mr. Adrian Byrne and

Mr. Brian Halpin. Neither Mr. Byrne nor Mr. Halpin has any recollection of having had any dealings with Mr. Donovan related to any concerns he had regarding back-to-back arrangements in Guinness & Mahon.

Mr. Donovan goes on to say that he was so concerned that he may have damaged his relationship with Mrs. Horan and Mr. Byrne, who were to be his new superiors in the banking supervision department, that he contemplated seeking a transfer from that department to another department of the Central Bank and that he sought guidance in relation to this matter from a Mr. Michael Deasy. Mr. Deasy has stated that he has no recollection of any such approach from Mr. Donovan.

It has not been possible in the course of the Tribunal's informal meetings with the individuals involved in the inspection to resolve the differences that I have outlined very briefly between their respective recollections. In the ordinary way, the Tribunal would endeavour to adduce evidence, leaving it to the Tribunal to put whatever interpretation is appropriate on that evidence, hoping to avoid, so far as possible, conflicts between the evidence of a significant degree. That has not been possible in this case and the Tribunal has therefore determined to proceed on the basis that the conflicting evidence will be heard. Ultimately, having heard the evidence and

any necessary examination or cross-examination of any of the witnesses, it will be a matter for the Tribunal to make findings as to the facts, and in particular, as to whether there were any sensitivities of the kind described by Mr. Donovan and, if so, whether they were brought to the attention of his superiors and ultimately as to whether, and if so, how these sensitivities were handled by members of the Central Bank staff.

Now, I should say that much of the additional information that has come to the Tribunal in connection with this matter has been mediated through the Central Bank, and I should say that no doubt or query arises as to the completeness of the responses previously given on behalf of the Bank by witnesses connected with the Bank on this or indeed on any other subjects. There can be no doubt as to the level of assistance and cooperation provided by the Bank in general with the Tribunal.

This additional information has come to the attention of the Tribunal as a result of the questionnaire I mentioned earlier and again, as I said, much of the information has been mediated through the Bank where it has involved current serving bank officials, although in Mr. Donovan's case, he is represented by his own solicitors. Mrs. Horan is no longer an official of

the Bank and hopes to be represented by her own solicitor, subject to any order you may make, Sir.

It is through the Central Bank that the Tribunal made contact with officials no longer employed by or associated with the Bank. The Central Bank itself has stated that, as far as it is concerned, it considers that each inspection of Guinness & Mahon, including the 1988 inspection, was conducted thoroughly and in a proper manner.

None of the officials from whom evidence will be taken today and none of the former officials has ever come across anything in the course of an inspection which might have led them to an awareness of the bureau system.

There is one other matter concerning a correction to the transcript, but I think there is some further details to be examined concerning that and I'll deal with that tomorrow, Sir.

MS. O'BRIEN: The first witness, Sir, will be a short witness, Mr. Richard Robinson please.

RICHARD ROBINSON, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. Robinson, you have been asked to give evidence to the Tribunal in relation to the letter of

the 17th October of 1985 which Mr. Healy referred to in the opening statement of the Tribunal. And I think you have provided the Tribunal with a memorandum of the evidence which you are in a position to give. And do you have a copy of that memorandum with you in the box?

A. I do.

Q. What I suggest is I take you briefly through that. We can then consider the contents of the letter. I may have one or two questions which I wish to ask you.

In your memorandum you state that you are a banker and you were appointed as a director of Guinness & Mahon Ireland Limited on the 22nd February 1997, which is when you joined the bank; is that correct?

A. That is correct.

Q. You state that the letter of the 17th October of 1985 forms part of the books and records of Guinness & Mahon Ireland Limited; is that correct?

A. That is also correct, yes.

Q. You state that the letter was written by Mr. Bruce Ursell; that Mr. Ursell was appointed a director of Guinness Mahon and Company Limited hereinafter called London, on the 25th March of 1974.

A. That's correct.

Q. So at the time this letter was written, Mr. Ursell was a director of Guinness Mahon & Company London?

A. That is correct.

Q. I think at that time Guinness Mahon & Company London

was the parent company of Guinness Mahon & Company Ireland?

A. That is also correct.

Q. You state that at the time when you wrote the letter, he was the managing director of London. You state that Mr. Ursell was also a director of Guinness & Mahon Ireland Limited having been appointed on the 25th February of 1983.

A. That is correct.

Q. You state that Mr. Traynor, at the time the letter was written, was firstly Chief Executive and deputy chairman of Guinness Mahon Ireland limited, having been appointed on the 11th December of 1969; is that correct?

A. Yes, that is correct.

Q. Secondly, he was a director of Guinness Mahon & Company London, and that he had been appointed as a director of Guinness Mahon & Company London on the 25th July of 1978; is that correct?

A. That is also correct, yes.

Q. And he was also Chairman of Ansbacher Cayman.

A. Correct.

Q. I think, in fact, at that time Ansbacher Cayman was known as Guinness Mahon Cayman Trust?

A. I believe that to be the case, yes.

Q. You state that Mr. Traynor resigned as a director of Guinness Mahon & Company London on the 30th April 1986

and as a director of Guinness Mahon Ireland limited on the 2nd May of 1986.

A. That is also correct, yes.

Q. You state that on the 1st October 1986, Mr. Ursell replaced Mr. Traynor as deputy chairman of the Guinness Mahon Ireland Limited and he resigned as a director of Guinness Mahon Ireland limited on the 5th May of 1987.

A. That is also correct.

Q. So if we just look at that letter dated 17th October of 1985. As you state in your memorandum, Mr. Traynor at the time was deputy chairman of Guinness & Mahon Ireland Limited and Mr. Ursell was both a director of Guinness & Mahon Ireland Limited and managing director of Guinness Mahon & Company London; is that correct?

A. That is correct, yeah.

Q. And in the letter I will just formally deal with it.

It says:

"Dear Des, further to our conversation last week I confirm that we would be very pleased for you to continue in the role of Chairman of Guinness Mahon Cayman Trust for a period of at least three years until the end of your employment in Guinness & Mahon.

"We would be agreeable to you moving into the office previously occupied by Don O'Connor and having a computer terminal wired up to tap into the Cayman bureau.

"We would also be agreeable to you taking your secretary with you and bearing the costs of this.

"It is understood that with regard to these last two items, that it is likely that you will have an alternative office location in a period of twelve months and at that time it is very likely that the cost of both the secretary and the office would dwindle away.

"We would pay you a salary of $\frac{1}{2}$ 12,500 per annum for this. In addition, I understand you will receive a similar sum in Grand Cayman.

"We also pay for the cost of your telephone. All of the above is subject to review after twelve months on both sides."

Just on the next page of the letter, a large portion of it has been deleted.

Signed: "Yours sincerely, Bruce Ursell."

A. That's correct.

Q. I don't know whether you can assist the Tribunal in relation to this. But do you have any information as to how this letter was filed in the records of Guinness & Mahon?

A. It was just how it was filed? It was part of just the normal research material, archive research material,

that was researched by the legal team.

Q. Do you know whether it was files that specifically dealt with the affairs of Guinness Mahon & Company London or would it have been in personnel files or in specific files of that nature?

A. I am afraid I don't know the exact location of it.

Q. I wonder were you aware of the internal audit report of 1989 on which Sandra Kells gave evidence to the Tribunal sometime ago?

A. I was not aware of that.

Q. You weren't aware of it at the time?

A. No.

Q. Well, I take it you are aware of it now?

A. Oh, I am aware of it, yes.

Q. I think it was the understanding as of that time that the first occasion on which the directors of Guinness & Mahon Ireland and Guinness Mahon & Company London became aware of the Cayman bureau system was as a result of the contents of that internal audit report?

A. Yes.

Q. I think in the light of the contents of this letter, I think it would suggest otherwise?

A. I would agree.

Q. Thank you.

CHAIRMAN: Thank you very much, indeed, for your attendance, Mr. Robinson.

MR. HEALY: Mr. Terry Donovan.

Terry Donovan

MR. GORDON: Before Mr. Donovan is called to the stand, John Gordon, Senior Counsel, instructed by Dillon Eustace solicitors. We will be requesting limited representation on behalf of Mr. Donovan.

CHAIRMAN: On the usual basis Mr. Gordon, as I have stated on past occasions, it, of course, doesn't bind any particular position with regards ultimate costs of adjudication, but I can readily see from what Mr. Healy has opened, that is desirable that your client have the assistance of the skilled legal advice. So I will concede to the limited basis you propose.

MR. HUNT: I appear for Mrs. Ann Horan instructed by Patrick Monaghan solicitor, and I have a similar application in relation to the matters arising in this section of the evidence the Tribunal is about to hear.

CHAIRMAN: I think, Mr. Hunt, my disposition is perhaps being less to give limited representation in some marginal situations such as this, but I think on the basis that Mr. Healy has indicated, a considerable degree of divergence between the respective recollections, I think it has now become proper that I accede on the same basis as Mr. Gordon's application.

MR. HUNT: I am obliged, Sir.

TERRY DONOVAN, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Now, you provided the Tribunal with a draft statement to enable it to take you through your evidence. Do you have a copy of that statement with you there?

A. I do.

Q. I propose to go through your statement and then come back to any aspects of it that I think require further clarification. So I will take you through it paragraph by paragraph to begin with.

The first thing you draw attention to is Section 16 of the Central Bank Act and you say that having regard to the statutory obligation of confidentiality placed on the Central Bank and on you by Section 16 of the Central Bank act as alleged, all information about the affairs of Guinness & Mahon set out in your statement is disclosed pursuant to a consent to such disclosure that has been given to the Central Bank by Guinness & Mahon.

You go on to say that you can confirm that questions about the back-to-back loan arrangements in Guinness & Mahon were raised by officers of the Central Bank with Guinness & Mahon management in the course of the 1988

on-site inspection and this is not reflected fully in the Inspection Report. "An account of my involvement in the 1988 inspection of Guinness & Mahon prepared to the best of my recollection is set out in part D of this draft statement."

You then go on to say: "I believe it is important that the information I am providing to the Tribunal should not be taken out of context and that more significance should not be attached to it than is warranted. In February of 1988, I was new to the Central Bank's provision work, inexperienced and untrained. In 1988 rather the 1988 Guinness & Mahon inspection was my first involvement in on-site work and my first encounter with the management of any bank or with any difficult supervisory issue. For that reason the events of February of 1988 made an impression on me as reflected in the detail of my account of those events.

I now know that the key information which was new to me in 1988 relating to the back-to-back loan arrangements in Guinness & Mahon was not new to the Central Bank. As a result, the material might not have had the same significance for other officers of the Central Bank as it did for me at the time.

Separate from the question of the back-to-back loan arrangements, significant prudential issues arose and

were examined in detail during the course of the 1988 inspection of G&M. I do not intend to deal with these prudential issues in this statement. I will, however, elaborate on the subject if the Tribunal believes it to be relevant to its inquiries."

You then go on to deal with your account of certain aspects of the 1988 inspection.

You say: "As these matters occurred twelve years ago, details are difficult to recall. I have compiled the following account to the best of my recollection.

"I understand that I am being contacted by the Tribunal because my name appeared on the cover of a 1988 Inspection Report relating to G&M. I did not at any time have any supervisory responsibility for G&M and my involvement in 1988 was limited to that described below." Meaning in your statement which now follows.

"I have no recollection of having read the completed 1988 Inspection Report at any stage. Prior to reading it in March 2000 while preparing this statement, I do not know at what stage the Inspection Report was finalised and I was not asked to sign it following its completion. In January of 1988 I was transferred by the Central Bank from its currency centre in Sandyford to the Banking Supervision Department in Dame Street. I was on the senior Executive Officer grade at that

time which was considered equivalent to bank examiner.

While I had qualified as a certified accountant in 1985, I have no specific knowledge of or experience of nor had I received any particular training in supervision matters or in the conduct of on-site inspections at that stage. On arrival in the Banking Supervision Department, I was assigned to work for Mr. John Fitzgerald who was at that time a senior bank examiner. Mr. Fitzgerald was in the course of completing a particular project and was not immediately in a position to assign duties to me. Not long after my arrival in the Banking Supervision Department, I was approached at my desk by the manager of the department at that time, Mr. Brian Halpin, who told me that it was his policy to send newly arrived examiners on the first available on-site inspection as part of their training.

"As there was no upcoming inspection scheduled at that time for Mr. Fitzgerald's team, Mr. Halpin directed me to join an on-site inspection already in progress in Guinness & Mahon. I indicated to Mr. Halpin that I felt I needed time to prepare and specifically to review relevant G&M file material. He instructed me that this would not be necessary, that the files I needed to see were in the offices of G&M and that I should go there without delay where the inspection team was awaiting my arrival.

"On arrival at the offices of G&M in College Green, I found that the 1988 G&M inspection was being conducted by the authorised officers responsible at that time for the day-to-day supervision of G&M. Mrs. Ann Horan, the examiner in charge of the inspection and Ms. Elaine Byrne, whom you describe as a bank examiner.

"In the course of the inspection, Mrs. Horan instructed me to analyse some of the G&M's accounting statements." And you say that you believe it may have included a set of internal unpublished management accounts.

You going on to say: "I found that they included a reference to 'Hypothecated Deposits' and/or 'Hypothecated Loans' which terms I had not come across before in the course of my accountancy training or otherwise.

"The item represented, to the best of my recollection, approximately one third of the total liabilities of G&M as presented in those accounts. I queried the meaning of the terms and I was advised by Mrs. Horan to raise this matter together with other unrelated routine information requirements with Mr. Martin Lannigan O'Keefe of Guinness & Mahon, who was the main point of contact to deal with the information requirements of the inspection team.

"My recollection is that Mrs. Horan and I had a number

of short discussions on the matter with Mr. Lannigan O'Keefe, possibly in the presence of Ms. Byrne. I understood Mr. Martin Lannigan O'Keefe's responses to me that the terms 'Hypothecated Deposits' and "Hypothecated Loans" were related to back-to-back loans indirectly secured by monies held in the Cayman Islands. I cannot recall the full details of his explanations, much of which did not make sense to me at the time. I formed the view, however, that it was possible that full information was not being provided to the Central Bank by G&M.

I recall that Mr. Lannigan O'Keefe contended that no-risk to G&M could arise from the hypothecation arrangement given the amounts involved and the lack of a direct security arrangement. However, I found it difficult to accept this contention and once Mr. Lannigan O'Keefe had left the room, I expressed to Mrs. Horan, the view that the matter should be explored further. I do not believe that I was aware or made aware at that stage that the matter or any related matters had been considered previously by the Central Bank.

I was unsure how best to proceed and kept the issue in mind while I proceeded with other work. I recall that I started preparing a handwritten record of the points made by Mr. Lannigan O'Keefe and the potential issues,

prudential or otherwise, which I believe might arise despite his explanation.

When, in the normal course of my work, I subsequently visited Mr. Lannigan O'Keefe's office to collect or return some documentation relevant to other aspects of the inspection, Mr. Lannigan O'Keefe reverted to the question of the meaning of the hypothecation and sought to establish whether I had accepted his previous explanation. When I indicated that I was not satisfied by his explanation, Mr. Lannigan O'Keefe sought to persuade me once again of the zero risk nature of the transactions for G&M.

"In the course of the brief discussion, I inquired further about the operation of the scheme. I cannot remember at this stage the details of his reply or whether it added further to my very limited knowledge. In response to a direct question from him, I indicated to Mr. Lannigan O'Keefe that I believed that the matter should be investigated further. Without notice to me of his intentions Mr. Lannigan O'Keefe suddenly telephoned Mr. Michael Pender, then general manager of G&M, and arranged for Mr. Pender to meet me immediately, as he, Mr. Pender, had something to say to me on the matter. I was concerned about proceeding with the matter by myself without first having a further discussion with Mrs. Horan, the Authorised

Officer in charge. For this reason, I sought to defer the meeting with Mr. Pender.

"Mr. Lannigan O'Keefe insisted that the meeting with Mr. Pender could not be rescheduled as Mr. Pender was about to leave the office, it was then close to lunch time, and would not be available later. Mr. Pender wished to have a brief conversation with me before I proceeded further with my line of inquiry.

"Mr. Lannigan O'Keefe brought me directly to Mr. Pender's office. I met very briefly with Mr. Pender who referred to the fact that I was asking questions about the operation of the back-to-back loans. He mentioned Mr. Des Traynor, a name which had no particular significance for me at the time other than perhaps as Chairman of CRH, and said that Mr. Traynor had already explained the back-to-back loan arrangement to Mr. Adrian Byrne of the Central Bank. Mr. Traynor recommended sorry, I beg your pardon, Mr. Pender recommended that I discuss the matter with Mr. Byrne before deciding whether to proceed further.

"I was confused and concerned at this stage. I did not have sufficient knowledge of supervision requirements or methods to form a basis for judgement as to whether such limited information as I had been given could describe an example of normal banking

business or whether it pointed to something beyond the norm. I had formed the opinion that Guinness & Mahon management regarded the matter as serious and sensitive.

"It would have been unwise for me, therefore, to pursue the matter without guidance.

"I returned to the room in G&M then occupied by the inspection team and relayed immediately to Mrs. Horan the full contents of my conversations with Mr. Lannigan O'Keefe and Mr. Pender. I asked Mrs. Horan for guidance as to how I should proceed. Mrs. Horan expressed surprise at my having met with Mr. Pender but I do not recall that she passed any other significant comment on my inquiries. She advised me to raise the matter with Mr. Adrian Byrne who was then deputy manager of the Banking Supervision Department and was the person to whom Mrs. Horan reported. I suggested to Mrs. Horan that it would be more appropriate for her to raise the matter directly with Mr. Byrne or at least to accompany me in meeting him, but she declined and left it to me to decide whether to take the matter further.

On returning to the Central Bank, I raised the matter with Mr. Byrne as advised. My recollection is that this conversation took place immediately after lunch on the same day and that only Mr. Byrne and I were present

at the time. I believe that this may have been the first occasion on which I had a business discussion with Mr. Byrne. I approached him to obtain guidance as to how the inquiries should proceed. It was my view by that stage, that I was not sufficiently experienced to deal with the matter and that someone with more knowledge and experience should take the matter further. I made this known to both Mrs. Horan and Mr. Byrne.

"I related to Mr. Byrne the questions I had raised with Guinness & Mahon regarding the prudential implications of the back-to-back loans. The responses received from G&M and my concerns about the absence of clear explanation from G&M of their activities in that regard. I told Mr. Byrne that Mr. Pender had said that the back-to-back arrangement had been explained previously by Mr. Traynor to Mr. Byrne. I recall that Mr. Byrne expressed concern that it was I, rather than the examiner in charge of the inspection, Mrs. Horan, who had had a discussion with the general manager of G&M in such circumstances. It would not be normal practice then or now for a junior member of an inspection team to take part in such a meeting except under the direction of a senior officer.

Mr. Byrne indicated that I should not take part in any further such meetings in G&M unless so directed.

Towards the end of the conversation, I explained to Mr. Byrne that I was in the course of reviewing G&M file material concerning individual back-to-back loans and obtained his agreement that I should complete this segment of the work. I cannot recall at this stage whether Mr. Byrne confirmed to me that the Central Bank had had a meeting with Mr. Traynor that could correspond to that which Mr. Pender referred in his conversation to me, but he may have done so. Mr. Byrne did not provide me at that time with any information regarding any knowledge he may have had of the back-to-back loan arrangement.

"I returned to the G&M inspection and informed Mrs. Horan of my conversation with Mr. Byrne. I proceeded to complete my review of G&M file material concerning individual back-to-back loans. I had been attempting to correlate information relating to deposits serving as security, information which was provided by G&M or obtained from their files with loan file summaries prepared separately by members of the inspection team. It appeared to me that there were inconsistencies between the information provided from different sources within G&M.

"I now know that only one reference to this work appears to have been included in the 1988 Inspection Report and can be found on page 84, appendix 7, for the

loan account relating to Mr. K.P. O'Reilly-Hyland. I was not aware at that stage that Mr. O'Reilly-Hyland had previously been a director of the Central Bank. The account had no particular significance for me other than as an indication of an inconsistency in the information provided by G&M to the inspection team. I believe that the reference 'no mention of Cayman Island deposits' on page 84 of the Inspection Report, which reference I believe so to have been drafted by me, was intended to convey that Mr. O'Reilly-Hyland's name had appeared on some inspection source made available to the inspection team by G&M, possibly a security file, relating to offshore deposits, but no evidence of this had been included on his loan file account in G&M.

"The core focus of the on-site inspection work in G&M in 1988 was asset quality and the adequacy of provisioning. As part of this work, not long after my meeting with Mr. Byrne, I was assigned by Mrs. Horan a substantial work load which formed part of the normal work of the inspection to assess the asset quality of certain loans in G&M. This detailed analysis took up most of my remaining time on-site and I documented my findings in relation to some these loans at considerable length; an example is summarised at appendix 6 of the Inspection Report, others were prepared in summary form.

"Just before the end of the field work in G&M, I had started to prepare a section for the Inspection Report in relation to the back-to-back loans. I recall that Mrs. Horan informed me that she saw no need for the 1988 Inspection Report to include a description of my inquiries. Mrs. Horan indicated that the approach to be taken should follow the pattern of the 1985 Inspection Report. It was my understanding that the intention was to include material in the report sufficient to provide confirmation to Central Bank management as to whether the back-to-back arrangement was still in operation and whether the amounts involved had been reduced since the last inspection.

"While the latter point was not set out explicitly in the Inspection Report, it could be deduced. I indicated to Mrs. Horan that I was not satisfied that this was an adequate reflection of the matter at which stage she gave me some background information including the fact that there had been previous Central Bank contact with the G&M back-to-back loan arrangements. I formed the impression that there was a degree of sensitivity involved. It was only on reading the material provided by the Central Bank to the Tribunal in the course of preparing this statement, that I have learned the extent of the previous consideration by the Central Bank of the issue. The indications provided

to me by Mrs. Horan were sufficient to suggest to me, however, that much, if not all, of the information which I believed I had discovered, was not new to the Central Bank. Mrs. Horan mentioned a relevant reference in a previous Inspection Report to matters not pursued because of the sensitivity of the matter. I suggested to her that, at the very least, a similar reference should be included in the 1988 Inspection Report.

"Mrs. Horan did not agree.

"I recall that in the course of the ongoing inspection, I kept some handwritten notes of matters related to the back-to-back loans. In particular, I built up a list of what I believed to be potential prudential and other issues relating to the back-to-back loan arrangement. The current whereabouts of these notes is not known to me. I cannot now recall clearly the complete contents of the issues list which I compiled, but I believe that it included the following prudential matters related to the back-to-back arrangements:

"Firstly, in the event that a loan provided by G&M were not prepaid the risk that the indirect security arrangement will fall due to misplaced reliance on Cayman Island law, liquidation of the Cayman bank or otherwise, then G&M would not get access to the Cayman Island deposit which was supposed to be acting as

security.

"The extent of reliance on a single funding source, the aggregate Cayman Island deposits.

"The third item: whether G&M was entitled to have the back-to-back loans treated as zero risk and, therefore, zero weighted in the calculation of its minimum capital requirement.

"And fourthly, references made in the course of the inspection by some officers at G&M to Mr. Traynor's ongoing involvement with certain unspecified loan customers.

"At no stage was I, or as far as I was aware, any member of the inspection team in possession of information which could reasonably indicate that some form of bank-within-a-bank arrangement, as has been termed recently, may have been conducted from the premises of G&M or otherwise in 1988 or at any other time."

And you also say that at no time were you, or as far as you are aware, any member of the inspection team in possession of information which could constitute definitive evidence of any instances of tax evasion.

"Following the conclusion of the field work, I believe that I had no further contact with G&M in relation to

the 1988 inspection or to any other matter which may be of relevance to the work of the Tribunal. To the best of my recollection, I did not visit the premises of G&M other than as set out in this statement.

On returning to the offices of the Central Bank in Dame Street at the end of the on-site inspection, I finished documenting my findings in relation to the loan accounts which I received. I arranged to have this material typed and passed it to either Mrs. Horan or Ms. Byrne for inclusion in the Inspection Report. I subsequently gathered together such working papers as I had assembled in the course of the inspection, placed them in a folder and passed them to Mrs. Horan. I indicated to Mrs. Horan that I did not wish my name to appear on the Inspection Report because I felt that the report was likely to be deficient in its treatment of the G&M back-to-back loans. Mrs. Horan did not agree to the omission of my name as I had taken part in the inspection. I then suggested that my name be included only by way of footnote conveying that I participated but was not a part of the team responsible for the ongoing supervision of G&M. I further indicated to Mrs. Horan that in relation to signing the completed report which I had been informed was the usual practice, I would not be prepared to sign as I was not fully in agreement with its contents. I was not

consulted further regarding the contents of the subsequent Inspection Report or involved further in its drafting. I continued to be concerned that the 1988 Inspection Report would not fully reflect the issues which I believed had been raised in the course of the G&M inspection. I did not know what more I could do to resolve these concerns.

"I was not aware, nor had I been made aware of any policy in the Banking Supervision Department at that time to resolve such matters. A policy to deal with significant differences of opinion between examiners relating to matters arising during inspections was introduced by the Central Bank at a later date. I approached Mr. Michael Deasy, who along with Mr. Adrian Byrne was the deputy manager of Banking Supervision at that time for advice, although I did not have a reporting line to Mr. Deasy at that time, nor to the best of my knowledge, did Mr. Deasy have any responsibility for the supervision of G&M. I asked him for guidance as to whether it would be best for me in the circumstances to seek a transfer from Banking Supervision to another department of Central Bank. At Mr. Deasy's request I provided him with some indication but not a detailed account as to my concerns regarding Guinness & Mahon and my earlier conversation with Mr. Byrne. Mr. Deasy asked me not to take further steps regarding seeking a transfer until he had had an

opportunity to consider the matter.

"Mr. Deasy reverted to me within a day or two to indicate that he had raised the matter with Mr. Brian Halpin, manager of the Banking Supervision Department, who would contact me directly. Soon afterwards, I recall that Mr. Halpin called me to his office, indicated that he would deal with the G&M matter himself and said that I should not have any further concerns regarding the 1988 inspection of G&M. He said leave it with him.

"Mr. Halpin indicated that it had not been appropriate to have put me in such a difficult situation given the history of G&M and he confirmed that I had no responsibility in the matter. Mr. Halpin told me that he had spoken to Mr. Byrne who had said that he did not recall having a conversation with me on the subject. I asked Mr. Halpin specifically if I should document separately for him my findings regarding the back-to-back loans in G&M and my concerns in that regard. Mr. Halpin told me that it would not be necessary to prepare such documentation as he was aware of the issues.

"As instructed by Mr. Halpin, I reverted to reporting to the senior examiner to whom I had been assigned originally, Mr. John Fitzgerald. I believe that some

further action may have been taken in 1988 by the Central Bank regarding the G&M back-to-back loans. A few weeks after the 1988 inspection, I was shown by Mrs. Horan an internal note which I believe made reference to the G&M back-to-back loans. I am not sure whether or not the note had been prepared originally by Mrs. Horan. I do not recall the contents of the note or the names of those who indicated by initialling it or otherwise that they had seen it. This note has not been located during the recent searches of the Central Bank files relating to G&M.

"I recall that Mrs. Horan approached me at some stage in 1988 and remarked that the 1988 Inspection Report was finally complete.

"I do not recall the brief conversation clearly. I have some recollection, however, that she told me she had approached Mr. Halpin with the report and it had been agreed that given the passage of time and the fact that the note referred to at paragraph 27," which is the one I have just mentioned, "had been circulated, it was not necessary at that stage to circulate the Inspection Report itself. It would be sent directly to the file. In practice, probably a box file."

Mr. Donovan, I want to go over one or two aspects of your statement. I don't want to go over every detail

of it because, as you know, there are other witnesses who disagree quite forcefully with the contents of it; isn't that right?

A. I understand there are other witnesses who don't recall the conversations and events to which I refer.

Q. You say at paragraph 1 of part D of your statement, and you I just want to be clear about this. That "As the matters being mentioned occurred twelve years ago, details are difficult to recall." Isn't that right?

A. Yes.

Q. Nevertheless, your statement does contain a significant amount of detail, isn't that right?

A. I put considerable effort into recalling as much information as I could but I am not by any means claiming that I have recorded every detail that occurred. I have recorded everything that I can recall.

Q. I think the point you make in the introductory remarks to your statement is that this was your first involvement with an inspection, isn't that right?

A. That's right.

Q. And you say that for that reason, you think it made a greater impression on you because you were new to this work, you had never been in a bank before carrying out a supervision, and therefore, the impact of the events was greater, you think, than it would have been on somebody who had been involved in inspections before

that?

A. I think that's a possibility, yes.

Q. Well, is it a possibility or not? I mean that is what you are saying. I want to clarify your view of it.

You say that it left a greater impression on you because it was your first inspection.

A. Everything on that inspection made an impression on me because it was my first inspection. The particular areas, if I may, that we are dealing with here struck me as being abnormal. Now perhaps I would have felt differently about it had I been aware of the previous consideration given by the Central Bank to the matter as has been set out already in evidence to the Tribunal. I was not aware of that. Others may have been and that may have coloured their view. So I saw these matters as significant and I was surprised that others that were reacting to me, didn't seem to share that view.

Q. You say that although you were involved in the inspection you have no recollection of having read the completed 1988 Inspection Report at any stage prior to reading it in connection with your preparation for giving evidence in this Tribunal. Isn't that right?

A. That's correct.

Q. I think you also say at one point that you were not prepared to sign the document, isn't that right?

A. That's right.

Q. I think what you say is that you did not wish your name to appear on the Inspection Report because you felt that the report was likely to be deficient in its treatment of G&M back-to-back loans.

A. That was my view.

Q. You hadn't, in fact, read the report, isn't that right, at that time?

A. Much of the report probably wouldn't have been written at that time.

Q. Mm-hmm.

A. It was clearly of course being drafted.

Q. I am just querying why it is you take the view that you didn't want your name to appear on it if you didn't know in fact what it contained or what it would contain?

A. I also record here my recollections of the discussion which I had with Mrs. Horan about the segment of the report that would relate to the back-to-back loans. I wanted the issues that I believed had been identified to be recorded, even if we hadn't resolved them, I believe the issues should have been recorded. Now, I now know that in earlier reports a lot of detail was included about the Central Bank's views and examiners' view of what they had found, it was not confined merely to a list of the balances outstanding, but I was informed by Mrs. Horan that her preference was to follow the pattern of the 1985 report and she had taken

part, I understand, in the 1985 inspection and that is what in fact happened. So I think I felt I knew at that point what was going to appear in the report relevant to or relative to the back-to-back loans and I wasn't happy about that. And on that basis, I didn't really wish to be associated with the resulting report.

Q. Would I be right in summarising your evidence as follows: that if Mrs. Horan was not going to ensure that the issues that had attracted your attention were recorded in the report, you would not be happy with the report?

A. Correct.

Q. But you never did in fact see the report until recently. Nobody brought it to your attention and said, Mr. Donovan, that's the report we are sending out?

A. No.

Q. Have you been involved in subsequent bank inspections?

A. Yes.

Q. And is that practice followed of

A. It would be normal for every examiner to read the resultant report.

Q. That is in respect of the inspections you have been involved in since 1988?

A. Correct.

Q. Every examiner reads the report in draft form I presume?

A. Yes. In practice what happens is that individual members of the inspection team will draft the sections with which they are most familiar and that typically it will be the examiner in charge who will take responsibility for assembling the file report. It is normally then circulated to the two or whatever number of inspectors were involved. There was an opportunity typically to make drafting changes if need be. I would say that if there was likely to be conflict as regards the content of the report, that is more than likely to emerge prior to the drafting or certainly prior to the finalisation of the drafting of the report, so that wouldn't on the very rare occasion where it does happen, that would normally be sorted out at a much earlier stage.

Q. Again I want to come to this question of the signing of the report. You recall in your statement you said that you indicated to Mrs. Horan that in relation to signing the completed report, you would not be prepared to sign.

A. Yes.

Q. Because you were not fully in agreement with its contents. Again just to clarify that, what you were saying to her, if I understand you rightly, is that you would not sign the report because of what you believed its contents would be likely to be?

A. Yes, I would agree with that.

Q. And your evidence is that you had been informed that the signing of reports was the usual practice.

A. Yes.

Q. Who had informed you of that?

A. That, I can't recall. I think I had a discussion with one of the other examiners in the area what wasn't involved in the inspection.

Q. Have you since signed every report in relation to every inspection that you have been involved in since 1988?

A. I can't say definitively that I have, but it is more common than not that the inspectors sign the report.

In some cases not all of them will sign, but there may be very simple practical reasons for that, they may be involved in other business activities at the time, they may be travelling or whatever. So there isn't an absolute rule that all inspection reports must be signed, but I didn't know that in 1988.

Q. But you believe that in 1988 in 1988 you believed that it was the practice that all reports should be signed?

A. I expected that I am to be approached to sign the final report. What I was attempting to do at the time, perhaps this will help to clarify, was to draw attention to this issue in the hope that it would still be addressed at that stage and that we could reach agreement as to a suitable text to include in the report.

Q. You were anxious to signify or to convey that you would not stand over the report?

A. Insofar as it related to the back-to-back loans, yes.

Q. Of course. I understand that you can't it would be impertinent of an examiner to seek to suggest that major changes be made to a part of a report involving an aspect of the bank's activities that he had not been inspecting. You were concerned obviously solely with those aspects of the inspection that you had been connected with, isn't that right?

A. That's correct.

Q. And in the ordinary way, as you say, bank reports are signed by inspectors unless for some logistical reason an inspector is not available to sign the report once its completed?

A. Well, that would be one reason.

Q. What other reasons?

A. I can't say categorically that that is the reason why certain reports haven't been signed over the years.

It may be that the final report has taken quite sometime to prepare, that it has been delayed for some reason, so there may well be cases on file where reports have not been signed but are very genuine reasons.

Q. What I am trying to get at, Mr. Donovan, is this and it's quite a serious and important matter. If a report is to have any standing and if, as you say, the

practice is to sign reports, then somebody looking at an unsigned report would surely have to come to the conclusion that unless there was a logistical reason why somebody's signature was not on the report, there was some other reason which might give somebody pause for thought.

A. I am not sure that that would be a fair reflection.

The normal process of preparation of reports is a very open one. It is normally the case that examination teams work closely together. They are typically under pressure to produce a final report as quickly as possible. That will generally then be sent by the examiner in charge under his or other signature up the line to the next most senior officer. Whether or not each individual member of an inspection team or not signs would not in itself signify that one or more individuals had difficulty with the contents.

Q. The reason I am asking the question is that the Tribunal has seen a number of reports, some are signed, some are not signed, there doesn't appear to be any consistent practice, but obviously as if, you may have been suggesting but are not now suggesting I think, if there was any message to be conveyed by the non-signature of a report, the Tribunal would obviously have to take that into account. Do you understand?

A. I do. And I wasn't intending to send any message whatsoever here other than to record the fact that I

used this as a way of trying to draw further attention to the matter and have it dealt with more thoroughly in the report.

Q. You are saying that as part of the exchanges between yourself and Mrs. Horan, you used this as a way of highlighting or indicating how seriously you took the matter?

A. That was my intention, yes.

Q. In you could go to paragraph 5 of section (d) of your report, or of your statement, please. You say that you came across references to "Hypothecated Deposits" or "Hypothecated Loans" and these were terms you had not come across before and you queried the meaning of the term and you were advised by Mrs. Horan to raise the matter, together with other unrelated routine information requirements with Mr. Martin Lannigan O'Keefe.

A. Yes.

Q. Mrs. Horan, according to you, gave you no explanation as to what these terms meant?

A. No. I haven't said that. I asked her what they meant and my recollection is that she said something like, "I think it just means that they are secured."

Now, it struck me as strange that someone would use a term like 'hypothecated' when a simple word like 'secured' would have done the job. So I thought there must have been something more to it. That it must

have had some further significance and when I said this, she said something to the effect that "the next time Martin Lannigan O'Keefe visits the office, you can raise it with him." It would have been normal at that time for Mr. Lannigan O'Keefe to call to the office where we were located daily, perhaps more than once each day, to deal with whatever list of items we had come across during that since his previous visit or information requirements that we wanted to put to him.

Q. I am simply anxious to establish to what extent there may be differences between your recollection and Mrs. Horan's recollection. You are not saying, in other words, you asked the meaning of a term and she simply told you to go elsewhere. She endeavoured to explain it and suggested if you wanted a fuller or better explanation, that you take it up with the bank through Mr. Lannigan O'Keefe?

A. Precisely.

Q. You did take it up with Mr. Lannigan O'Keefe and you say that Mrs. Horan was present and possibly Ms. Byrne as well?

A. Yes, my recollection is that we went through a number of items with Mr. Lannigan O'Keefe in the, what I call, the inspection room, the office where we were located. I recall that it was a three-way conversation between Mr. Lannigan O'Keefe, Mrs. Horan and myself. Ms. Byrne was present for, in the office for much of that

inspection, I can't say with certainty that she was present during that particular conversation, but I certainly don't recall that she took any part in it.

Q. Now, you have, in preparation for giving evidence at this inquiry, had an opportunity of examining the pre 1988 inspection reports, isn't that right?

A. I have looked at the 1985 Inspection Report. I could have obtained previous reports, earlier reports, but as I was being asked by the Tribunal to provide information in relation to 1988, I felt it was unlikely I would find useful information in the previous reports, so I haven't read them.

Q. Your examination or inspection of the 1985 report was the first time in connection with the 1988 report that you had ever come across any references to back-to-backs, is that right, other than in Guinness & Mahon? I am talking about in the Central Bank now.

A. I am sorry, can you clarify the question for me?

Q. It is only recently you have had an opportunity of examining inspection reports that were completed prior to 1988, isn't that correct?

A. Correct.

Q. The only previous Inspection Report you have examined is the 1985 one. You haven't examined earlier inspection reports?

A. No.

Q. In the 1985 Inspection Report, there is a reference

to 'Hypothecated Deposits' to secure loans.

A. Yes.

Q. You are familiar with that.

A. Yes.

Q. I'll read it out, I think it might be of assistance.

It says, "Deposits amounting to $\text{€}11.1$ million at 31st

December 1985 were hypothecated to secure loans to

customers and are not included as advances in the

balance sheet. These are loans granted by the Dublin

bank on the strength of deposits held in the Cayman

Islands and other offshore locations. When these

loans are granted, the equivalent amount of funds is

transferred from the offshore location to the Dublin

bank. Most of these loans are to non-residents. In

the case of loans to residence, Mr. Pender said that it

is possible that some tax liability could arise in the

event of default but should this arise, additional

funds can be transferred to Dublin should this be

required. He assured the examiners that all the legal

formalities necessary to give the bank a right of lien

over these deposits had been completed."

Now, can you recall whether your discussion with

Mr. Lannigan O'Keefe or with Mr. Pender in 1988

included anything similar to the description that I

have just read out and which you have had an

opportunity of examining in the 1985 report?

A. If I could take that in reverse order.

Q. Yes.

A. My recollection of a brief conversation with Mr. Pender did not include any of that material.

Q. Right.

A. In the case of Mr. Lannigan O'Keefe, I have difficulty in recalling exactly the explanation he provided. It would have been something along the lines of the text that you read out, but my recollection is I wasn't clear at the time. I didn't fully understand at the time what he was saying. I am not sure he would have put it quite as succinctly as it's expressed in the report.

Q. You say that in your statement you can't recall the full details of Mr. Lannigan O'Keefe's explanations but you formed the view that it was possible that full information was not being provided to the Central Bank. What caused you to form that view?

A. Mr. Lannigan O'Keefe seemed to be quite reluctant to answer questions. He didn't refuse to do so, but questions had to be put to him a number of times, perhaps in a number of different ways before he would reply. He repeated the statement that these loans were zero risk or that there was no-risk in them from the point of view of Guinness & Mahon and he repeated that in answer to

Q. questions to which that was not really a response,

is that what you mean?

A. Yes. So while he was reasonably helpful in that he answered, he provided an answer to each question, I was uncomfortable and felt that this is something that should be probed further.

Q. Were you the only person asking the questions or was Mrs. Horan asking them as well?

A. I am not sure whether Mrs. Horan asked any questions, she may have done so but for the most part I was asking questions. Mr. Lannigan O'Keefe was replying to them. My recollection is that Mrs. Horan provided some useful interventions, as I just wasn't getting the message from Mr. Lannigan O'Keefe, I didn't understand some of the terms he was using and she helped me to understand them.

Q. So therefore, you were both, if I can put it this way, pursuing the matter although you were the person who was making the running, would that be right?

A. I would accept that, yes.

Q. And Mr. Lannigan O'Keefe's response was to repeat I think the sort of mantra that there was a zero risk but not to deal with your other queries?

A. I wouldn't put it as bluntly as that. He did provide other information, he did make reference to the secured nature of these facilities because I remember questioning him as to the nature of that security and how well these facilities were secured. Bear in mind

that at that time I had no idea of the real scheme and how it operated. I was looking at this in good faith as a set of commercial loans which were relying on, what I considered to be an unusual form of security.

Q. You wanted to be sure that these loans were really assets of the bank and that the money was really recoverable either from the borrowers or from the security, isn't that right?

A. Yes. And I believe that when I questioned Mr. Lannigan O'Keefe about the quality of the security, his answers left doubts in my mind as to whether the security was real and enforceable.

Q. Can you recall did you keep a note of that conversation or those conversations?

A. What I did after that conversation was to start to keep an issues list. I don't recall that I kept a minute of a meeting because it wasn't in fact a meeting. It was one of a series of opportunities which the examination team had to go through routine issues with Mr. Lannigan O'Keefe and this was one of the issues that came up in a whole series of issues, but I did start to keep records of my doubts and my outstanding questions as to the nature of the answers he was giving.

Q. At that stage therefore, had you reached the point where you had to either accept or reject the explanations you were given? There was going to be no

further scrutiny or pursuit of those issues?

A. No. I don't think so. Certainly my belief was that this was outstanding work and that the team would be returning to it and would continue with it as opportunities arose.

Q. What you say at Paragraph 7 is "Given the amounts involved and the lack of a direct security arrangement however, I found it difficult to accept this contention," that was Mr. Lannigan O'Keefe's contention that there was no risk to G&M "and once Mr. Lannigan O'Keefe left the room I expressed to Mrs. Horan the view that the matter should be explored further. I do not believe that I was aware or made aware at that stage that the matter or any related matters had been considered previously. I was unsure how best to proceed and kept the issue in mind while I proceeded with other work." You say, "I recall that I started preparing a hand written record of the points made by Mr. Lannigan O'Keefe and the potential issues I believe which might arise."

You then come to the next meeting you had with Mr. Lannigan O'Keefe when you were you went to his office I think, to query him about some other aspect of the inspection. This was nothing to do with the back-to-backs or not directly, isn't that right?

A. My recollection is that I was returning documentation. There wasn't any intention to have a discussion with

Mr. Lannigan O'Keefe on any subject on that day. Now, I can't say with certainty what the documentation was, but I think it may have been something like a minute book from the board minutes or committee minutes, something that needed to be returned.

Q. You had some other reason to be in his office in any case unconnected with back-to-back loans?

A. Correct.

Q. He again drew up the matter?

A. Yes.

Q. And you say in your statement that "In the course of the brief discussion I inquired further about the operation of the scheme. I cannot remember at this stage the details of his reply or whether it added further to my very limited knowledge. You say, "In response to a direct question from him, I indicated to Mr. Lannigan O'Keefe that I believed that the matter should be investigated further."

Can you remember what that direct question was?

A. He asked me if I believed that we should that we would investigate this further? I said, "yes".

Q. I see. And then he brought in Mr. Pender?

A. Yes. If it would help

Q. Yes

A. As I have stated, Mr. Lannigan O'Keefe raised the subject with me, he seemed to be checking whether I had

accepted his previous explanation. I indicated to him that I still had some doubts about it and gave him the opportunity to persuade me. Now, I have difficulty in recalling what he said, I am not sure if it added a great deal to what he had said previously and he then asked me specifically did I accept what he had said and would it be investigated further? To which I said yes sorry, I correct myself, "did I believe it should be investigated further?" To which I said "yes".

Q. After you had had your first discussion with Mr. Lannigan O'Keefe, the one which Mrs. Horan was present, after that discussion, you were presumably not satisfied. Do you recall whether Mrs. Horan was satisfied?

A. I was still confused. I can't recall that she said anything that would suggest to me that she wasn't satisfied.

Q. You can't recall that she said anything to you that would have indicated that she wasn't satisfied.

A. Yes. I can't say whether she was satisfied or not.

Q. She was the she was leading the inspection team, isn't that right? She was the most senior person involved in the field work?

A. Yes.

Q. You were in fact the most junior person at that point?

A. I was a trainee at that point.

Q. If Mr. Lannigan O'Keefe was raising the matter with you, and in particular raising with you the question whether it would be pursued any further or whether the explanations were satisfactory, surely you would have wanted to convey to him Mrs. Horan's view and not your own view?

A. I don't recall that Mrs. Horan had expressed a view to me on the subject. I was asked by Mr. Lannigan O'Keefe did I believe that this should be investigated further? And I said "yes".

Q. But you had said to Mrs. Horan, "I think the matter should be explored further." What did she say to that?

A. I don't recall that she said anything.

Q. Surely she must have said something? She said "You know, I understand all of that, fine" or she said "No, we'll have to look into it again"?

A. I am sorry, I just don't recall what she said.

Q. You came back to Mrs. Horan after your meeting with Mr. Pender and Mr. Lannigan O'Keefe?

A. Yes.

Q. And you again drew up the matter with her and you asked her what should you now do?

A. Yes.

Q. And there was firstly the issue of your having met Mr. Pender on your own and I think you had understand that you were put in a difficult situation, isn't that right, because you were the most junior person being

asked by a senior bank official, a senior official of Guinness & Mahon, to, as it were, provide almost a policy response to a question, isn't that right?

A. I didn't choose to be in this position and at that stage, I was extremely nervous and concerned that I had overstepped the mark. Now, I would have much preferred if I hadn't been alone during those encounters, but Mr. Lannigan O'Keefe was insistent that there would be one opportunity for Mr. Pender to say something to me. He wished to say it to me there and then and my encounter with Mr. Pender was very brief. I didn't try to question him further. I didn't think it was my place to do so. And basically I got back to the inspection room just as quickly as I could to explain what had happened and how it had come about and to see what further should be done about the matter.

Q. You came back to her and she advised you to raise the matter with Mr. Byrne who was effectively her boss, isn't that right?

A. It is correct that he was her boss, yes. My recollection is that - I have mentioned lunch time a number of times during my statement because all of this happened in a very short space of time. When I returned to the inspection room I found Mrs. Horan and Ms. Byrne waiting for me, standing in the corridor outside, I was delaying them, it was well into lunch time, so the conversation that took place was quite

brief. It was clear, I would think, that I was quite disturbed by what had happened, I was quite concerned. Mrs. Horan and I stepped back into the inspection room and I finished telling her what had happened. When I asked her what further should be done, should we discuss it with Mr. Byrne? I recall that she said something along the lines that Mr. Pender had suggested to me that I speak to Adrian Byrne about it and perhaps I should go and do that.

Q. I think that you then said to her I think, wouldn't it be more appropriate for Mrs. Horan to raise the matter with Mr. Byrne, isn't that right?

A. Yes.

Q. Or to go with you to Mr. Byrne?

A. That's right. I asked her would she raise it on my behalf and then I asked her would she accompany me?

Q. And you say that "she declined and left it to me to decide whether to take the matter further."

A. At that time, yes.

Q. By that, do you mean that she said this is not important, do what you like about it or it is important and you bring it to Adrian Byrne's attention, I am not going to trouble myself to go to Adrian Byrne about it?

A. Well, she certainly didn't phrase it like that.

Q. When you say she declined, did she say "No, I won't"?

A. I think I would struggle to try and recall the exact words that were used but I do remember her saying that

as I was the one who raised it with Mr. Pender and Mr. Pender who had indicated to me that I should discuss it with Adrian Byrne, then I should go ahead and discuss it with him.

Q. I wonder would this be an appropriate time to adjourn for lunch

CHAIRMAN: Well we are just on to twenty five to one.

Obviously there will be some not inconsiderable amount of further questions for Mr. Donovan and I think the order of the examination that occurs to me that may be considered by practitioners over lunch after Mr. Healy has concluded his initial examination is that there will be an opportunity for Mr. Connolly or Mr. McCarthy should they have any limited matters to raise in the first instance. Thereafter I think the sequence would be Mr. Hunt, Mr. Feeney, Mr. Gordon and any remaining balance on behalf of the Tribunal going back to Mr. Healy.

So, we will adjourn now then, Mr. Donovan, if that seats you and resume your further testimony at five to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 1.50PM:

CONTINUATION OF EXAMINATION OF MR. DONOVAN BY
MR. HEALY:

MR. HEALY: Before lunch, Mr. Donovan, we were dealing with how you tackled the question of what you should do in relation to the concerns that you had developed in the course of your work in Guinness & Mahon on a particular day, and you'd reached the lunch time on that day when you had a discussion with Mrs. Horan. You were then going back to the Central Bank and as I said in your statement, you went back to the Central Bank and you raised the matter with Mr. Byrne as advised. And you say that your recollection is that the conversation took place immediately after lunch and that only Mr. Byrne and you were present, and you think it was the first occasion on which you had had a business discussion with Mr. Byrne. You related to Mr. Byrne the questions that you had raised with Guinness & Mahon and so on and it seems that you went in some detail, would that be right, through what had transpired in Guinness & Mahon that morning.

A. I certainly covered the main points of what had happened, yes.

Q. Do you remember how long the interview took?

A. Not precisely. I would say perhaps fifteen, twenty minutes.

Q. Well, in terms of your lunch time then, that was most of your lunch time I suppose?

A. Well, this would have been immediately after leaving the staff restaurant, so it would have been directly

after lunch.

Q. Directly after lunch and before you went back to the Central Bank?

A. If we are speaking about my conversation with Mr. Byrne?

Q. Mm-hmm.

A. This took place in the Central Bank in his office.

Q. I beg your pardon. When I said before you went back to the Central Bank, I meant before you went back to Guinness & Mahon. I am sorry.

A. That's correct.

Q. Before you went back to Guinness & Mahon?

A. Yes.

Q. Right. You say that you explained to Mr. Byrne that you were in the course of reviewing the Guinness & Mahon file, material concerning individual back-to-back loans and you obtained his agreement that you should complete this segment of the work. So as far as you were concerned, you were going to go back to Guinness & Mahon. You were going to continue looking at the back-to-back loan file material, is that right?

A. My understanding is that he agreed that I would complete the particular task that I was doing, which was focusing exclusively on the back-to-back loan element and not on any other element of the scheme, for example, the deposits of funding or where this might have come from.

Q. So again if I could summarise what I take from your evidence to be the position at that stage. You had been dealing with back-to-back loan file material that morning. You had developed certain concerns about the material you were looking at. One of those concerns was I suppose activated by the fact that you didn't quite understand what a hypothecated loan or a hypothecation of a loan meant. You had discussions with Mr. Lannigan O'Keefe, Mr. Pender, Mrs. Horan in relation to those matters. You went back and you had a discussion with Mr. Byrne about it. Mr. Byrne told you to continue with the work you were doing, is that right?

A. If I might clarify. Not all of this took place in one day.

Q. I understand.

A. The initial discussions with Mr. Lannigan O'Keefe in the presence of Mrs. Horan had taken place on the preceding days.

Q. All right. If I could just go over it. You had a discussion on the preceding day. You were not terribly satisfied at the conclusion of those discussions that you had learned anything new and you still were of the view that you were probably not getting full information from G&M. On the following day in the course of some other unrelated task, Mr. Lannigan O'Keefe drew the matter up with you. You

went to discuss with him and Mr. Pender. You went back to Mrs. Horan, went back from lunch. During the lunch time break you spoke to Mr. Adrian Byrne, then you went back to the Central Bank to talk about back-to-back loan material.

A. I went back to Guinness & Mahon.

Q. Guinness & Mahon, right. So you were back doing the work that had caused you to have concerns and caused you to raise queries with Guinness & Mahon staff and with Central Bank staff?

A. I was looking at one aspect of it.

Q. Back-to-back loans?

A. Specifically how these loans were secured.

Q. And wasn't that one of the matters that was causing you difficulty the day before?

A. That's correct. That was one of the matters, yes.

Q. And wasn't it the key matter that was causing the problem with Mr. Lannigan O'Keefe, as far as you were concerned?

A. It was one of the factors. I believe there were others. Certainly there were other issues in my mind

Q. But your difficulty in coming to grips with his responses was caused by the fact that he couldn't deal with your queries about the securities?

A. That was one very specific element of it, yes.

Q. And it's that difficulty that caused you to form the

impression that you weren't getting enough information?

A. Not that alone. There were other aspects. For example, I had great difficulty in understanding why there were individuals apparently outside the State who were placing deposits in the Cayman Islands or the Channel Islands as security or pseudosecurity for loans that were being granted to somebody else in Ireland.

Q. The whole notion of the way the thing was arranged or operated was something you didn't understand and wanted to know more about?

A. Correct.

Q. Quite apart from the actual mechanics of it?

A. Yes.

Q. So you were concerned about the whole notion of this back-to-back arrangement but you were also concerned assuming that it was satisfactory, you were still concerned that the arrangement was one that should be capable of being relied on by the bank as a security, was a security that the bank could actually resort to in the event of default on a loan, isn't that correct?

A. That's correct. I think I was trying to approach it as best I could with my experience at the time, from a prudential point of view, and I do recall that there were discussions between Mrs. Horan and myself as to whether this was raising prudential issues or not.

Q. Mm-hmm.

A. And I know this has been given to the Tribunal in

previous Central Bank evidence as to how we go about defining prudential and what particular issues we are interested in. So in this case, as with any other case, it's a matter of trying to assess the risk to the institution with a view to assessing in turn the risk for the depositors of that institution, so our depositors at risk. And there were questions in my mind which I couldn't resolve as to whether this really was a prudential issue or not. It seemed to me that there were unanswered questions, there were loose ends.

Q. You thought it was a prudential issue?

A. I was exploring whether it was or whether it wasn't.

I took the view that it could be. If the security arrangement turned out to be flawed, Guinness & Mahon could potentially suffer loss and in turn the depositors of Guinness & Mahon would be in a worse position. Now, I wasn't to know at that time the full details of the arrangement that in fact could not arise

Q. How do you know that couldn't arise; what has caused you to come to the view since then that that problem couldn't arise?

A. From reading such evidence as I have seen presented to the Tribunal, I have it is now my understanding that the people concerned weren't necessarily different people, and that there wasn't necessarily a distinction between the money that was supposed to be in the Cayman

Islands serving as security and the loan provided in Ireland. But I don't claim any particular expertise in understanding this, this is just from perusing the material that's been presented to the Tribunal.

Q. I understand. Though I am sure you would agree that a prudential issue could still arise even though it was probably the same person who is a person with a number of interests in Cayman who had the so-called deposit and the same individual was borrowing money here but if the arrangement whereby the same individual was at both ends of the transaction was an arrangement that savoured of tax evasion, then your prudential concerns would be equally valid, wouldn't they?

A. I am not sure that at the time I would have had a particular view as to

Q. I am asking you for your view now.

A. I beg your pardon. My view now, yes.

CHAIRMAN: Could I just clarify for a moment as regards your state of mind at this particular time, because you state I think in the course of your statement that nothing that you came across as an officer of the Central Bank constituted definitive evidence of tax evasion. I think you have been emphatic, Mr. Donovan, in your evidence, that your concerns were prudential, above all you felt that the basis of security was not prudent and may have exposed

the bank if borrowers defaulted to a possibility of having serious debts.

A. That's correct, yes.

CHAIRMAN: And the other criticism which you were not to know of because you had not read the previous reports and the evidence that has been heard from Mr. Adrian Byrne and others were these back-to-back arrangements permitted of, at best, an uneasy tax situation which suggested that the bank might be involved in conduct that was at best inappropriate and at worst illegal. Now, did the latter have any part in your thinking or was it exclusively in relation to the prudential side, the housekeeping of the bank itself?

A. Well, I am certain that the thought crossed my mind, that it was certainly something unusual from a taxation point of view.

CHAIRMAN: Yes.

A. I wouldn't have been in the position to know whether this was something that could be tax evasion or tax avoidance or potentially something that could have an acceptable explanation, but I don't recall that any information was made available in my presence at that time which would help to determine what category it would fall into. We wouldn't, as examiners, have had access to information about individual borrowers or

individual depositors to know for a fact what their tax residency was, whether they were Irish residents for tax purposes or not. Nor would we have access to any information about the tax affairs of these individuals to know whether there was any other basis for them having these accounts which would be perfectly valid from a taxation point of view. And I think I would have taken the view at the time that it wasn't really our primary issue. We were there to cover specific prudential matters. My concern was more to do with uncertainty as to the significance of the overall arrangements. I felt that there were gaps in my knowledge certainly, there were loose ends. There seemed to be a reluctance to give direct answers to direct questions. On the basis of that, I felt that it's something that should have been pursued further, if not by me, then by something more experienced.

CHAIRMAN: Thank you.

MR. HEALY: When you went back to complete your review of the G&M file material, how did you perform that work if there were documents missing or answers to queries that you weren't satisfied with?

A. What I was doing was going through individual files separate from the set of main loan files. Now, I think these were security files but I am not absolutely sure. These files were pointed out to me by Martin

Lannigan O'Keefe and I was trying to match up the documentation on those files which were quite thin, there was very little on them, with the much larger loan files to see if I could make sense of the numbers in them. So I completed that work which left me with some instances where there was an exact correlation between the information on the loan file and the we'll call them security files. In other cases there was information on the security files which wasn't mentioned at all.

Q. On the loan files?

A. On the loan files. And in other cases again, the loan files had details of security which were not in the security files.

Q. Wouldn't those inconsistencies have made it impossible for to you satisfy yourself that the loans were recoverable and satisfy yourself on that prudential issue?

A. I certainly had outstanding questions on that point, yes.

Q. Now, you say that there is only one reference to this work in the 1988 Inspection Report at page I am hoping to get a copy of the entire Inspection Report for 1988, Mr. Donovan, but it will be a minute or two before I can put my hand on it. There are extracts from the 1988 report on the file of documents that you have with you there, is that right?

A. Yes, I have the 1988

Q. You have the entire report?

A. I have the report here, yes. It's page 83 leading on to page 84.

Q. I see. Mr. Hogan has given me his copy, Sir, and I'll just rely on that for the moment.

Now, if we can put up page 83 on the overhead projector. This shows this is part of an appendix to the report, isn't that right?

A. That's correct, yes.

Q. It's appendix 7 to the report which contains details of the 20 largest loans as of the 31st January 1988, and one of those is a loan to Mr. K.P. O'Reilly-Hyland, who was a company director. And that's is that one of the files that you examined on that day?

A. Yes.

Q. The security for that loan is described as "A transfer of shares. A solicitor's undertaking to remit proceeds of properties and an equitable mortgage over 67 Nutley Avenue." And a repayment schedule appears to be agreed in respect of $\frac{1}{2}$ 140,000 only out of the loan, which at that point I think was in excess of $\frac{1}{2}$ 1 million, is that right?

A. Yes.

Q. Now, on the next page, page 84, a comment is included and you think that comment is attributable to some of the work you were doing, is that right?

A. I believe so, yes.

Q. The comment is: "Loan account in excess of approval due to addition of rolled up interest." That's perhaps not particularly remarkable, that comment.

A. No.

Q. The next comment is "No mention of Cayman Island deposit." Perhaps you'd amplify what's contained in your statement how you believe that statement came to be made in the report?

A. As far as I can recollect, it relates to information which I found on a second file for this particular borrower, which I am terming as security fund though it may be called something different, which made reference to a deposit in the Cayman Islands. However, on correlating that with information from the loan file account there was no mention there of the use of a Cayman Island deposit as part of the security. And I believe I was just noting that fact.

Q. Do you remember drawing that particular file to anyone's attention in the course of your field work in the inspection?

A. I believe I drew the results of my overall analysis

Q. And this was one of the items in that overall analysis.

A. This was one of the items and this is the surviving item.

Q. And to whose attention do you specifically draw those items including this one?

A. I believe I had a discussion with Mrs. Horan about them.

Q. And can you recall what the result of the discussion was?

A. As I recall, an analysis was being prepared, which I presume are now the schedules included in the report itself of the top 20 loans and various other categories of loan. If I recall correctly most of that work was being done by Ms. Byrne and what I had sought to do was to insert the results of my work into her analysis.

Now, it may be the case that some of that analysis was in fact also my own. I don't recall clearly at this stage. Mrs. Horan's attention was drawn to the fact that I was adding this material in and she took a decision that it should not be shown, that it was not necessary to include these references. One of them remained and that's the one referred to by coincidence, as it happens, it's K.P. O'Reilly-Hyland.

Q. You weren't aware that Mr. O'Reilly-Hyland was at the time a former director of the Central Bank?

A. No.

Q. If you go to paragraph 18, and to some extent you have already anticipated some of the queries I had concerning this paragraph in the evidence you have just given. You are referring to discussions you had with Mrs. Horan prior to the end of the field work when you

indicated you had started to prepare a section for the Inspection Report in relation to the back-to-back loans.

A. Yes.

Q. Mrs. Horan informed you that she saw no need for the 1988 Inspection Report to include a description of your inquiries. Just to clarify that, did you mean by that or do you mean by that the inquiries you made of Mr. Lannigan O'Keefe and the discussions you had with Mr. Pender?

A. Yes. Now, I think what I had in mind to draft was an indication of the loose ends, the outstanding points.

Q. Well, what do you mean by "loose ends"?

A. The fact that I had a range of questions asked to which I didn't have satisfactory answers in my opinion and that I felt that there were significant issues, some of them significant prudential issues, which hadn't been satisfactorily resolved. Now, again, this was in the context of someone who, at this stage, hadn't been told anything of the previous work done by the Central Bank in this area, so I now know that many of the things that I was that I had on that list and was discussing are in fact dealt with in great detail in, for instance, the 1976 and 1978 reports, and I take that from the evidence already presented by the Central Bank to the Tribunal.

Q. But how can you say that without having taken the

opportunity of examining those reports from the '70s?

A. What I did examine was the statement made on behalf of the Central Bank by Adrian Byrne.

Q. But you haven't examined the reports themselves?

A. Not the reports themselves, no.

Q. Are you saying that you are satisfied that what's contained in the earlier reports accurately records the types of concerns that you had or are you saying that it accurately records a satisfactory response to queries based on those concerns?

A. I am saying that it records some of the issues which I had raised at that time. I am not saying that it's my view that it presents a satisfactory result. I am not sure I have a view on that point.

Q. But if those issues were being raised in the 1970s, and they are being raised again in the 1980s or at the end of the '80s in 1988, doesn't that in itself give rise to the issue, if you like, as to whether there was some unsatisfactory conduct on the part of Guinness & Mahon that was still occurring in 1988 or still giving rise to unanswered queries in 1988?

A. I would say yes. However, what I can't say is how I would have approached this or whether I would have approached it at all if I had read the 1976 and 1978 reports before arriving at Guinness & Mahon at all. I was approaching this from the point of view of a blank sheet and for that reason these issues seemed very

significant to me. And up to that point, I hadn't been told that the questions had been asked previously or that answers had been given, whether they were satisfactory answers or not.

Q. Were you aware that in an earlier report the Central Bank recorded the fact that they were not getting very satisfactory answers to queries and they were not getting a very satisfactory level of cooperation from Guinness & Mahon staff?

A. No, I wasn't aware of that.

Q. Wouldn't that be consistent to some extent with the responses you were getting in 1988?

A. I would think so, yes.

Q. You say that Mrs. Horan indicated that the approach to be taken should follow the pattern of the 1985 Inspection Report.

A. That's my recollection.

Q. And yet we know from your evidence that you didn't read the 1985 Inspection Report until recently, isn't that right?

A. That's correct.

Q. Having regard to the degree of concern that you describe yourself as having at that time, isn't it surprising you didn't look at the 1985 Inspection Report?

A. I didn't have the previous inspection reports.

Q. But couldn't you have gone and looked at it?

A. I wouldn't have thought it was my place to leave the site of the inspection and go back to start searching through Central Bank files.

Q. No, this wasn't in Guinness & Mahon. You said just before the end of the field work I had started to prepare a section for the Inspection Report in relation to the back-to-back loans. Mrs. Horan indicated you should take the approach of the 1985 Inspection Report. What is to stop you when you went back to the Central Bank, bearing in mind that this was a very important matter as far as you were concerned, so important that ultimately you considered whether you shouldn't seek a transfer; shouldn't you have gone back and checked the '85 report?

A. I am not sure that that was an issue for me at the time. The discussion was as to what should be contained in the 1988 report. And it was explained

Q. And the answer was whatever was contained in the 1985 report.

A. I am sorry what was explained to me is that what should be shown is a brief description of the scheme indicating the amount outstanding and supplemented by an appendix which listed the accounts. That was the approach which the examiner in charge wanted to take.

Now, I don't think it would have been for me to go searching files. I think there is something important here that needs to be brought out. We are

dealing with one aspect of what was a very detailed and complicated and pressured inspection. There were a lot of prudential issues and I may have been a beginner, but these issues were very easy to recognise in terms of the deficiencies as a quality in Guinness & Mahon at that time, in terms generally of the state of the security which Guinness & Mahon had taken, or said they had taken against some of those loans. They had particular difficulties which we noted in enforcing some of that security already, and frankly, I was quite shocked at the attitude that was taken as to the valuations that were placed on security and they were regarding as security items, what were in my view, of limited value. Now, this was the main focus and most of our time was spent going through those files to try and establish an independent view on this. And if you look at the main findings of the report, you will see that there are strong recommendations there in terms of provision issues, for instance, and I did have a small part to play in putting forward information that led to the Central Bank's request for additional provisions on a number of accounts. Now, these were very significant issues.

It took up a great deal of time and speaking of time, we are talking about a two-week period. Now, I wasn't there for the full two weeks, but the entire inspection on-site was two weeks. In that time, as you will see

recorded in the Inspection Report, if I remember the figure correctly, 80 percent of my value of the loans were independently examined by the team. So the impression may be coming across that a great deal of time was being spent on this issue of the back-to-back loans. It was very much something I was doing alongside the core work of the inspection. Mrs. Horan did not prevent me from doing so. She did not instruct me to do so. I took it upon myself to try and follow-up these issues as best I could alongside other work.

Q. I understand that you wish to put evidence that you have given in context, Mr. Donovan. Can you understand that from the Tribunal's point of view, the Tribunal has the benefit of your evidence now and your statement, but that there are quite contradictory statements from other individuals involved in the inspection and in the bank at the time which suggest that that the events that you have described may not have occurred at all; the exchanges which you have described may not have occurred and that therefore the reason I am anxious to establish the degree of concern that you have is to try and put in focus the conflict between what other witnesses are saying or are likely to say and what you have said, because if you were as concerned as you say you were, then can it really matter that your role in the inspection was a very

limited or peripheral one, if you brought those concerns to the attention of your superiors and if you went as far as to seek a transfer, do you understand me, or seek guidance as to whether you should seek a transfer? You were giving these matters a considerable emphasis

A. Yes, for me

Q. For you

A. they have that significance.

Q. But wouldn't you agree that for any other member of the staff of the Central Bank involved in that inspection, those items, while they might not have had the same importance or significance, they must, nevertheless, have given rise to events which could hardly be forgotten by other people?

A. I can't speculate as to other people's recollections or memories. The Tribunal approached me with a series of questions and asked me did I have any contact with the whole issue of I'll term it back-to-back loans.

What I have said, to the best of my ability and my recollection of everything that took place. Now, I am afraid I can't be asked to account for other people's memories, recollections or lack of recollection. I have said in my statement that these items were significant for me. They may not have had the same significance for others. Indeed, if I had had the opportunity to read the background material, they

mightn't have had the same significance for me either.

In fact I can safely say they wouldn't have.

Now, that stills leaves for me a number of unanswered questions, partly answered questions, gaps between what was being put forward by Guinness & Mahon as a zero risk transaction, or set of transactions with what appeared to me to be the reality that the security was far from satisfactory, for example, and various other outstanding points in my mind that I couldn't manage to satisfactorily resolve through the contact with Martin Lannigan O'Keefe. My recollection is that Mrs. Horan didn't give me explanations for these points. I don't know whether she saw them as being of any significance at the time. Perhaps she was just humouring me and allowing me go and pursue these matters in case I did turn up something. I don't know. She had very little to say to me on the subject other than if I put a question to her to which she didn't provide an answer, she left it entirely to me to go and put that question to Guinness & Mahon.

Q. I think you very you have put it very fairly by saying that these things may not have been as significant to other members of the Central Bank staff as they were to you because of your role as a new recruit to this branch, and you say that quite fairly Mrs. Horan may have been humouring you on the basis

that she'd let you get on with the work. You were essentially in a training mode and if you came across something worth looking at, so much the better.

A. It's a possibility. That's my speculation.

Q. But while these events and these matters may not have been of as much significance to anyone who was fully appraised of the situation, isn't it true to say that your response in relation to them was something of significance, the fact that you went as far as to seek guidance on a transfer?

A. Again, I can't speak to the reality of the people who were aware that I did that.

Q. Considering the events in themselves, you I think quite fairly accept that the things you were looking at might not have been significant or as significant to others as they were to you.

A. I can see that now.

Q. Would you agree

A. I didn't see it then.

Q. Of course. Would you agree with me that going to somebody and looking for a transfer from a department on the first day effectively that you are involved in any serious work in that department is something significant, from your point of view, looking at it now or looking at it then?

A. I think we shouldn't overstate this. I was concerned, I was upset about the manner in which this was handled.

And I chose to speak to Michael Deasy on the subject, as a personal favour more than anything else. I wasn't reporting to Michael at the time and I asked his advice. I think it would be wrong to say that I was going to somebody demanding a transfer or I was insisting on transferring out of the department.

The reality is I didn't want to transfer. I had just arrived in the department. I was looking forward to working there. I think the fact that I have remained there for twelve years says something in itself. But I was concerned that I felt I didn't have another avenue to explore. I had already brought the matter to the attention of two senior people at that stage; the person in charge of the inspection and her boss who was deputy manager at the time and who was indirectly my boss as well. And I really didn't know where to go with this. I asked Michael's advice. He informed me that he had raised the matter with the manager of the department, Brian Halpin. All the time I was hoping we could reach a point where people would look again at the content of the report. People would possibly look again at the work that had been done and take it further or otherwise explain to me why it wasn't necessary to take it further, show me where I had gone wrong; show me that these questions had perfectly reasonable answers. And I have to say I was relieved when I had the opportunity to speak to the manager,

Brian Halpin, who went a long way towards setting my mind at rest, that he didn't regard it as my responsibility to take it further and that he was going to look at the matter himself.

I felt at that stage, if you like, that I had done my duty; there was nothing more I could do. And I was very relieved that I didn't have to pursue the matter of transfer or anything else. As far as I was concerned at that point, the case was closed.

Q. You say that in paragraph 19 of your statement, you say that you indicated to Mrs. Horan that you were not satisfied with how she proposed to reflect the work you had done in the Inspection Report.

A. Or the fact that she didn't wish to reflect in the report the work that I had done, yes. I didn't understand why she took that decision. Now, she may well have had a perfectly good reason for doing so, but I didn't understand it and I felt we were still looking at something that wasn't quite right in Guinness & Mahon.

Q. You say that at that stage she gave you some background information including the fact that there had been previous Central Bank contact with Guinness & Mahon back-to-back loan arrangements.

A. Yes.

Q. Can you remember what she told you about previous

Central Bank contact with G&M concerning back-to-back loan arrangements?

A. I don't have any strong recollection of the content of that conversation. I am reasonably sure that only Mrs. Horan and I were present at that time. My impression is that certainly she gave me to understand that what I was looking at was not new, that it had been considered before. The impression is that what she told me was unclear to me. It was sketchy.

Q. Well, you go further. You say you formed the impression that there was a degree of sensitivity involved. Do I understand from that that you mean that you were trespassing on an area where perhaps you shouldn't have been?

A. I don't think I'd phrase it quite like that, but that there had been difficulties about this issue in the past. I think that's how I would phrase it. I don't recall that she was specific about what those difficulties might have been.

Q. You say that Mrs. Horan referred you or mentioned a relevant reference in a previous Inspection Report to, and you quote: "Matters not pursued further because of the sensitivity of the matter". And you suggested to her that a similar reference be included in the 1988 report?

A. Yes.

Q. Now, with the benefit of hindsight, do you still agree

or would you still agree that there was a degree of sensitivity in Guinness & Mahon?

A. On the part of the people in Guinness & Mahon with whom I had discussed this?

Q. Mm-hmm.

A. That's how it appeared to me, yes. People were being very careful and cautious in answering questions on this subject.

Q. They had every reason to be so because they were continuing to operate this system.

A. Well, I know that now, but at the time I just formed an impression that people weren't being straight in their answering and that the answers didn't deal with all the questions.

Q. And when you referred to Mrs. Horan's suggestion that a relevant reference in a previous Inspection Report be included in this Inspection Report, "matters not pursued because of the sensitivity of the matter" did you understand her to be referring to sensitivity in Guinness & Mahon?

A. I am not sure that I would have been able to make that distinction at the time, no. I understood that the issue was sensitive. So as an alternative to putting in the text that I was talking about including, there was a discussion as to whether we should put in something to at least signify that there was still matters outstanding perhaps. It was Mrs. Horan drew

attention, mentioned this. She said, there was a reference in a previous Inspection Report to this, she read this out.

Q. Did I hear you did I understand you to say she read this out? Did she have a previous Inspection Report with her when she read it out?

A. I just want to correct it as I was doing it. I don't recall that she read it from a document, no.

Q. Why did you put it in inverted commas in your statement? Is it because you believe it represents a quotation from a report or is it because it's your quotation of what she actually said to you?

A. It's intended to be a quotation of what she actually said.

Q. So your quotation is that do you recall her saying "Matters not pursued further because of the sensitivity of the matter"?

A. That's my recollection.

Q. It's a very careful recollection of someone's actual words used some considerable time ago. Are you happy to stand over that?

A. I believe I am correct in saying it. Now, if someone can show me I am mistaken, I'd certainly take

Q. I can't show you were mistaken obviously, because I wasn't there, but

A. It stuck in my mind.

Q. Are you aware of any report in which those words are

used?

A. No. I am aware that in previous testimony to the Tribunal there was a reference which was stated to be quoted from the 1976 report that said "In view of the delicate nature of these matters, we did not pursue the matter further." And that's the only reference I found.

Q. What part of the '76 report was that?

A. I am sorry, I can't help you with that.

Q. Have you a note of the evidence there that you are referring to?

A. No, I have a handwritten note of an extract which I took from the Central Bank's previous testimony.

Q. And do you recall what issue was being discussed at the time that that testimony was given?

A. Not offhand, no, no.

Q. Why do you think it refers to the expression used by Mrs. Horan? Was it in relation to back-to-back loans or

A. Oh, I am sorry, yes. Well, certainly I understand it to be in relation to back-to-back loans, yes.

CHAIRMAN: I think it is the correct recollection of the matter, Mr. Healy.

MR. HEALY: I am trying to find the relevant passage in the report. Mr. Feeney is referring me to page 9, paragraph 5 of the '76 report under the heading

"Offshore subsidiaries" and I will read it out to you, Mr. Donovan. It's as follows this is page 9 of the 1976 report: "The bank " meaning Guinness & Mahon "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."

And you think that was the reference that was

A. Well, I can't say for sure. All I know is that there was a short discussion as to whether something along those lines should be included in the 1988 report. I supported the idea and on reflection, Mrs. Horan decided not to include it.

Q. Now, are you aware that Mrs. Horan has responded to everything in your statement but has made a particular response to what's contained in that paragraph? You are aware of that, aren't you?

A. I have a copy of an addendum to evidence given by Mrs. Horan which was provided to me by the Tribunal.

Q. And in relation to that paragraph she says I am not going to go through everything she says, but I feel sure her own counsel will do so. But she says "The items which Terry " that's a reference to you " refers to in this paragraph happened before I

joined the Banking Supervision Department. I was not aware of them at the time. In March of this year I was given an opportunity to read Adrian Byrne's statement to the Tribunal and this was the first time that I became aware of discussions which took place with Guinness & Mahon in the late 1970s regarding the 'Hypothecated Deposits' and the potential for tax evasion. I could not have had this conversation with Terry Donovan."

Do you understand what she is saying?

A. I understand what she is saying. I do have some difficulty with it given that this was the examiner in charge of the inspection, the examiner who was responsible for the day-to-day supervision of Guinness & Mahon. And if I understand this correctly, Mrs. Horan is telling us that she didn't read the previous inspection reports and didn't review the files for that bank despite the fact that she was the responsible officer. I find that strange.

Q. I think what she is saying, and I am sure I'll be corrected if I am wrong, that not only did this not happen but it couldn't have happened because she couldn't have had the information that you are suggesting she must have had?

A. And the information we are talking about is the text of previous inspection reports, is that correct?

Q. Mm-hmm.

A. So the examiner in charge for a particular bank is saying that she did not read previous inspection reports which presumably were contained on the registered file for the bank for which she was the supervisor.

Q. Did you ever

A. I am sorry, may I just finish the point?

Q. Yes, of course. I will repeat for you where you were if you like. You said, "so the examiner in charge for a particular bank is saying that she did not read previous inspection reports which presumably were contained on the registered file for the bank for which she was a supervisor," then I interrupted you.

A. I would have thought it normal practice for an examiner taking on responsibility for a particular bank to start by reviewing the historical material for that bank. I would certainly expect myself to do that, I would expect people who report to me to do that. The fact that something happened before you joined the department I don't think is a relevant factor.

Now, there may be an issue as to how far back you need to go in order to feel that you understand enough about the current state of a particular bank, but I do have difficulty with her response on this point for that reason.

Q. Can I ask you whether you have ever conducted another

inspection in Guinness & Mahon apart from the 1988 one?

A. No, I had no contact with Guinness & Mahon at any time other than for that two-week, or less than two-week period in 1988.

Q. If you go to paragraph 20 of your statement, and you refer to an issue list that you compiled that included a number of prudential matters relating to back-to-back arrangements. And you have compiled this list from memory, isn't that right, because you don't have the documents?

A. That's correct.

Q. If you look at the last item, you say that "reference is made in the course of the inspection by some officers of G&M to Mr. Traynor's ongoing involvement with certain unspecified loan customers," can you remember what officers of G&M made those references?

A. I know that one was Martin Lannigan O'Keefe. I think the issue also came up with someone in the loans department who was helping us with access to files. Now, I can't be more specific than that but I know there was another reference somewhere to an ongoing involvement by Mr. Traynor.

Q. Do you remember whether that was a male official of the bank or a female?

A. I am afraid I don't remember. There were there was so much contact with the officials in that area, it was ongoing daily, so I wouldn't be able to pin it down to

any particular person.

Q. If we go to paragraph 23 when you referred to what you did with your documents, your notes after the on-site inspection was completed. You say that you arranged for your the material you had put together to be typed and you passed it to either Mrs. Horan or Ms. Byrne for inclusion in the Inspection Report. "I subsequently gathered together such papers as I had assembled in the course of the inspection, placed them in a folder and passed them to Mrs. Horan."

Now, do I understand you to draw a distinction between your final work that you envisaged being included in the report and your preparatory material?

A. That's part of the distinction, yes. The material which I had typed was in relation to specific loan accounts and one in particular that forms one full appendix to the report. It also included, as I recall, some shorter summaries on particular loan accounts that I had worked on and I passed this material directly or indirectly, it went to Ms. Byrne, for inclusion in the report. As I recall, she was on the individual loan documentation issues, she was inserting some of the results of my work into an overall table which included some of her work. The other loan case that I had typed up I think I passed directly to Mrs. Horan but I am not a hundred percent

sure on that. I think there was some discussion as to whether that should be included in full on the file report or not. As it turns out, it is included.

My recollection is that Mrs. Horan told me that she made a case to have that work included in such detail even though that would be the norm, if you like, to recognise the effort I put into it. I am making a distinct between all of that which you can now see in the report and the handwritten notes that I would have taken as I went along. Some of this would have been draft material. We had a form of template or questionnaire that we used to collect information on individual loans, so there would have been many of these individual loan sheets that I would have completed. Also in there was the notes I had taken in relation to the back-to-back issue and particularly, the issues list that I had prepared.

Q. And what normally happens to all that material in any inspection?

A. Normally it is kept together in a box file. In some cases, it is sorted by category into individual folders or binders within that box file. In other cases the box file is simply used for storage.

Q. But what ultimately happens to that material after the Inspection Report is finalised?

A. Typically in those days somebody ended up being the keeper of that box file. It may be it was examiner in

charge, it may be the other examiner in relation to the team. A lot depends on who had space to keep it, because most of them at that time were kept in individual offices. At a later stage, there was a move towards Central Bank storage of many of those records, but typically once the material had been used to produce the report, it was then the report itself that was the focus of attention. And only if questions were raised about the report subsequently would it be necessary to go back and look at any of this material.

Q. At this time in the Central Bank, is there a systemic way of retrieving such material? And I am not talking about 1988 material, I am talking about 1999 or 2000 material. Is there a systemic way of retrieving preparatory work which came into existence in the course of an inspection?

A. If I were to if I wished to retrieve preparatory work for a particular inspection, I would first approach the examiner in charge of that inspection.

Q. Is there a systemic way of retrieving it in a sense? Is there a place to which all of that goes, an archive it goes to after which the Inspection Report is completed?

A. I think the answer is that yes, there is a facility for storage of such material. I wouldn't be confident that in all cases the material goes to that storage area. Examiners may choose to keep it with them for

their own information.

Q. Is there a protocol for dealing with this material or is it entirely at the discretion of individual examiners or individual on-site workers who may or may not hand this material up to the examiners responsible for an Inspection Report?

A. I think the individual examiners have a significant role in this. Some of this material can remain relevant to the ongoing work. I mean, if there are issues outstanding on the inspection, despite the fact that the report has been signed, it may still be necessary to hold on to this material and keep working with it. I think I would leave it to an official Central Bank spokesman to tell you what the protocol is.

Q. What do you do if you are involved in an inspection?

A. At this stage I am not actually directly involved in inspections.

Q. Can you say what happened in relation to the documents produced on inspections where you were involved?

A. I believe I would have retained those box files in my possession, locked in my office until such time as someone else took on responsibility for the bank's concern. I would then pass on the box files to them.

Q. Do you have box files or did you have box files that you passed on to other individuals who took over the responsibilities that they may have had?

A. Over the years, yes. I understand the policy, if you want to call it that, at the moment, is that all of this should be centralised and that's being put into place at this time.

Q. I see. I don't propose to go over the parts of your statement where you say you approached Mr. Deasy and that you ultimately had an approach from Mr. Halpin, isn't that right?

A. That's correct.

Q. But if you go on to page 27 of your or paragraph 27, I beg your pardon, of your statement, you say: "I believe that some further action may have been taken in 1988 by the Central Bank regarding the G&M back-to-back loans. A few weeks after the 1988 inspection, I was shown by Mrs. Horan an internal note which I believe made reference to the G&M back-to-back loans. I am not sure whether or not the note had been prepared originally by Mrs. Horan. I do not recall the contents of the note or the names of those who indicated by initialling it or otherwise that they had seen it. This note has not been located during the recent searches of the Central Bank files relating to G&M."

I am sure you will agree that if you can't recall the contents of a note, it's difficult to know how it could be retrieved from files in 1988, wouldn't that be

right?

A. There is a distinction between recalling the existence of a note which would allow it to be retrieved and being able to recall the detailed contents.

Q. Mm-hmm.

A. There is a reason why I have phrased my sentences as I have here, because I wasn't directly involved with this. And perhaps if I give my account of it in simple English rather than the slightly convoluted way I have expressed it here, it might help.

Q. Do, please.

A. Some weeks after the inspection, Ann Horan came around to the area of the department where both Ms. Byrne and I were located at the time. If I recall correctly, she had recently returned from holidays and she had in her hand a note. She seemed to be annoyed about something to do with that note. She said to me "This is all your fault" and she put the note into my hands very briefly. I am not quite sure what it was that troubled her about it. I understood from her that she had drafted this note or at least prepared the first draft and I think her concern was that someone had made amendments to it in her absence and circulated it in amended form. I understood at that stage that the note had something to do with back-to-back loans, but I didn't know exactly what. I thought it might have been connected with the discussion I had had previously

with Mr. Halpin but I wasn't sure and I didn't inquire further.

At some later stage, and we may be talking the following year or two years or three years after that, I can't say exactly when, I came across the note on a part of the Guinness & Mahon file. I don't know what prompted me to look at that file at that time, but I did. And I saw the note there and I recall that it gave some description of the back-to-back loan arrangement. And I think there were attachments to it. The note itself is quite short and there was something else attached to it. I remember thinking at the time that if that note had been put into the Inspection Report in the first place, there wouldn't have been any need for me to kick up a fuss, that it really dealt with largely dealt with the issues that I had raised.

Now, I am afraid that's the best I can do with the terms of impression. Those recollections are not particularly sharp in my mind as the same way as some of the other ones were from the inspection itself and that's the reason why I mention it, because the Tribunal had specifically asked me if I had any knowledge of notes or documents related to the back-to-back arrangement and I could recall this note.

The file has been searched I looked at the parts of

the file for the relevant period. The note is not

there now.

Q. We go starting at the end if you like of that account, you certainly read the note at one time, isn't that right?

A. I am not sure that I read it in great detail but certainly I would have at least skimmed it.

Q. Was it a handwritten or a typed note?

A. A typed note.

Q. Do you recall whether the note contained what were your impressions or somebody else's impressions?

A. I would say somebody else's impressions. The language used certainly wasn't the sort of terminology that I would have used.

Q. Do you remember how long the note was? Was it more than one page?

A. I believe it was more than one page.

Q. And there were attachments to it?

A. There were I think attachments to it. It was certainly something typed in a different layout; again something quite brief I think.

Q. Was it something in the nature of a schedule attached to it or was it another narrative statement attached to it or was it another page of narrative attached to the note?

A. I am afraid now we are reaching the limit of my recollection. I think it was narrative, but I

couldn't be absolutely sure.

Q. Now, to go back to what you first told us about this note in evidence. You say that Mrs. Horan came to you and she had the note in her hand.

A. She came to the area. I would say that she came to visit Ms. Byrne about it, but I was seated quite close by and she included me in that conversation.

Q. But she said to you, you think, "This is all your fault"

A. Or words to that effect, yes.

Q. You are responsible for this.

A. Yes, she didn't say it with any venom.

Q. That's what I am trying to get. Is she saying, 'this is all your fault I had to going to this additional work or trouble'? Are you is she saying, 'this is all your fault, you have gotten me into trouble'; do you know?

A. I don't know. That was the sum total of the conversation. I didn't pursue the matter with her.

Q. She gave you the note. What was the purpose of the note being given to you?

A. I don't know. She handed it to me and pointed out pointed the note to me, if you like, and I gave it back to her or she immediately took it back. I can't recall which.

Q. Well, do you remember reading it at that time even if you don't remember the contents from that time? Do

you remember reading it?

A. I didn't have the opportunity to read it at that time.

It was basically put in front of me and taken away.

Q. How do you know it was the same note that you came across later on?

A. I understood from what she said that it was connected to the issues that I had raised. When I found the note on the file for the relevant time with that information in it, I believed it was the same note.

Q. And that was a few years later?

A. Well, it was sometime later. I really can't recall how far later, but perhaps a year later.

Q. Why would you have had to examine a Guinness & Mahon file a year or so later when I think you, as you told me a moment ago, you had no further contact with Guinness & Mahon from the time of the inspection?

A. I don't know what prompted me to do it. It certainly wasn't part of my duties to examine Guinness & Mahon files. I think it was pure curiosity that I looked to see at that stage what had found its way to the file in relation to the 1988 inspection in which I had taken part.

Q. What do you mean by the file? Do you mean the Guinness & Mahon file including all Guinness & Mahon Central Bank related material? Is that what you mean by that?

A. The registered file, the correspondence file, yes.

Q. So you went back to it you think out of curiosity to see what was left in the file, if you like, as a result of the 1988 inspection and you saw this document?

A. Something prompted me to do so. I have to say that, and this perhaps goes to some way explaining the clarity of some of my recollections. I was concerned about the issues that had been raised in 1988, I think that's fairly clear, and in my own mind I returned to it quite a number of times over the years and recreated the issues. I went through it step by step to see if I could understand it better as to how it had come about, why it had happened, how I had ended up with the difficulties I had. It may have been as part of an exercise like that that had prompted me to go and look at the file, but I have done that a number of times and that made it a lot easier when I sat down to prepare the material in answer to the Tribunal.

Q. When you returned to look at the file, as you say out of curiosity and because this matter was still exercising your mind some years later, why did you not read what the 1988 report actually said about the inspection?

A. I don't recall that the 1988 report was on the file, on the registered file at that stage.

Q. Well, why wouldn't it have been?

A. It's not unusual for inspection reports to be retained by the examiner or retained with box file material so

that you will find not just the working papers, but

you'll often find the reports themselves.

Q. But how would somebody who was due to, say, examine G&M

today and who wished to follow what I think is the

commendable procedure you mentioned a moment ago

whereby they'd look at previous reports, how would they

get access to those previous reports if they weren't on

the file? Which I think is what you said you'd do if

you were going to conduct an inspection; you'd go to

the file. I think you may have used the expression

registered file I think a moment ago, did you, in

describing what you thought was the proper procedure?

A. The proper procedure involves locating the historical

material, wherever that may be.

Q. Mm-hmm.

A. Now, the starting point would typically be the

registered file, but I think I also said in evidence

that if I had the working papers for the inspection in

the box file in my office and I was passing on the

responsibility of a particular institution to another

inspector, I would pass the box file at the same time,

so someone who was about to conduct an inspection

should already be in possession of previous inspection

material, they should also review the file. In some

cases, in many cases the inspection reports are on the

file or there is a copy of them there and I am talking

about registered file. In other cases they are not,

you have got to go and look at the Inspection

Report sorry, I beg your pardon, you have got to go and look at the box file and working papers. Either way the examiners have access to both of them.

Q. Well, I don't want to digress, but it's all a bit haphazard, isn't it?

A. What it comes down to is individual responsibility of a senior examiner, an examiner in charge to make sure that he or she is aware of the issues and to gather the material necessary for that. So I wouldn't describe it as haphazard. Different examiners approach it in somewhat different ways, but with the same objective and hopefully with the same positive result.

Q. I think you said in evidence a moment ago that this was something that was exercising your mind and you returned to it in your mind time and time again

A. Well, a number of times.

Q. Yes. Did I not understand you to say earlier that you had a discussion with Mr. Halpin and that what he said to you went a long way towards setting your mind at rest that you didn't need to regard this as your responsibility at all?

A. That's what he said to me, yes, that it was not my responsibility.

Q. But if he set your mind at rest, how can it be the case that the concern stayed with you and continued to exercise your mind?

A. He set my mind at rest, I think I said partially at rest at the time to the extent that I felt that there wasn't anything further for me to do. There was no further action I could take.

Q. And I think

A. That's not quite the same thing as saying that the issue wouldn't return to me

Q. I understand.

A. at some stage, and that's exactly what happened. I have to say I was disturbed about all of this. I felt at some time that questions would be asked. I didn't quite anticipate it would be here and now, but I had that idea in my mind that there were issues there that would come out and would have to be discussed at some point. And I was quite concerned that I would be seen as having some role in this, despite the fact that Mr. Halpin confirmed then and I think is confirming now that he didn't regard me as having responsibility for this provision of Guinness & Mahon.

Q. I think that what you said in relation to exchange with Mr. Halpin is that he went a long ways towards setting your mind at rest, but you went on to say that "I felt at that stage that I had done my duty and there was nothing more I could do and I was very relieved that I didn't have to pursue the matter or transfer matter of transfer or anything else. As far as I was concerned at that point, the case was closed." Now,

again

A. Yes, I did say that.

Q. Isn't that isn't that slightly inconsistent with what you have just said to me a moment ago, in fact you continued to exercise your mind even to the point where you, out of curiosity or whatever, examined a file some three years later and came across a document which as you say would have satisfied you at the time had it been included in the report?

A. Whether you see it as an inconsistency or not, that's how it happened. The outstanding points returned to me, I thought about them at length, and I felt that it was important that I should be clear in my own mind as to my role in all of this because the thought had crossed my mind that the issue might raise its head again at some stage in the future.

Q. You were aware, I presume, that the Tribunal had showed some interest in this earlier in this year, if not indeed very early in the year, isn't that right?

A. Yes.

Q. Were you aware

A. In the whole subject of the

Q. Guinness & Mahon relationship with Central Bank?

A. Correct.

Q. In advance of the evidence that was given in March of this year, I assume you were aware that the Tribunal was, with the assistance of the Central Bank,

conducting interviews in the Central Bank and in Dublin Castle with members of the Central Bank staff or former staff?

A. I was aware that Adrian Byrne in particular was giving evidence, yes.

Q. At that point, did you not think it would have been appropriate to have brought your concerns to the attention of the Tribunal?

A. What I did at that stage was to look at the Terms of Reference of the Tribunal and I went through them carefully to see if I thought I had information which I should provide. And without going through all the points individually in the Terms of Reference, I was satisfied that I didn't have information in relation to the named politicians and so on down through until I came to the point that talks about making recommendations as to the Central Bank. And again, I didn't see that the material I had knowledge of was particularly relevant to that issue to the Tribunal.

When I was approached by the Tribunal, as I understand all other examiners were also approached, I replied to each of the questions in some detail and the statement that you read out earlier today is the result of my work in answer to the particular question about any contact I had with the whole back-to-back issue or the Ansbacher issue.

Q. Were you aware at the time in March of this year that Mr. Byrne was giving evidence and in advance of his giving evidence, were you aware that issues were being raised with him concerning back-to-back loans and the Central Bank inspections at Guinness & Mahon?

A. In general terms, yes. I wasn't involved in discussions with him at that time and I wasn't involved in the preparation of his material.

Q. Did you think at that stage that it must have been relevant to the Terms of Reference if the Tribunal were pursuing it with Mr. Byrne?

A. I wasn't sure what exactly the Tribunal were pursuing with Mr. Byrne. We didn't discuss it.

Q. Did you know that Central Bank inspections in Guinness & Mahon were the issue or was at least one of the issues being canvassed with Mr. Byrne and other officials of the Central Bank?

A. I was aware that Mr. Byrne was in discussions with the Tribunal on a range of issues and that there was to and fro as to the scope of the material that he was to cover. I think it was at quite a late stage that the question of individual inspection reports throughout the years was raised but I am not sure on that. That's the impression I formed.

Q. Were you aware before Mr. Byrne gave his evidence that Guinness & Mahon's relationship with the Central Bank in the context of inspections was the subject of some

of the Tribunal inquiries?

A. I was aware of a particular focus on the 1970s and on the detailed account that the bank was providing.

Now, I wasn't given the details of that, but yes, I was aware he was working on that aspect of it. I wasn't aware until a very late stage that the coverage included specifically any reference to the 1988 Inspection Report, at least not that I can recall.

Q. You say that the concerns that you developed in 1988 remained with you on and off from that time right up to now, up to the time you have made your statement, isn't that right?

A. Whenever any issue occurred relevant to Guinness & Mahon, it reminded me of what had happened in 1988, yes.

Q. Did you ever think of bringing those concerns to the attention of anybody more senior to you in the Central Bank once you were aware that the Tribunal were interested in the bank's relationship with Guinness & Mahon which was, after all, the trigger expression?

A. I had brought these concerns to the attention of senior officers in the Central Bank from time to time over the years, in particular, I had a number of discussions with Mr. Byrne

Q. Over the years?

A. Yes. Now, they would not necessarily have gone into great detail but they would certainly have served to

remind him that I had had issues at that time. Now that's not to say that he or the Central Bank certainly saw those issues as significant. The evidence is that they didn't see them as significant in 1988, why would they see them as significant at any subsequent time?

But I believe that Mr. Byrne was aware

Q. When did you bring those matters to Mr. Byrne's attention, Mr. Donovan, over the years?

A. It came up in conversation a number of times. In particular, one instance I remember is at the point where Mr. Byrne was promoted to manager of the Banking Supervision Department or head of function, as it's now called. Up to that point, from shortly after the 1988 inspection, I had not been reporting directly to Mr. Byrne. I now find myself in a position where I was. He was once again my boss. And I had some residual recollections of the exchange that had taken place between Mr. Byrne and myself in 1988 and I wondered would it reflect on our working relationship. So I remember quite distinctly raising the matter with him. He said he didn't recall having the discussion with me and we spoke about the Guinness & Mahon issue in more general terms. I believe he was in no doubt at that stage that I had recollections about 1988. If you like, we took that opportunity to clear the air and my working relationship with Mr. Byrne up until the issue, the issue has been raised again at the Tribunal

has been very, very good.

Q. You say that you brought these issues up on a number of occasions and while you say you wouldn't have gone into great detail, you would certainly have brought them up in sufficient detail to remind Mr. Byrne that you had had issues in 1988 at that time, as you put it.

Now, you then went on to say "The evidence is that they" meaning the Central Bank I think "didn't see them as significant in 1988. Why would they see them as significant at any subsequent time?" Now, on the subsequent occasions you would have been quite an experienced bank inspector and a much more experienced officer or official of the Central Bank, isn't that right, and you would have had an opportunity to reflect on what you had learned in 1988 when you were a much more junior employee?

A. Yes.

Q. And while I can understand that you might take the view that your superiors in 1988 would not see as significant what you saw as significant, surely when you brought it to the attention of Mr. Byrne and others at a later point, you were not satisfied that they should be the sole judges of the significance of what had come to your attention; you were now an experienced employee yourself, isn't that right?

A. Certainly I had gained experience, but we are still talking historically about an issue relating to 1988

and there wasn't an opportunity to change the past.

The report had been written at that time. I was given to understand that it would not contain material relating to the concerns that I had raised. It couldn't be rewritten years later because as far as I was concerned those issues still arose. I think I was conscious also that there had been changes in relation to Guinness & Mahon ownership over that period, so things had moved on and this was something that related to many years ago.

Q. I understand. So do I take it that you agree with me that you would have had a different view, you would have understood perhaps better, the significance of what had happened in 1988 by the time you had acquired experience in the bank?

A. Possibly, yes. I am not sure I thought of it in those terms.

Q. You regarded the matter as sufficiently significant to keep it in your mind and to bring it up on a number of occasions. It was at least that significant?

A. Yes.

Q. The issue of differences of opinion was buried, if you like, because the report was now history, I accept that, isn't that right?

A. Yes.

Q. But if the matter was still exercising your mind and if the significance of it was now perhaps something that

you were prepared to be the judge of yourself, why did you not bring it to anyone's attention specifically at the time that evidence was being given or prior to the giving of evidence by the Central Bank in March of this year?

A. I could ask the question from the opposite side. Why was it that in the preparation of the material by the Central Bank that examiners who had been involved with Guinness & Mahon and who were still on the staff were not approached as to their recollections and for any contribution?

Q. And were you approached do I take it from that you were not approached by any official of the Central Bank?

A. I have no recollection of being approached by anybody as to the drafting of material for the Central Bank report to the Tribunal. If I might continue?

Q. Do you wish to continue before I ask you further questions? Go right ahead.

A. Yes, because it might help to clarify the matter. I was offered sight of a copy of the finalised report just before it was submitted to the Tribunal.

Q. By "finalised report," do you mean finalised draft of Mr. Byrne's statement, is that what you mean?

A. That's exactly what I mean. At the point where it was being stapled for delivery to the Tribunal, I was asked did I want to have a look at it.

Q. You were offered sight of a copy of it?

A. At that time, yes. It was about to be delivered to the Tribunal. That was my understanding.

Q. Did you read it?

A. No.

Q. Why not?

A. I took the view that this was Mr. Byrne's statement.

I was conscious that Mr. Byrne and I had differing recollections of the 1988 report and I didn't think any constructive purpose would have been served at that point in my presenting my differing recollection at that stage. I was working on the understanding that, or at least in the belief that Mr. Byrne would recall that I had a different view; but that view did not appear, as we now know, in the Central Bank's report of that inspection.

Q. Did you ever get a chance of contributing to the statement prior to its being sent to the Tribunal and prior to its being put in a final form? Did anyone say to you, is there anything in this statement you agree with or disagree with or can you add anything or can you help me out with your own recollection or anything like that?

A. No, I wasn't approached, that I can recall.

Q. The only time that you were approached then was when you were given the final draft?

A. I wasn't given the final draft. I was offered sight

of the final draft or a copy of the final draft. That was my understanding of what was on offer. As the document was being stapled.

Q. What significance do you attach to the stapling of the document?

A. That this was the final act, if you will, before it was delivered to the Tribunal.

Q. But why wouldn't you have wished to examine it at that stage. How did that in any way affect your decision as to whether you'd look at it or not?

A. If Mr. Byrne had wanted my input into this, he had every opportunity to approach me at a much earlier stage. I took the view

Q. Was it out of a fit of pique then that you wouldn't contribute to it, because it was in its final stage and been to be stapled?

A. No. There was no question of pique involved. I didn't think that was an appropriate time for me to start raising other issues, given that I could recall how Mr. Byrne responded to those issues in 1988.

Q. How do you mean that this wasn't an appropriate time to raise other issues? You didn't know what other issues you would be raising if you hadn't read the document?

A. I think I could reasonably surmise that it didn't include my recollections.

Q. But a moment ago, correct me if I am wrong, I understood you to say that you assumed that it would

contain what you had relayed to Mr. Byrne as your concerns in 1988?

A. Oh no, that wasn't what I said. If I did, that certainly wasn't what I intended to convey.

Q. Correct me. I am quite happy to be corrected.

A. I believed that it would not contain any reference to the issues I had raised in 1988.

Q. You believed that it would not contain any of them?

A. That it would not contain and that at that point for me to start saying I disagreed with it would not have been helpful.

Q. So you were satisfied at that stage that the Tribunal was going to get an account of events that occurred in the 1970s and the 1980s which was not consistent with your recollection of those events?

A. I took the view that the statement was the responsibility of the author of that statement. If the author had wished to include the views of other officers who had had contact with Guinness & Mahon, he had had every opportunity to do so.

Q. But weren't you being given an opportunity of doing so at that point, and in view of the fact that you knew, according to yourself, that the report was inaccurate, according to your view, wasn't that the last chance you had to say, I don't agree with this, there is more to this than is contained in this statement; although I haven't read it, I know what it contains?

A. Well, it's not so much that I knew what it contained as I suspected what it did not contain.

Q. I think you know what I mean, Mr. Donovan, and the task the Tribunal has is to try to resolve very conflicting reports of what happened. You had an opportunity certainly to add to something at a point when the Tribunal were not going to be made aware of facts of which you were aware and were in fact going to be given an inaccurate version of something by your lights, isn't that right?

A. I am not sure I would describe it as an inaccurate version. The material which I had put forward in 1988 was not accepted at that time. I didn't know for certain what was being included in the submission of the Central Bank, the draft submission. I didn't know for certain that it included any reference to the 1988 inspection, I hadn't been told that. And if I had raised the issue at that time with Mr. Byrne or anybody else, I expected that the difference of opinion that had emerged in 1988 would simply be rehearsed all over again. I wasn't sure that I saw any purpose in that at the time.

Q. You said that if you had raised the matter with Mr. Byrne or anybody else you examined, that the difference of opinion that had emerged in 1988 would simply be rehearsed all over again and "I wasn't sure that I saw any purpose in that at the time." But the

difference of opinion was something that had exercised your mind all of the time from 1988 up to now, isn't that right? It wasn't a minor difference of opinion, it was a significant and enduring one, isn't that right?

A. Well, certainly, if I retained my recollection as to what I had seen in the course of the 1988 inspection

Q. And what you had recollected was in fact consistent with a continuing degree of sensitivity in 1988 on the part of at least on the part of Guinness & Mahon?

A. Yes.

Q. A sensitivity to scrutiny, isn't that right?

A. Yes.

Q. Scrutiny was the job the Central Bank were supposed to have been involved in, isn't that right?

A. Prudential supervision

Q. Scrutiny is how you get the information that enables you to supervise prudentially, isn't that right?

A. That's part of the function, yes.

Q. Without asking questions, you can't get information; isn't that a simple proposition, without asking questions, without making inquiries, without getting documents, you can't form an opinion?

A. Without collecting information, yes.

Q. And there was a sensitivity to requests for information?

A. I believe so, yes.

Q. And that sensitivity was in the context of back-to-back loans?

A. Yes.

Q. And back-to-back loans was one of the features, as we now know, of the Ansbacher accounts and as you must have known in March of this year?

A. Yes.

Q. And wasn't that therefore something of critical importance to bring to the attention of the Tribunal if, as you keep insisting, you were aware that the Tribunal was not going to get the full picture?

A. At any stage Mr. Byrne could have approached me for my input into the material he was preparing. He opted not to do so.

Q. Well,

A. When I was approached by the Tribunal and asked specific questions, I believe I have answered them fully, to the best of my ability and I have tried to cooperate in full with the Tribunal in any further questions that have been put to me. I didn't see it as my role to try to dictate to Mr. Byrne what he should include in his submission to the Tribunal, particularly having regard to the fact that he and I did not see the matter in the same way in 1988 and that he has been consistent in saying that I never raised it with him in 1988.

Q. I may need to come back to this matter, Mr. Donovan.

Thank you.

CHAIRMAN: Nothing Mr. Quinn you want to raise?

I think in the order I have intimated, Mr. Hunt, you
will be next

THE WITNESS OF EXAMINED AS FOLLOWS BY MR. HUNT:

MR. HUNT: Mr. Donovan, I appear on behalf of
Ms. Horan. Obviously I have some questions for you
arising out of your evidence.

Can I deal with paragraph 27 of your statement, perhaps
dealing with the end first. In that, you give a
version by way of statement to the Tribunal in relation
to the developments which took place either as matters
were being finalised or after matters were being
finalised in relation to the Inspection Report in 1988,
isn't that correct?

A. Yes.

Q. Would you agree with me that the version contained at
paragraph 27 contains material and significant
differences from the version that you have given in
evidence to the Chairman here this afternoon?

A. I wouldn't agree with that. What I would say is that
I have tried to clarify today what may have been
somewhat confusing from paragraph 27.

Q. Mr. Donovan, I take it you understand the necessity of

being as precise or as accurate as you possibly can be in relation to these matters when you are making a submission to a Tribunal, isn't that right?

A. Of course.

Q. But can I suggest to you that what you have contained in, or what is contained in paragraph 27 of your statement is a very, very far cry from the version that you have given in evidence; a very far cry in terms of not containing slight differences, or differences of emphasis, but is almost a totally different version?

A. I couldn't accept that, no. What I have done in paragraph 27 is to couch my recollection in terms which indicate that I had very little direct involvement with this issue.

Q. You did know of course that what you said to the Tribunal, whether by way of statement or evidence, also bears on the position of other people having regard to their conduct of investigations and that matter, specifically for example, Mrs. Horan, isn't that right?

A. I am not sure I quite follow your question.

Q. Perhaps that's a convoluted way of putting it. Did you know or did you appreciate that things that you might have been saying to the Tribunal would bear on the position of other parties involved, including Mrs. Horan?

A. I am certainly aware that the evidence, the submission that I was providing to the Tribunal made reference to

other parties who were involved with me in the 1988 inspection.

Q. You have contained in a single sentence an account of being shown an internal note which you believed made reference to the G&M back-to-back loans. That's how you describe that transaction in a simple sentence, isn't that right?

A. Yes.

Q. Did you not think it was relevant to set out for the Tribunal first of all the circumstances in which that transaction arose? For example, that Mrs. Horan seemed to be annoyed, I think they were the words that you used; would that not be a relevant consequence to set out in giving a precise and frank account of what you say happened?

A. What I tried to do here is to draw attention to what I believe may have been a follow-up to the issue I was involved in, because I wasn't directly involved with this. I thought it sufficient to note it and draw the Tribunal's attention to it. Now, the Tribunal is of course free to question me further on this as they have done so today and it's no great surprise to me that further clarification and detail would emerge from that as can emerge from a discussion of any of the points in this. I mean, there is no way that a that I could have included every single recollection of every word that may have been spoken right the way through

Q. It's perhaps a matter for the Tribunal. You are quite specific in various other instances contained in this statement, but for example, can I ask you what you mean when you say that you weren't directly involved at this stage? What do you mean by that?

A. I had no role in requesting or being requested for this material. I had no role in drafting it. I had no role in deciding what was done with it or where it went.

Q. Mr. Donovan, can we get real here? You have been charged by somebody who was at this time superior to you, who seemed to be annoyed, who was charging you that something was all your fault, that you were responsible for something. Now, that's a pretty direct involvement, isn't it?

A. As I explained already, I am not sure that I knew how to interpret that remark at the time. It wasn't said with any venom. I wasn't sure whether she meant it as she said it or whether it was said in jest. All I know is that that was the remark she made. I didn't pursue it with her.

Q. Mr. Donovan, you worked I think for a not inconsiderable period of time with Mrs. Horan, and my instructions are that you had a good working and sociable relationship during all of that time, would that be correct?

A. Part of that is correct. I didn't work with

Mrs. Horan for any extended period of time. The only time at which I worked with her was in relation to this two- to three-week period of the 1988 Guinness & Mahon inspection and the follow-up work on that.

Q. You would have you would have met her frequently during the time when you both worked with the Central Bank?

A. Yes.

Q. And during that time you had good relations?

A. Yes. I had a very high regard for her and continue to do so.

Q. I see. Was she in the habit of saying things in jest such as in the account that you have given to the Tribunal?

A. I can't say whether she was in the habit of saying things in jest or not.

Q. In your experience, Mr. Donovan, was she in the habit of saying things in jest to you?

A. I am not sure that I can give you a sensible answer to that question.

Q. Well, you are the one who raised the concept, Mr. Donovan?

A. May I answer?

Q. Yes.

A. Mrs. Horan and I had what I would regard as a very good working relationship in relation to this inspection.

We differed as to the significance attached to this or

how it should be dealt with in relation to back-to-back loans but otherwise we got on very well. At a personal level we got on very well. I cannot say whether we ever had a conversation in jest or not. I suspect we did, but I can't say that in evidence, because I don't recall.

Q. Was she the kind of person who, in your experience, would feign annoyance in relation to an issue like this?

A. I have no reason to believe that she would.

Q. So when you said that she seemed to be annoyed, may we take it that that's how she appeared at face value?

A. Yes.

Q. And may we also take it when she stated that "It's all your fault" or all your responsibility, that she was raising something by way of a serious issue?

A. She didn't pursue it if she believed it was a serious issue. That was the sum total of the remark and I can't be absolutely certain as to the exact words at this point, but it was something to the effect "This is your fault."

Q. Is not the natural response to that, if you didn't know what it was being raised, "Is what my fault?"

A. I had some inclination that it was related to the issues I had been raising in the 1988 inspection and I think that was confirmed for me when she put the note in front of me briefly so that I could see that it

concerned the matters relating to the back-to-back loans.

Q. So you are asking the Chairman to accept first of all that you said nothing further; secondly, that she said nothing further apart from your introductory remarks, but the next step in the transaction simply involved her placing a note in front of you, is that right?

A. She showed it to me briefly and then went on with the conversation which she had come around to have. I don't believe that she intended to have a discussion with me on this. She didn't approach me other than to pass that remark, show me the note briefly and then she continued other discussion with Ms. Byrne.

Q. In what manner did she show you the note, Mr. Donovan?

A. As I recall, I was walking past her at the time and she just held it up for me and then took it away again.

That's my best recollection.

Q. You were walking past her?

A. I was walking to my desk, yes.

Q. That's not slightly unusual in the context of a conversation where somebody has taxed you with causing something to be a source of annoyance to them and saying that something was your responsibility, you were walking away from her, is that right?

A. No, I wasn't walking away from her. I said I was walking past her to my desk.

Q. I see.

A. And I feel you are overstating the significance of the conversation. I wouldn't even call it a conversation.

It was literally a remark in passing.

Q. Well, I don't know I can overstate it or understate it, Mr. Donovan, because the first time I have heard of it is this afternoon, you will appreciate that. It's not in here, is it, Mr. Donovan?

A. The reference to her remark to me is not in there, no.

Q. No, it's not. So would you agree on her behalf it's something I have to pursue, isn't that correct?

A. I have no difficulty with you pursuing it.

Q. Very good. Perhaps you'd let me continue to do that.

She held up something as you walked past, is that correct?

A. She showed it to me as I walked past.

Q. Did you stop?

A. I can't recall whether I stopped or just glanced.

Q. You would have to be very close to glance at something and discern its contents, isn't that right?

A. I haven't said that I discerned its contents at that stage. All I could establish was that it was connected in some way to the back-to-back loans.

Q. How did you know that?

A. I either saw something written or she mentioned it, I can't recall which, but certainly I formed that view from that brief encounter.

Q. Did you not take the note and read it?

A. I don't recall doing so, no.

Q. Why ever not?

A. Well, why should I?

Q. Well, you are charged with being a source of annoyance and with having caused some difficulty by somebody who was your superior. This person was holding a note in their hand which apparently was related to this annoyance. Now, wasn't the natural thing to ask either what was wrong; or B, to ask for the note which was obviously related to seeing what precisely what happening here?

A. Can I just clarify one point?

Q. Just answer the question.

CHAIRMAN: Let him clarify it.

MR. HUNT: Sorry, My Lord.

A. Then I will answer the question. You described Mrs. Horan as my superior at that point. That was not in fact accurate. She was the senior officer on the Guinness & Mahon inspection and while I was involved in that inspection, yes, I was reporting to her. But once I had completed work in that area, I was instructed to revert to my assigned senior officer and that's as set out in my testimony.

Q. I have missed the nuances, but the situation is in layman's terms, that you were clearly discussing something in relation to the 1988 inspection, isn't

that right?

A. At what time?

Q. At the time that you are talking about, this incident in paragraph 27. It couldn't have related to anything else, isn't that right?

A. I don't recall any discussion taking place.

Q. Well, what did you think that it was that she was saying to you or raising with you? What else could it have been?

A. As I have stated in my evidence, she passed a remark. She had a document in her hand which I had very brief sight of.

Q. Yes.

A. And I formed an opinion based on that and on what I could overhear that this was related in some way to the back-to-back loans.

Q. From what you could overhear, what do you mean by that?

A. She was having a conversation with Ms. Byrne on the subject.

Q. I see. And could you tell us now what the gist of that conversation and what the contents of that conversation was please, or were?

A. No, I can't, because I wasn't party to that conversation. I heard something of it but very little. It was sufficient to know that there was some linkage to the back-to-back loans.

Q. Where did this take place, Mr. Donovan?

A. It took place in an open plan area where both Ms. Byrne and I were working at that time.

Q. And was anybody else working there?

A. There were four positions there altogether.

Q. And how far removed are the positions from each other?

Are we talking about a large or a small area?

A. I would have difficulty in telling you the exact square footage involved.

Q. Well, how far away were the participants in the conversation from you?

A. While the conversation was taking place between Mrs. Horan and Ms. Byrne I would say they were close to the same distance as you are from me at the moment.

Q. I see.

A. Now, the account that I spoke of took place as I walked passed Mrs. Horan to my desk so I would have been quite close to her very briefly at that time.

Q. So you didn't follow up with her either by way of continuing the conversation which she had initiated or by looking at the document in her hand?

A. No.

Q. But you knew from something that you overheard as part of another conversation that it related to 1988 and Guinness & Mahon, is that right?

A. And also from what I had been shown briefly. Now, I am not saying that Mrs. Horan didn't say anything else at all in the course of that. I can't recall what

other words she might have used, but it was sufficient to form the view in my mind that this was connected in some way to the back-to-back loans and I formed the view, rightly or wrongly, that it might be connected to the fact that I had brought the issues to the attention of Mr. Halpin.

Q. So when you say in your statement you were shown the note, that's not really what you mean at all?

A. I was shown the note briefly but not to the extent I was able to peruse it and read it. I wasn't given a copy of it.

Q. And you didn't follow that up by way of request?

A. No.

Q. Is that not somewhat unusual?

A. I can't really say whether it is unusual or not. It wouldn't be usual for someone to show me a note and then take it away. If she wanted me to read it, she would have given it to me.

Q. Not alone was she showing you a note but she was saying that something was all your fault and she seemed to be annoyed.

A. I am not sure that she was annoyed with me at the time; perhaps she was, but

Q. You said in your evidence that she seemed to be annoyed and she stated to you "It's all your fault." What other interpretation could you possibly place on it?

A. I understood her annoyance was in relation to the note

itself and the content of it and something that had

been done to it.

Q. Are you certain about any of this at all, Mr. Donovan?

A. I am certain of the existence of the note. I am

certain that I first encountered it when Mrs. Horan

brought it around to that open plan area. Beyond

that

Q. I mean, here is something that's twelve years later is

exercising your mind. Now, we are not talking about

twelve years later; we are talking about a very short

time afterwards, isn't that correct, at the time that

this event occurred, or you say occurred?

A. I am sorry, can you clarify that for me?

Q. Yes. We are talking about something that happened a

very short time after events which continue to exercise

your mind twelve years later, isn't that right?

A. Yes. I saw that note not very long after the

inspection took place, a number of weeks.

Q. I just have difficulty in accepting that you did not

follow this up in any way with Mrs. Horan at the time.

A. Well, to be honest I didn't follow it up with her.

Q. Would you ever tell the Chairman why ever not?

A. I am not sure I can explain why I did or didn't at that

time. I don't know what was in my mind twelve years

ago in relation to that particular issue. By then I

had no further involvement with the Guinness & Mahon

issue. If I remember correctly, the inspection

material that I had been working on had now been dealt with. I had moved on to other duties and was reporting to somebody else.

Q. I just have difficulty in accepting that you have caused annoyance to somebody who has worked with you in relation to this investigation, that the question of fault has been raised and that for some considerable time afterwards, you never sought to see the note or to find a copy or to try and get access to it.

A. Well, first of all, I am not sure that I can accept that I was the one who caused the annoyance.

Q. I can only presume that that's what was meant.

A. I think your presumption is incorrect. My view is that her annoyance related to what had happened to the note itself. I had no knowledge of that. I had no contact with it. I didn't know the existence of any note until that point. And she passed a remark literally in passing, I wasn't sure how I should interpret it.

Q. Did she pass it to you or was it said in general?

A. It was said in my general direction.

Q. So it was said to you?

A. I think so.

Q. Did this note or the contents of it that you hadn't managed to see on this occasion, did that not peak your curiosity over the following period of time? Is it not something that played on your mind in the way that

this whole issue seems to have or as part of that

general concern that you continued to maintain?

A. I don't have any clear recollection of whether or not I

gave a great deal of thought to it immediately

following that.

Q. When you came to read the file at some later time, you

have given evidence in relation to

that incidentally, can I ask, that's clearly a

matter of significance, isn't it, the fact that you saw

some papers in relation to this at some subsequent

time? That is clearly a matter of relevance and

significance, isn't that right?

A. I am not sure that it is. I suppose it depends on the

content of that note and my recollection of the content

is far from clear.

Q. That's the matter I wanted to come to, because here you

had something that had been exercising your mind; here

you have described a transaction whereby a document had

been produced but the contents not disclosed to you.

You finally get to see that document, isn't that right,

or what you presume to be that document?

A. Yes.

Q. And you get to read it, isn't that right?

A. Certainly I got to skim it I think was the term I used.

Q. Well, in what where did you get to read these

documents?

A. My recollection is that it was close to the storage

area of the files, yes.

Q. And having set out to find them, I presume, was there any reason why you couldn't have taken care to inspect them, given that this was something that was exercising your concern?

A. I can't recall the particular circumstances of that day as to whether I had time to read it or not. I think it's quite possible that I didn't. Certainly I do recall skimming over the contents of it and confirming in my own mind that it did give some description of the back-to-back loan arrangement.

Q. About how long after 1988 was this, as best you can remember?

A. I wish I could give a clear answer.

Q. Do the best you can.

A. But I really am not sure how long it was after the inspection.

Q. Would it be two years? Five years?

A. I don't think it would have been five years. I think we are probably talking about perhaps one to two years, but I just want to make it clear that that's from a very hazy recollection of the time. I have no basis on which to place it in time in relation to anything else.

Q. For a period of one to two years, you had been concerned about what happened in 1988, such that you went to find certain papers in the storage area, isn't

that correct?

A. Something prompted me to do so. Something relevant in relation to Guinness & Mahon perhaps.

Q. Something that you can no longer remember. But you finally, after that time, you come across these documents. What I have difficulty in accepting, Mr. Donovan, is how you can give no guidance as to the contents of this document given the importance which you must have attached to it at this time?

A. I really can't go beyond the evidence I have already given, that I do recall that it contained some descriptive material in relation to the back-to-back loans and that on reading it, I felt that it was a pity that that material hadn't been included in the Inspection Report in the first instance.

Q. When you say descriptive material, what do you mean by that?

A. I have difficulty in being more specific than that. I really cannot recall the precise contents of that.

Q. That it described the back-to-back loans, is that what you mean?

A. I think it did, yes.

Q. Can I suggest to you that, in fact, had you troubled yourself to find the Inspection Report of 1985, there is indeed a description, descriptive material of the back-to-back loans?

A. There is a brief description, yes.

Q. Well, did that jog your memory, when you saw the contents of the report? Does that correspond to the material in the document that you have referred to?

A. My recollection is the material of the document was of greater length than the text that's included in the 1988 report. What I am not sure about is whether it would have added anything in terms of contents. I suspect it must have because of the because of my feeling that had it been included in the 1988 report, it would have gone a long way towards relieving my concerns.

Q. Again you have stated that you remember it was over a page long, is that right?

A. I believe so.

Q. And there were possibly attachments?

A. My impression was there was at least one other page in a different typeface.

Q. Could that be a list of such loans, for example?

A. I can't be absolutely sure at this remove. I don't think it was a list.

Q. Because again, I have to suggest to you, that there is a list of such loans contained in the appendix to the 1988 report.

A. I am aware of that, yes.

Q. So can I suggest to you that if there was such a document on the file, that it simply contains the information which is contained in the report?

A. My recollection is that there was something more in the way of certainly length, but I can't be more specific than that.

CHAIRMAN: Just for the guidance of counsel, I propose that we will conclude Mr. Hunt's examination, but whilst I had been anxious to finish this witness today, it seems to me both unfair to the witness and to the stenographer's if we have a continuous sitting for much over two hours and twenty minutes and there is urgent business that the Tribunal has to attend to for the remainder of the day.

MR. HUNT: I won't be very much longer. I am going to go back and go through the statement put in by Mrs. Horan in brief terms and I think we can conclude at that.

Q. Can I just suggest to you that in relation to that, that that that Mrs. Horan has no recollection of such a document ever being in existence or indeed of the events that you have described this afternoon in relation to her saying what she said or showing you the document?

A. I have been provided by the Tribunal with the addendum to her statement of evidence.

Q. Her addendum couldn't deal with those particular matters, Mr. Donovan, because they are not contained in your particular statement.

A. As I was about to say I know from it, she doesn't appear to have a recollection of any of the events that I have described.

Q. Indeed.

A. And says that she has very limited recall in relation to the 1988 inspection.

Q. And can I suggest to you that if there was any reality in matters happening in the way you have described, you would have set them forward in the statement which you gave to the Tribunal initially?

A. I have given as evidence today as detailed an account as I can of the existence of a note. I don't believe that the account I have given today is materially different from the reference I put in to the original statement to the Tribunal. It has expanded on it certainly at the request of the Tribunal.

Q. Very good. Can I ask you just to go back then to the start of the statement. Can you say I think you indicated in your evidence that this inspection took about two weeks, is that right?

A. Yes, I believe so.

Q. And you weren't there for all of it, I think you were delegated by somebody else to go and attend at this inspection, is that right?

A. That's correct.

Q. This would be on-the-job training for you as trainee, in fact, is that correct?

A. That was my understanding.

Q. You seem to attach some significance to the issue of the signature of this report. Can I suggest to you, Mrs. Horan will say as far as it was her practice and she knew, that reports were not signed by anybody including the presiding or the person in charge, that they simply contained a list of the names of persons who had been concerned in the compiling of the report?

A. Well, I think we have already established in evidence that some reports are signed and others are not. I wouldn't be happy that any great significance would be attached in this case to the existence or absence of a signature. I was using the opportunity at the time to make it clear that I felt that something further needed to be added to that report. I had been told that it was common practice to sign reports. Perhaps I was misled in that, but I do know that many reports are signed. And I saw that as a useful opportunity to highlight the issue once again and I think there is no more significance in it than that.

Q. Well, I want to suggest to you that in fact there is no significance in it at all as far as Mrs. Horan is concerned; nobody was going to sign this report including herself and the report is not in fact signed.

A. I can only repeat that I was using that as an opportunity to highlight the issues. If it didn't succeed in dealing with the issues, perhaps that would

go some way to explain why the remainder were unresolved.

Q. At what point did you join the inspection in the two-week period?

A. Sometime in the first week. I can't remember which day of the week.

Q. Now, in paragraph 5 you referred to coming across the question of 'Hypothecated Deposits' and 'Hypothecated Loans' and you say you hadn't come across that before.

A. Yes.

Q. You then refer to the item represented to the best of your recollection approximately one third of the total liabilities of G&M as presented in those accounts. Is that something that you would have known at the time or is it something that came into your possession afterwards?

A. What I was looking at, as I recall, was a set of accounts with a balance sheet and on the liabilities side of that balance sheet there was a substantial item which I believed to have represented approximately one third of the total of the balance sheet which was entitled 'Hypothecated Loans' and I thought it was very odd that an item called a loan would appear on the liability side of a balance sheet. I believe somewhere else in those accounts there was a reference to 'Hypothecated Deposits' and this is what gave rise to my initial question to find out what these items

were.

Q. When you say that you queried the meanings of the terms with, I presume, Mrs. Horan, what exactly did you say to her?

A. I asked her what the term meant, or if she knew what it meant.

Q. And you see, she has no recollection of this, but what she will say in evidence is that if you had raised the point with her, she would have been familiar with it from the 1985 inspection of the bank and she would have been in a position to tell you exactly what the position was in relation to those accounts.

A. My recollection is that she told me that it meant the loans were secured. I don't recall receiving an explanation as to why an asset item appeared on the liability side of a balance sheet or what lay behind that and my best recollection is that she suggested that if I wanted to know more or if I thought the term hypothecated meant more than simply secured, I should raise that in the normal way with other routine matters with Mr. Lannigan O'Keefe.

Q. She has no recollection of such a conversation, but I think her evidence will be that it would be unusual for her to send a junior trainee off to speak to a senior official in the bank in that fashion in the course of an inspection?

A. She didn't send me anywhere. The practice was for

Mr. Lannigan O'Keefe to visit the office to deal with whatever new information requirements we may have had or what issues we wanted to raise with him. And my evidence is that I asked him for an explanation of those terms in the presence of Mrs. Horan and my recollection was that it was a three-way conversation.

I was asking questions; perhaps they weren't very sensible questions, I was a trainee after all, but I was asking questions which Mr. Lannigan O'Keefe was attempting to answer and Mrs. Horan was being helpful in clarifying some of these answers or putting them in terms which I could understand.

Q. But having put them in terms you say which you could understand, at the end of the day, the terms were not satisfactory, isn't that right?

A. Well, I don't know that the issue was as regards the term at that stage. The issue was as regards the explanation that was provided by Mr. Lannigan O'Keefe as to what these represented and what was actually going on and what the connection was with the Cayman Islands. At that point I started to get quite confused because it didn't make sense to me that deposits in one name in the Cayman Islands were in some way indirectly securing loans made to people from an Irish bank.

Q. Paragraph 7 I think reflects your dissatisfaction with the information you were receiving back because you say

that you were not happy with something that Mr. Lannigan O'Keefe said to you. You find it difficult to accept his contention in relation to those deposits and you say once Mr. Lannigan O'Keefe had left the room you expressed to Mrs. Horan the view that the matter should be explored further. In what terms did you express that view?

A. I can't recall the exact words at this point.

Q. In general terms?

A. Possibly. I certainly would have indicated that I still wasn't satisfied. I recall being confused as to how something which we were being told was not actually secured could in fact serve as security. That's one of the things that was in my mind.

Q. And what did Mrs. Horan say to you? Because you say what you said to her, but your statement contains no detail as to what her response was.

A. I have great difficulty at this stage remembering precisely what she said. My general recollection is that she didn't say a great deal about the matter.

Now, perhaps this would go to the issue of significance, but I was seeing a significance here that perhaps she was not. I do recall at one point that she said, "they are simply back-to-back loans." So I was making life very complicated in terms of trying to get behind the security and thinking of other issues that might have prudential implications which were

linked to these. I don't recall that she gave me a great deal of information in response to that.

Q. I see. Were you unhappy with that?

A. Well, it left me with unanswered questions, with doubts in my own mind as to whether I understood what was going on. That's the best way I can describe it. I would have had great regard for the view that she, as examiner in charge, would have taken. I wouldn't be happy to start pursuing any of this unless she was happy for me to do so, and it was my understanding that I was left free to pursue these to my own satisfaction.

Q. Were you aware that she had taken part in the 1985 inspection?

A. I am not sure I was at that point. I may have been, but I am not sure that I was. I know that I certainly was at a later stage, because she specifically told me.

Q. Well, in any event you took the opportunity of raising the matter further with Mr. Lannigan O'Keefe, or he raised it with you, I think, was it?

A. He raised it with me and that was not something that I was comfortable with.

Q. Did it not strike you as unusual, a senior member of the bank, that you were investigating raising matters with a person who was, in effect, a trainee?

A. Well, remember that I was the one who had asked the question in the first place. As to whether as to Mr. Lannigan O'Keefe's seniority, he was the point of

contact for the inspection team. He was the person to whom you should bring issues. Now, my preference would be that any such issues would have been discussed with Mrs. Horan present.

Q. You must have found it very flattering that Mr. Lannigan O'Keefe wanted you to be satisfied of the explanations that he had given you?

A. I don't think I found it flattering. I found it unnerving to be put in that position. I was very uncomfortable. I had simply gone to his office to return what I believe were minutes or some other valuable document that we didn't want to leave lying around during lunch time, just to return it to him, so he raised the question and started a what was quite a short discussion on the subject.

Q. Not alone that, he goes and gets the general manager of the bank to come and speak to you in relation to these matters.

A. He phoned

Q. That must have flattered you?

A. That really frightened me. I certainly wasn't feeling flattered. I was given very little option but to go with him to Mr. Pender's office. I tried to convince him that I shouldn't go, that I certainly shouldn't go alone, but as I have recorded, he dismissed my reservations and said, well, Mr. Pender simply wants to have a quick word before I proceed further with this

matter.

Q. You then say you went back at paragraph 12 that you relayed immediately to Mrs. Horan the full contents of your conversations with both of the previous named gentlemen. She will say that she has no recollection of this but had such a thing occurred, she would have a significant memory of it because it would not be the practice to have anybody, let alone a junior trainee, have conversations alone with officials of a bank that was being investigated or inspected.

A. I would certainly agree that it's not the practice for officers to have meetings alone. It does happen occasionally. I think I can recall situations from other inspections where I or other officers have had meetings alone where it appears or appeared that there was a possibility that information would be revealed that wouldn't be revealed in a more formal setting. So as a matter of policy and practice, it's not something I would recommend and I was very uncomfortable to be in that situation, but I think it would be wrong to say that under no circumstances should an officer have a one-to-one discussion.

Q. This isn't an occasion where something might slip out in circumstances which are not as formal as they ought to be. You have been pursued by Mr. Lannigan O'Keefe in relation to the matters that had arisen and not alone that, you are pursued to the extent of having

Mr. Pender brought in to speak to you. So this is not something that comes out by chance. This is something very, very far out of the ordinary, isn't that right?

A. Well, for a start I wasn't to know when I entered that office what was going to happen next. I wasn't setting the agenda. But I would agree with you that this was unusual. Now, I can't account for

Mrs. Horan's recollections or lack of recollections here. I can simply record what I recall and I recall it very distinctly because I found it quite an unnerving experience at the time.

Q. If this happened as you say it did, are you sure you gave Mrs. Horan the full details? Because she will say that such a thing would be unprecedented and she would have a specific recollection of such a thing happening in the course of an investigation.

A. Again, I cannot speak for Mrs. Horan's recollections, but I am quite sure that it happened. I believe I made every effort to relate to her everything that had transpired. I certainly didn't deliberately hold anything back. I cannot be absolutely certain that I revealed every word that was spoken, but certainly I am satisfied that I made her aware that Mrs. Lannigan O'Keefe had raised the issue again and that Mr. Pender had said what I recorded he said, that the matter had been discussed previously or explained previously by Mr. Traynor to Mr. Adrian Byrne.

Q. What you do say is that "Mrs. Horan expressed surprise at my having met with Mr. Pender but I do not recall that she passed any or significant comment on my inquiries."

I want to suggest to you if you had told her the full details of what transpired, she would have had significant comment to make on a trainee getting involved in the kind of meetings that you had got involved in.

A. And I am saying that I don't recall that she said very much in response to it at all. She did express surprise as in saying something like "You met Mr. Pender on this?" Or words to that effect, and we then went on quickly to the discussion of what we might do about it next.

Q. Well, just coming to that. You say that she suggested that you would raise the matter with Mr. Adrian Byrne, who I think was Mrs. Horan's superior?

A. That's correct. It's correct that he was her superior. I think in my evidence earlier I recalled that she said something along the lines of "Well, Mr. Pender suggested that you raise this with Adrian Byrne, perhaps you should do so, or you should do so" or something to that effect.

Q. You see, Mrs. Horan will say that simply could not have happened, because she would not have been content to

have you discussing an investigation with Mr. Byrne which she was in charge of, that the Central Bank was a hierarchial organisation or was at the time certainly, and that simply would not have been something she would have acceded to. She would not have let you discuss the matter with Mr. Byrne without her having been present.

A. I had no particular wish at the time to follow that route. I didn't ask her for permission to talk to Mr. Byrne. It was her suggestion. So in that sense, you could argue that she was still in control of this process.

Q. She will say that she would not make any such suggestion which would involve you discussing the matter with Mr. Byrne without her being present. I am putting that to you. You disagree with that?

A. I disagree with that. I recall that's how the conversation took place. Now, whether there may have been other things that were said in that conversation that I don't recall is a possibility.

Q. We will pass. You suggest, "I suggest to Mrs. Horan it would have been more appropriate to raise the matter directly with Mr. Byrne or at least accompany me in meeting him but she declined." So you go a bit further than that. In fact, you say you suggested she should go off and meet Mr. Byrne and you tell us she declined. Can you tell us in what terms she declined?

A. I cannot recall the precise language that was used. I go back to the piece I do remember clearly, which is that she said to me that Mr. Pender had suggested that I raise this with Adrian Byrne, perhaps I should do so. And the terms of the way I phrase this, I think I would prefer to use that text so if people are reading into this, that, you know, she flatly refused to do anything about this. I am not saying that at all. That did not happen.

Q. Mr. Donovan, what other interpretation would you possibly expect anybody to put on the word "Declined" except some form of a refusal? She was turning down a suggestion that had been made by you on your evidence, isn't that right?

A. The reality is that she did not pursue this matter herself, to my knowledge. She left it to me to pursue it.

Q. She declined to pursue it herself is what you are saying. Declined.

A. That's the word I have used in my evidence.

Q. And I am asking you, because you are, in effect, as I understand it, suggesting that she was in some way derelict in her approach to this matter, but I want to know what you mean when you say when you use the term in your statement "Declined"?

A. I am glad to have the opportunity to reply to your first term. I am not suggesting that Mrs. Horan was

derelect in her duty. I have never suggested that.

Q. What are you suggesting in relation to her then?

A. I am recording my best recollection of a conversation which took place where the net result of which was that she left it to me to take the matter to Adrian Byrne.

Q. Mr. Donovan, will you just apply yourself to the statement that you have put in and I am just asking you whether any other reasonable inference is to be drawn from it by Mrs. Horan except a suggestion that she was derelect in her duty? You, a junior trainee, have raised matters of concern, isn't that correct?

A. Matters which I believe to be of concern, yes.

Q. You have brought them to her on your version of events, isn't that correct?

A. Yes.

Q. You have relayed what I would suggest to you are seriously unusual circumstances for a junior trainee to have been involved in, viz your discussions with the bank officials from Guinness & Mahon, isn't that correct?

A. It would certainly be unusual for a discussion to take place with a general manager, yes.

Q. And you were suggesting that Mrs. Horan declined to take the matter further but in effect left the matter in the hands of a junior trainee. That's the effect of that paragraph, isn't it?

A. I am not necessarily saying that she did not take other

action or intend to take other action. I don't know what she might have done which I have no knowledge. All I can say is that I recall a conversation. This was a brief conversation in that we were about to leave the building and it may or may not have been her intention to return to it later, I don't know. I just recall the quote where she said Mr. Pender suggested you read this with Adrian Byrne, perhaps you should do so.

Q. She was washing her hands of it, in effect?

A. Well, that's your term. I am not using that term.

And I wouldn't be in a position to make such a judgement.

Q. You see, I want to suggest that, and Mrs. Horan will be quite categorical about this in her evidence, that had you brought these concerns to her, she would have acted on them straight away; that this simply didn't happen, Mr. Donovan. I don't know why you are saying this now, it simply didn't happen.

A. It is my recollection that this happened exactly as I have recorded it. If other people have different recollections, that's their entitlement, but I am speaking under oath. I am satisfied that this happened as I have said it happened. Now, a lot goes to the question of significance here. I was the one who was attaching significance. I didn't know this was an old story as far as the Central Bank was concerned. I

didn't know that there had been previous contact between the Central Bank and Guinness & Mahon on this.

It was completely news to me that Mr. Traynor had raised any of these matters or discussed any of these matters or explained any of these matters to the Central Bank. And as I recorded, I didn't even know who Des Traynor was at this point, I only discovered that afterwards.

Now, in the circumstances, Mrs. Horan had given me quite a bit of leeway to pursue what I believed were loose ends here. This had now been, if you like, escalated by Guinness & Mahon in that there was a brief discussion with Mr. Pender which I did not initiate and I didn't particularly welcome at the time because I felt it wasn't appropriate for me. We had a short discussion just before adjourning for lunch where I explained what had happened

Q. We have been over all that before, Mr. Donovan.

A. Well, I think it's important that we establish the context that this was, as far as I was concerned, a work in progress. There were outstanding points. I was doing my best to follow them up, and if you like, the next port of call that was suggested was to see if Adrian Byrne had the same recollection

Q. You have said all that. What I have put to you, Mrs. Horan will say that she simply would not have done that. Perhaps we can move on. You are now happy to

say that you have no criticism in relation to

Mr. Horan's handling of the point, as I understand it?

A. I am happy to have the opportunity to say that.

Q. I see. In relation to paragraph 13 of your statement, you refer to going on to discuss the matter with

Mr. Byrne. You said it was your view that you were not sufficiently experienced to deal with the matter and that someone with more knowledge and experienced should take the matter further. You say "I made known this view to both Mrs. Horan and Mr. Byrne." In relation to Mrs. Horan, how did you make that view known to her and in what terms?

A. I would suggest to you in terms very close to as I have described here. I took the view that there were matters that I believed should be pursued further. I was very uncomfortable at the turn of events whereby I found myself having a short discussion with the general manager. I didn't think it was appropriate for me to do that, and I was quite uncomfortable at the prospect of taking this forward any further.

Q. In relation to paragraph 13 and 14, Mrs. Horan will say that had you had a discussion in her absence in relation to these matters with Mr. Byrne, she would have expected to have heard back from Mr. Byrne that such a matter had been brought to his attention. She will say that Mr. Byrne never made her aware of such a conversation if such a conversation or conversations

occurred. What do you say to that?

A. There is not a great deal I can say about it. I have no knowledge of any conversation that might have taken place between Mr. Byrne and Mrs. Horan.

Q. Well, you work and have worked for a considerable number of years in the Central Bank. Would you be surprised that the information was not relayed back by Mr. Byrne to Mrs. Horan?

A. Well, I'll turn that and say that I wouldn't have been at all surprised if discussions had taken place.

Q. I suggest to you that they would have taken place had any of this occurred?

A. Well,

CHAIRMAN: It's hypothetical, Mr. Hunt. I have noted your point.

MR. HUNT: Very good.

You also stated in relation to paragraph 40 of your statement that you raised prudential issues with Mrs. Horan insofar as that evidence may be taken to relate, if it relates to anything other than appears in your statement, could you assist us in relation to that or does that simply refer to the discussions which you have referred to in your statement.

A. Well, can you assist me by pointing out

Q. Well, I don't know, because, you see, you gave in

evidence to Mr. Healy that prudential issues were raised with Mrs. Horan. Now, I have your statement which has, I suggest to you, been shown to be incomplete in other respects. Are you referring when you refer to that matter of discussing prudential issues with Mrs. Horan, is that a general description of the conversations stated to have taken place in that statement or does it refer to something outside the four walls of the statement? Only you can know that?

A. The I don't think there is anything further to the statement that I need to draw out here. What I have done is to set out some of the points that I had in my mind as outstanding issues. I think you would have it as paragraph 20. There were others that I cannot now recall. Some of them I would describe as prudential issues. One is mentioned here in terms of concentration of funding. A lot of the funding appeared on the face of it to be coming from a single source. Others were broader issues. For instance, I wasn't clear in my own mind and perhaps I think I am still not clear in my own mind as to whether the so-called security arrangement was a prudential issue or not. It would have been a prudential issue if it could have created risk for the institution for Guinness & Mahon. So there are shades of grey here as to what is prudential and what is not, and the typical practice is that you pursue these issues until you feel

that as an examiner, you have established the facts and you can then judge whether they are prudential matters or not, whether they have prudential implications.

Q. You were on your first inspection at that time, Mr. Donovan. You hadn't reached the stage where you could make that statement that you are making now, isn't that right?

A. I accept that, yes.

Q. What Mrs. Horan will say in relation to these matters is that if you had raised the question of the existence of these accounts, deposits as an issue, her knowledge would have been, and it's solely related to carrying out the 1985 inspection, and she would have told you that the Central Bank was, as a result of that inspection, aware of the existence of deposits, knew about them and their effect. This was not news to Mrs. Horan and she would have told you that?

A. She did tell me that certainly towards the end of the inspection. I cannot recall whether she might also have done so earlier in the inspection. But I think what we were discussing here were approaches to this issue which might or might not have been similar to approaches that were taken before. I don't know whether I was raising exactly the same questions or perhaps some different questions. But I was given leeway by Mrs. Horan to pursue the matters, to discuss them further, to raise them with our point of contact

in Guinness & Mahon initially in her presence. Now, events overtook that to some extent subsequently.

Q. You seem to have, and perhaps I can give you another opportunity to say whether or not you are being critical of Mrs. Horan in this regard: She indicated that she wished to have the report in the same format as the 1985 report. Is there anything wrong with that?

A. Well, that's a matter of judgement. I am not saying there was anything wrong with it. I am saying that I felt that there were still outstanding issues which should be raised. The fact that questions had been put which particularly to Martin Lannigan O'Keefe which I felt weren't fully answered, and the sort of issues that I had raised, whether you consider them prudential or not, and which had not been fully answered, I thought that should be reflected in the report. But bear in mind that I did not know what was in the 1985 report or any previous report at that stage.

Q. This leads me on to my point in relation to paragraph 18. You seemed to be dissatisfied with Mrs. Horan saying that the format was to be on the same basis as 1985 but you never asked to see that report which would have been very easy for you to do, isn't that right?

A. I am not sure whether that report was actually on the premises or not at that time. I can say that I didn't

read the 1985 Inspection Report. I can't be absolutely certain that I might have shown an extract from it. Certainly my recollection is that it was made clear to me what would be included in the 1988 report in relation to these back-to-back loans, that there would be a piece of the script of the text which you have before you as the Inspection Report and an appendix setting out the loans. That was clear and when I sought to put something further in, my recollection is she said that what we were doing would, as I put it here, follow the pattern of the 1985 Inspection Report.

Q. What she says in relation to paragraph 18, she says given that the Central Bank is already aware of the existence of those deposits and that no new information in her view had been recovered, she was unclear about what you wished to have included in the report over and above that. What was your problem?

A. I don't have any difficulty with that statement, if she says she was unclear. I am just conscious that all of this is against a background where she has stated to the Tribunal that she has very limited recall in relation to the 1988 inspection. Yet it seems that there are very specific points being made here which would suggest that she does have recall. However, leaving that aside

Q. No, that's not so. What she will say is on the basis

that if certain things had happened, she would have recollected them because they would have been significant and unusual matters. What she says in relation to the format of the 1988 report is that she can't see anything which was uncovered which would justify departing from that format.

A. As the examiner in charge, she is certainly entitled to that view. It was my view, for what it was worth, that there were issues that needed to be explored further. I may have been mistaken in that, given that I didn't know the history, but that was my view and that's the basis on which that discussion took place.

Q. The report contains a description of the deposits in similar terms to the 1985 report and contains a list of those deposits, isn't that right?

A. That's correct.

Q. Now, in relation to paragraph 19 of the matter, I want to suggest to you, and Mr. Healy has covered some of this ground earlier, but I better just go over it formally, that the conversations referred to in that paragraph simply could not have taken place because Mrs. Horan is not aware until very recently that there had been some discussion in the late 1970s between the Central Bank and Guinness & Mahon in relation to these deposits and some undertaking or some arrangement that they would be reduced in size. She will simply say she did not have that information and she could not

have imparted such information to you at that time?

A. Which particular reference are we talking about here?

Q. The assumption that that is what you were referring to when you say "She gave me some background information, including the fact that having previous Central Bank contact with the G&M back-to-back loan arrangements."

Well, what do you mean by that? Perhaps you can expand on it.

A. I am not sure that I can expand on it.

Q. What did she tell you?

A. She certainly made it clear to me that this was not the first occasion on which the Central Bank had become aware of the back-to-back loans.

Q. That is so, because she will say that her knowledge of Guinness & Mahon was based on her earlier inspection in 1985 and the compiling of the report in 1985. Now, it is clear from a reading of that report that anybody who was involved in compiling that report would know about the existence of deposits, so is that what you are referring to when you refer to background information?

So far as Mrs. Horan referred to it, the 1985 report, is that what you are referring to?

A. I don't recall that she was specific as to whether it related to 1985.

Q. Or further back than that?

A. I don't recall that she was specific as to what exactly, what time it related to but certainly it was

news to me. That was the first time I learned that what I was looking at had been looked at before.

Q. Well

A. In general terms at least.

Q. I want to suggest you may have missed something because if you had raised those concerns with Mrs. Horan in relation to the fact of the existence of such deposits, she would have been in a position and would have told you directly that the Central Bank and she knew of these matters from the 1985 inspection. So there was nothing new there, Mr. Donovan?

A. What I am recording here is the time in the inspection, in the sequence of the inspection where this information was made available to me.

Q. I just want to, from Mrs. Horan's point of view, she will say that her knowledge of this matter was confined solely to the 1985 report and that she knew that in that report there is reference to the existence of these accounts. Is that what you are talking about when you refer to background information in that paragraph? Because she will say that she had no background information other than that.

A. I cannot recall clearly the precise information she gave me at that time.

Q. I see.

A. I do know that that was the stage at which it became clear to me that this had been considered previously or

some aspects of it had been considered previously.

Beyond that I am not in a position to say whether other information was given to me by Mrs. Horan.

Q. You then go on to say that Mrs. Horan suggested or mentioned that there was a relevant reference in a previous Inspection Report to, and I quote "Matters not pursued further because of the sensitivity of the matter". Mrs. Horan raised that, are you certain about that?

A. That is my recollection.

Q. You see, she will say that that simply did not happen, because the extent of her knowledge was confined to her previous investigation, the most recent investigation and the 1985 report.

A. Well, I cannot say what knowledge she may or may not have had at that point. Clearly I can't address that.

What I would say is that as the examiner in charge of the bank, it raises a question in my mind as to what material she should have reviewed as part of that role and whether that should have been confined to merely something that dated from 1985.

Q. Well, would you go back twelve years if you were carrying out an investigation in 2000, would you go back to 1988?

A. That is a matter for each examiner, but if we were looking at a significant issue, I think it's reasonable that one would go back to the origin of that issue.

Q. The issue had been canvassed in the 1985 report, the then most recent report, Mr. Donovan.

A. There is a reference to it in the 1985 report.

Q. There is a very specific reference to it. There is a section devoted to it and an appendix, isn't that right? It's more than a passing reference?

A. Well, the reality is that I can't say what she would have read or what she would not have read prior to that time.

Q. Are you criticising her for not going back twelve years in 1988 or are you not? Which is it?

A. Given that I don't know what information she had or how far back she went, I can't express a view on it either way.

Q. I see. The material that appears in quotation marks in your statement, whose quotation is that? Is that Mrs. Horan's quotation or is that her quoting from the report?

A. My recollection is that it was her quotation. What I cannot recall is whether she was actually quoting from a document in front of her at the time or that's how she phrased it at the time.

Q. She was paraphrasing her memory of a document. Well, in either of those events, I want to suggest to you that it did not happen because she had not seen any reports prior to 1985 and therefore was not in a position to give you either a direct quotation or a

paraphrase.

A. My recollection is that she said something which I believe were those words, and that I reacted to that by saying that yes, that I thought that should be included in the report. She reverted to me sometime later and said she had decided not to put it in.

Q. Did you not ask her what report it was?

A. I don't think so at the time. I don't recall.

Q. I mean, here you are, you are now being brought into the light for the first time. You are being told that this wasn't exactly news to the Central Bank and you are being referred specifically to a previous report where there is reference to these matters. Did the conversation not develop or did it once again end abruptly?

A. My interest was in the content of the 1988 report and I welcomed the suggestion that was made by Mrs. Horan that something along these lines be included. I wasn't all that concerned about where it might have come from. I was concerned that there should be some recognition in the report that questions had been raised and not answered. That was my focus.

Q. You now know for the first time that matters that had been matters of concern to you had in fact been addressed before. Can I not suggest to you that a reasonable person would have followed up on that in some way by trying to ascertain what the source of that

previous consideration had been?

A. I formed the impression from that conversation with Mrs. Horan that she had some reluctance in giving me detail as to what the previous consideration had been.

Q. Surely you could have found this out for yourself, had you so desired?

A. And how would I have done that?

Q. You would have presumably had access to the records of the bank, isn't that right?

A. The only records I had access to were the papers that were in Guinness & Mahon at that time.

Q. You could have gone back, you could have requested access, isn't that right?

A. I could have requested the information from Mrs. Horan?

Q. Yes. Or from anybody else; from Mr. Byrne whom you had already been to in relation to this.

A. I don't recall that I requested further information on the background to it. I may have done. I can't say for certain whether I did or whether I didn't. My recollection is that the discussion was about what we were going to put into the 1988 report. Now, recall that we were now quite close to the end of the inspection. There was a practice at that time that inspections started on a Monday, ended on the following Friday week. It seemed to be that that timeframe was regarded as something that should be adhered to. We were under great pressure at the time when this

conversation took place to try and complete our work.

There was no great time to have lengthy discussions on this or anything else. It was a matter of trying to get the papers together so that we could say we had the ground covered by the time the inspection was over.

So I think my recollection has to be seen in that light, that we had to come up with answers and we had to come up with them quickly.

Q. Well, you must have been pleased when Mrs. Horan made this suggestion because at least your concerns were being addressed?

A. I was pleased that it was being suggested, yes.

Q. And by the same token when it was withdrawn by Mrs. Horan sometime later, you must have been disappointed?

A. Yes.

Q. Well

A. Just to clarify, sometime later I think was quite soon after, it's possibly the same day.

Q. Possibly the same day. Well, would that not have motivated you to take your concerns elsewhere or to find out more about this if this had happened at all?

A. Well, I think I have recorded that I did take my concerns further when I had the opportunity to do so. But again, we are talking about a situation where there was an inspection team, I was being added to that team. The responsibility for the inspection, for the content

of the report in my view rested with the inspection team.

Q. Did you not ask her at a very minimum that, why she didn't follow-up or why she now had resiled from the suggestion that she had made earlier about incorporating this reference into the report? Did you not follow that up with her as part of your many discussions you say you had of what were and were not prudential issues? Was that not at least the single follow-up question that any person would have asked in those circumstances?

A. I am quite sure that there were follow-up questions that I persisted on this matter, that there were issues outstanding, issues that needed to be taken further.

CHAIRMAN: Mr. Hunt

MR. HUNT: At maximum, three more minutes My Lord.

In relation to paragraph 20, I will just simply put Mrs. Horan's comment to you in relation to the matters you have set out there. That they seem to be extraordinarily comprehensive and complex issues to be listed by a junior trainee on his first examination.

A. I would accept that the wording I have used is more a reflection of my experience today, but I am satisfied that the issues that I had on my handwritten list included the issues I have put down here. I may have expressed it in a complicated way if you are talking

about the first one, but I have made reference to it many times today; that the indirect nature of the security arrangement gave rise to questions in my mind and the text as I have put it down here is as close as I can recall to the sort of things I was raising with Martin Lannigan O'Keefe. I was a complete beginner in terms of inspections, I fully accept that. However, I had completed my accountancy studies sometime before, so this matter wouldn't have been entirely foreign to me.

Q. Can I suggest that there is an element of retrospection here, that this may be reduced as a result of many years when this matter exercised your mind; you certainly wouldn't have seen the issue in those terms in 1988?

A. I am satisfied that the issues I have raised here were the issues, among the issues I raised in 1988. There were others. I mean, I have just put down four there. I have a mental picture of perhaps twelve or fourteen items on it. It's quite possible that not all of those issues, the ones I cannot recall were all that sensible. I don't know at this stage, but I certainly know I raised the question of security, which was the first one. The question of single funding-source was a very obvious one. The zero risk issue caused me great confusion because there seemed to be two categories of three loans. There seemed to be a set

of offset loans and then there was a set of back-to-back loans and I couldn't make any sense or distinction between them.

Q. We needn't at this stage get into the details

A. I am trying to make the point in response to what you said, that these were issues that were very much in my mind at that time. The wording I have put on them may well reflect my experience now. But there is no retrospection in terms of the issue.

Q. Perhaps two more matters. When you referred in your evidence to looking again at the contents of the report, who was to do that?

A. I am sorry, I am not with you.

Q. There was a note that you made a reference in your direct evidence to looking having looking again at the contents of the report. What was that reference?

A. I am sorry, I can't recall the context in which that was said.

Q. You don't recall the context. And the other thing I wanted to ask you was in paragraph 23 you refer to passing your papers back to Mrs. Horan. There was talk of making a case as to the contents of the report. By whom was that case made and to whom?

A. Making a case are we talking about a box file?

Q. That there was apparently some sort of further submissions to be made about the contents of the report. What does that relate?

A. I am at a loss to know what you are asking me about.

Q. It's a note I made of your evidence. Thanks.

CHAIRMAN: Very good, I will have to trouble you briefly Mr. Donovan to return at 10.30 tomorrow to conclude your evidence. Thank you for your attendance today.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
TUESDAY, 7TH NOVEMBER 2000 AT 10.30AM.