

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 5TH

DECEMBER 2000 AT 10.30AM:

MR. COUGHLAN: Before I commence with the next witness, Sir, perhaps I should indicate in ease of the public, that today and tomorrow we will be dealing with evidence which relates to the loan obtained by Dr. Garrett Fitzgerald from Allied Irish Banks and the ultimate settlement of that. Because of difficulties in relation to witnesses, I should indicate that there will only be one witness today, that is a Mr. Nugent from Allied Irish Banks and this afternoon, there will be a witness, Mr. Joseph Malone relating to a different matter. Tomorrow, Dr. Fitzgerald, Mr. Barry and Mr. Dowling will be giving evidence on Dr. Fitzgerald's loan and the ultimate compromise or settlement of that loan, so that the public are fully aware of what we are doing over the next two days.

Mr. Nugent.

PETER NUGENT, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Nugent, I think you are a former senior lending manager, commercial banking, Dublin metropolitan area of Allied Irish Banks, isn't that correct?

A. Correct.

Q. And I think in that capacity, you had certain involvement with the loan the loans obtained by Garret Fitzgerald in the late 1980s, isn't that correct?

A. Correct.

Q. And I think you were not totally involved in the ultimate settlement of those loans but you are in a position to deal with substantial areas relating to the loans, isn't that correct?

A. That is correct.

Q. And I think in that regard, the Tribunal sought certain information from Mr. Barry, who was a colleague of yours in a different side of the bank, and yourself, isn't that correct?

A. That's correct.

Q. And I think in response to the information sought, both you and Mr. Barry furnished to the Tribunal responses to the various queries, isn't that correct?

A. Correct.

Q. And my intention, Mr. Nugent, is if you have both the query list and the responses before you, is to take you through those two documents and to put up on the screen certain internal documents which were furnished by the bank and documents which were furnished by Dr. Fitzgerald to the Tribunal, if that's all right.

A. Fine.

Q. Now, I think that the Tribunal requested Allied Irish

Banks to provide the following information and the first one was details of the loans advanced to Dr. Garret Fitzgerald to finance the acquisition of Guinness Peat Aviation shares.

A. Correct.

Q. And I think in response to that the bank is able to say and you, on behalf of the bank, that in April 1988 a loan facility of \$322,000 US Dollars was approved and provided by Allied Irish Bank Retail Bank to Dr. Garrett Fitzgerald which incorporated an additional amount of \$125,000 for the purchase of GPA shares, the loan was provided on a normal full recourse basis, isn't that correct?

A. That is correct.

Q. Now, just so the public can understand. What is meant by a full recourse-based loan?

A. It means that the bank can claim for interest and principal against the customer, against his full assets.

Q. Against the customer and all his assets.

A. Exactly.

Q. And we will come to discuss another thing in a moment which is called a non-recourse or without-recourse loan as regards capital, and am I correct in thinking that that means that the bank will limit its claim in respect of that to a specific asset?

A. That is correct.

Q. The case and point in the Guinness Peat Aviation case, as with Dr. Fitzgerald and perhaps with other Guinness Peat executives, was that the security was the shares of the company, isn't that correct?

A. That's my understanding, yes.

Q. Now, I think you go on to inform the Tribunal that in August 1989, Allied Irish Bank Capital Markets negotiated with GPA to provide loans to a number of GPA employees and directors to enable them to purchase GPA shares, is that correct?

A. That's correct.

Q. These loans had recourse to the borrowers for interest, that meant that in respect of the interest the bank had full claims in respect of all assets of the borrower in respect of interest, or could execute in respect of all assets?

A. That's correct.

Q. And the GPA shares which we held security for, but the capital balance of the loan was relating only to the GPA shares, is that correct?

A. That is correct.

Q. You have informed the Tribunal that as part of this employee director loan scheme, AIB Capital Markets provided a loan of \$188,250 to Dr. Garret Fitzgerald, is that correct?

A. That is correct.

Q. Of this loan, $\frac{1}{2}$ \$82,000 was used \$82,000, I beg your

pardon, \$82,000 was used to part repay the 1988 loan from AIB Retail Bank and the balance was used to purchase GPA shares, is that correct?

A. That is correct.

Q. In 1992, Dr. Garrett Fitzgerald requested that the 1988 and 1989 loans be amalgamated into one facility with AIB Retail Bank, is that correct?

A. Correct.

Q. Prior to this event, the 1988 loan had been repaid down to a balance of \$129,951 and the 1989 loan had been repaid down to a balance of \$118,891, is that correct?

A. That's correct.

Q. And would I be correct in making a rough estimate there that the 1988 loan was reduced down to about 60% of the loan had been reduced by 60% and the 1989 loan had been reduced by about 40% or thereabouts?

A. Yes, I think so.

Q. In other words, the loans had been surplus?

A. Exactly.

Q. And apart from interest payments, there had been capital reductions as well over the years?

A. That is correct.

Q. I think you have informed the Tribunal that in 1992, both these loans were refinanced by a new loan of \$248,800 US Dollars from AIB Retail Bank and the loan was a normal full recourse loan to Dr. Garrett Fitzgerald, is that correct?

A. That is correct.

Q. So am I correct in understanding that in 1992 all of Dr. Garret Fitzgerald's loans were converted into one loan from AIB retail banking and that portion of the GPA scheme loan, which was non-recourse as to capital, now became a full recourse loan as far as the bank was concerned?

A. That is correct.

Q. And that was with the agreement of Dr. Fitzgerald?

A. Yes.

Q. Now, I think you have informed the Tribunal that GPA collapsed in 1993 and at that time, the full amount of the new loan of \$248,000 was outstanding in AIB Retail Bank Grafton Street?

A. Correct.

Q. Now, I think just to summarise so that we have to take this in three stages, isn't that correct? There was a loan in 1988 to Dr. Garret Fitzgerald of \$322,000?

A. Yes, there were two loans but making up that amount.

Q. Yes. In 1989 as part of the GPA scheme, a further loan was taken out, some of that was used to reduce the 1988 loan and the balance was used to purchase GPA shares, isn't that correct?

A. Correct.

Q. The purchase of GPA shares was non-recourse as to capital but with full recourse as to interest, isn't

that correct?

A. Yes, the loan from corporate banking from Capital Markets, yes, it was.

Q. Then in 1992 these previous loans were incorporated into one loan and there was full recourse to all assets?

A. That's correct.

Q. For the entire loan, that is capital and interest?

A. Correct.

Q. The first two loans, if I could describe them as that, the 1988 and 1989 loans, had been reduced over a period both as to capital and interest had been paid, isn't that correct?

A. That's correct.

Q. And then an event occurred in 1993, the GPA share flotation, it collapsed and the price collapsed.

A. Correct.

Q. Now, I think

CHAIRMAN: Just to make sense of that, Mr. Coughlan, Mr. Nugent, the third phase whereby the whole amount became subject to full recourse, was there any benefit that Dr. Fitzgerald obtained for agreeing to that? It seems, on the face of your summary, that he worsened his position by leaving all his assets open entirely but didn't get anything in addition on the last of the events.

A. I wouldn't have dealt personally with Dr. Fitzgerald at the time, but he signed the documentation so he would have been fully aware of what was happening.

CHAIRMAN: I mean, I am not saying that what was done wasn't completely proper, but on the face of matters it does appear he simply agreed to potentially worsen his position by leaving all assets over as the entire assets made to the bank.

A. That's correct, Sir.

Q. MR. COUGHLAN: Now, I think the second query which the Tribunal raised with the bank was information of details of all security held by Allied Irish Bank for the indebtedness of Dr. Garret Fitzgerald, isn't that correct?

A. That's correct.

Q. And I think the bank is able to respond through you that the security held for the 1988 AIB Retail Bank loan, the 1989 AIB Capital Markets loan and the 1992 AIB Retail Bank loan were as follows: In respect of the 1988 loan, security held by AIB Retail Bank for the 1988 loan requirements were an assignment over life policies, sum assured $\text{€}102,000$ on the life of Garrett Fitzgerald.

A. Correct.

Q. A letter of pledge over 250 shares in GPA group.

A. Correct.

Q. A letter of pledge over 500 shares in the GPA group, is that correct?

A. Correct.

Q. And a letter of guarantee of $\text{€}100,000$ from Mrs. Joan Fitzgerald supported by an assignment over a policy covering the life of Garrett Fitzgerald, the sum assured being $\text{€}100,000$, the guarantee the grantee, I beg your pardon, being Joan Fitzgerald, is that correct?

A. Correct.

Q. So Dr. Fitzgerald, first of all, assigned a life policy on his own life for $\text{€}102,000$; pledged the various shares in GPA and the late Mrs. Joan Fitzgerald then assigned a policy of which she was the beneficiary but was on the life of Dr. Fitzgerald, isn't that correct?

A. That's correct.

Q. That was, in effect, to support her personal guarantee, isn't that correct?

A. Yes.

Q. Now, in respect of the 1989 loan, the following security was held by AIB Capital Markets: That's the merchant banking side or was the merchant banking side effectively of AIB?

A. Correct.

Q. The first security held was and could I just ask you in relation to the operation of the bank, it would be seen as two different sides, would it? The retail

bank side and the merchant bank side?

A. It was, yes. The retail side was essentially supporting the branch system and the capital market side was essentially looking after capital market type investments, exactly.

Q. That type of thing. Now, the security held by Capital Markets AIB for the 1989 loan was: One, an equitable mortgage over 200 A preference shares and related dividends. These are all GPA shares of course.

A. Correct.

Q. Secondly, an equitable mortgage over 250 ordinary shares, isn't that correct?

A. Correct.

Q. Three, an assignment over a life policy for 50% of the amount of the loan.

Four, a mandate relating to dividend payments on GPA shares, is that correct?

A. Correct.

Q. Then, a security held by the bank for the 1992 loan which was the conversion of the other the previous two loans into this new loan in 1992 and this was with retail bank, isn't that correct?

A. Correct.

Q. So the initial retail banking loan and the capital market loan were now converted into one loan in the retail bank side of AIB?

A. Yes.

Q. And the security held in respect of this was a letter of guarantee in the amount of $\text{€}100,000$ signed by Mrs. Joan Fitzgerald.

A. Correct.

Q. An assignment over a Norwich Union life policy on the life of Dr. Fitzgerald and the sum assured was $\text{€}100,000$, is that correct?

A. Correct.

Q. A letter of pledge over 5,000 ordinary shares in GPA and 200 preference shares in GPA vesting in Dr. Fitzgerald, is that correct?

A. Correct.

Q. And a letter of pledge over 10,000 ordinary shares in GPA vesting in Alley Bank Nominees Limited?

A. Correct. Alley Bank

Q. I beg your pardon, Alley Bank. That's an AIB nominee company, is it?

A. Yes.

Q. And an assignment over a Norwich Union policy on the life of Dr. Fitzgerald, the sum assured was $\text{€}275,000$?

A. That's correct.

Q. Would I be correct in thinking that the security for the earlier loans was combined into this security held in respect of the 1992 loan or more or less?

A. It's essentially, yes.

Q. I don't think we need deal with the reply to query number 3. I think that's already been dealt with

here.

So if we go to query number 4 and I think what the Tribunal requested of the bank was the terms on which the loans were amalgamated or restructured in July of 1992 and I think in response you have informed the Tribunal that in 1992 Dr. Garret Fitzgerald requested AIB to simplify his loan arrangements by refinancing the 1988 AIB Retail Bank loan and the 1989 AIB Capital Markets loan into one new loan at AIB Retail Bank Grafton Street. In response AIB Retail Bank provided a new loan on normal commercial terms in the amount of \$248,000 and secured as outlined above as secured as outlined above. The loan had recourse to the borrower for interest and principal in the normal way.

A. That's correct.

Q. And then query number 5 was the Tribunal inquired of all matters which prompted to the bank to vary the terms governing the loan whereby the Capital Markets portion of the loan was converted, it says, to a non-recourse, I think it's from a non-recourse footing should be well, we will deal with the query about that. That is the portion of the loan which had been non-recourse as to capital previously, the Capital Markets loan, isn't that correct?

A. Yes.

Q. I think your response on behalf of the bank is that the Capital Markets portion of the loan was not converted

to a non-recourse loan in 1992. It had been a loan with recourse to the security GPA shares for capital and to the borrower Dr. G Fitzgerald for interest. In 1992, it was repaid in full by Dr. G Fitzgerald. The circumstances were that in order to simplify his loan arrangements in 1992, Dr. G Fitzgerald requested AIB Grafton Street to approve and provide a new loan of \$248,000 to enable him to repay the AIB Capital Markets loan and the earlier 1988 AIB Retail Bank loan. He asked AIB to do this on a normal commercial basis which is what they did.

So, that really if we could take that slowly, because it deals with the query raised by the Chairman a few moments ago with you.

In 1992 Dr. Fitzgerald went to AIB retail banking, isn't that correct?

A. Yes.

Q. And in raising the loan in 1992, he cleared off the two previous loans?

A. That's correct.

Q. In effect, he cleared off the 1988 loan which had full recourse, isn't that correct?

A. Yes.

Q. And he cleared off the Capital Markets loan which was non-recourse as to capital other than to the shares of GPA, so that those two loans were now ceased to exist

on the books of the bank, would that be correct?

A. That's correct.

Q. And AIB retail were not in the investment business, if

I could put it that way, like the capital market branch

was?

A. Correct. Yeah, the retail side of the house would

be would have provided loans on normal commercial

criteria where you'd have full recourse.

Q. Unless you have some specific unless you made a

specific arrangement?

A. Exactly.

Q. But again in response to the query raised by the

Chairman, Dr. Fitzgerald in fact, in effect, put

himself in a more disadvantageous position in relation

to this new loan, albeit entering it by agreement?

A. That's correct.

Q. Now, I think the Tribunal asked you for a comparison of

the terms governing the loan to Dr. Fitzgerald and in

particular, the conversion of the Capital Markets

portion to a recourse footing to the terms governing

the loans made by Allied Irish Bank to other GPA

employees officers and having regard in particular to

the security held and the level of indebtedness.

And I think you, on behalf of the bank have been able

to respond in this way: The 1988 and 1992 loans from

AIB Retail Bank to Dr. G Fitzgerald were specific to

the specific borrower in question.

A. Correct.

Q. The terms were normal commercial terms for the borrower in question. The terms were not compared to any other borrower from the bank or other GPA employees or directors but were negotiated directly with Dr. Fitzgerald as a specific commercial loan to deal with his specific commercial circumstances?

A. That's correct.

Q. The 1989 loan from Allied Irish Bank Capital Markets was part of a general loan scheme for GPA employees and directors. The loan to Dr. Fitzgerald was provided under this scheme on the same terms as for all other borrowers under the scheme. They had recourse to the security for capital and to the borrowers for interest. This loan was repaid in full by Dr. Fitzgerald in 1992 when he took out fresh borrowings from Allied Irish Bank retail banking, is that right?

A. Yes. That is correct. However, I wasn't in Capital Markets at the time. I wouldn't have the detail of it, but my colleague would have given that.

Q. I appreciate that. And for that reason, you can say on behalf of the bank, that the AIB Capital Markets loan was not converted from a recourse from a non-recourse to a recourse loan in 1992, rather it was repaid in full from the drawing down of the new loan from AIB retail banking which was a full recourse loan.

A. That's correct.

Q. I'll come back in a moment and perhaps ask you about the scheme, for your general knowledge of how the bulk of GPA borrowers were dealt with subsequently, if that is

A. Well, I don't have detail on that. I think that question should be addressed to my colleague.

Q. To Mr. Barry?

A. That's correct.

Q. Very good. That's fine.

Now, I think coming to the negotiations between Allied Irish Banks and Dr. Fitzgerald in 1992, I think the bank was asked for details of all negotiations between officials or officers of the bank and Dr. Fitzgerald or any representative on his behalf in connection with the settlement agreement concluded on the 17th November 1992. And I think it was Mr. Barry who was primarily involved in the negotiations with Mr. Dowling on behalf of Dr. Fitzgerald, isn't that correct?

A. That's correct.

Q. But I think you did write a letter on behalf of the bank accepting the terms which were agreed, isn't that correct?

A. That is correct.

Q. So whilst you didn't have specific knowledge of the negotiations, you had a general knowledge of what was going on?

A. That's correct.

Q. And it's just in that capacity at the time I'd ask you to deal with the responses given by the bank. We can go into it in a little more detail with Mr. Barry tomorrow if that's all right.

A. Fine, thank you.

Q. I think the bank has responded that Mr. Paddy Dowling, who was assisting Dr. Fitzgerald in restructuring his financial obligations following the collapse of GPA, telephoned your colleague Mr. Barry to outline Dr. Fitzgerald's financial problems and to seek to come to a mutually accepted settlement.

A. Correct.

Q. That's how it commenced. And I think you were aware that Mr. Dowling outlined the following position to Mr. Barry, that Dr. Fitzgerald is an absolutely honourable man and would do all in his power to effect maximum repayment of his AIB loan. However, he has very limited income and limited assets I think. I think it was indicated that his income was primarily from writing, isn't that correct?

A. Yes. I haven't the detail, I understand that to be the case.

Q. I think the bank was informed that he had a part interest in his dwelling house which he had sold for $\text{€}230,000$. He is concerned that the life policy which he had given to the bank as security would leave his

wife in a position of not being financially secure; and in addition to the AIB Retail Bank loan for \$248,000, he had a loan of another amount of money to another bank and does not know how he would look after that, isn't that correct?

A. Yes.

Q. I think Mr. Dowling, on behalf of Dr. Fitzgerald, offered Allied Irish Banks $\text{€}1/230,000$ in settlement of the loan, isn't that correct?

A. Correct.

Q. I think the bank concluded that in view of the very limited assets of Dr. Fitzgerald and in view of his other loan, that commercially AIB would be better off accepting a cash settlement, even one of modest size, around 20% of the loan balance, rather than taking legal action against Dr. Fitzgerald in which scenario most, if not all, of Dr. Fitzgerald's assets would be used in the legal costs leaving him with little or nothing to pay AIB, and in addition AIB would have to pay its own legal costs, isn't that correct?

A. Correct.

Q. And I think as a result, the bank responded to Mr. Dowling and sought a settlement of $\text{€}1/240,000$ which Mr. Dowling agreed on behalf of Dr. Fitzgerald, isn't that correct? I think the basis on which the amount sought by the bank was that $\text{€}1/230,000$ had been offered and the bank felt that if you sought a modest

additional amount of $\frac{1}{2}$ 10,000, that Dr. Fitzgerald may be in a position to arrange it in order to settle his large loan obligation.

A. Correct.

Q. And I think on top of the $\frac{1}{2}$ 40,000, the bank took an assignment of the GPA shares, which I think both Mr. Dowling and the bank viewed as being comparatively worthless at that time.

A. That is correct.

Q. Now, I think again the bank was asked for a comparison of the terms of the settlement agreement concluded with Dr. Fitzgerald with the terms governing settlements concluded with other GPA employees or officers and in particular, the proportion of the principal sum outstanding which was foregone, and having regard to the securities held and the overall level of indebtedness.

Again, this was primarily a matter for Mr. Barry perhaps and the Capital Markets side of things, but I think you are in a position to give a general response from general knowledge you have.

A. Correct.

Q. In relation to the preparation of responses to the Tribunal. And I think that the bank, through you, can say that the loan to Dr. Fitzgerald which was outstanding at the time of the collapse of GPA and

those to many other GPA employees under AIB Capital Markets scheme were not comparable. The loans to GPA employees under GPA employee loan schemes were recourse to the borrower for interest only. As a result, when GPA failed and the security of GPA shares was considered almost worthless, we could only pursue the employees for interest. We negotiated with their agents and agreed a settlement of 17.5% which represented 4.5 years interest at the then current dollar interest rate. Is that correct?

A. Correct.

Q. The loan to Dr. Fitzgerald was a full recourse loan with security of GPA shares which were deemed worthless under the GPA collapse. We negotiated settlement of this loan based on the best commercial deal we deemed we could do based on Dr. Fitzgerald's limited income and assets at the time. The actual settlement was $\frac{1}{2}$ 40,000 or the equivalent of \$56 US dollars on a loan of \$248,000 and it represented about 22% of the loan?

A. That's correct.

Q. Is that correct?

A. Correct.

Q. Now, I understand the reasoning of the bank that the loans are not comparable because Dr. Fitzgerald had, in fact, worsened his own position in one way by taking out the 1992 loan and paying off the previous loans.

But in broad terms, other GPA executives or employees

who borrowed under the scheme settled with the bank for 17.5% of the outstanding loan, isn't that correct?

A. That's my understanding, yes.

Q. And Dr. Fitzgerald, his ultimate settlement was 22% of his outstanding loan?

A. Correct.

Q. I think, and again perhaps Mr. Barry can deal with this in greater detail, in dealing with Dr. Fitzgerald, the bank was satisfied with the information which was being supplied by Mr. Dowling as to Dr. Fitzgerald's circumstances, isn't that correct?

A. That's correct.

Q. And I think the bank was aware that Dr. Fitzgerald had entered into an arrangement with his son whereby he was effectively deprived of his one major asset, his family home, isn't that correct?

A. That is correct.

Q. And he assigned his shares to the bank?

A. That's right.

Q. For what they were worth?

A. Exactly.

Q. Thank you very much indeed.

CHAIRMAN: Mr. Sheridan?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SHERIDAN:

Q. MR. SHERIDAN: I think just one small matter which may be of assistance. I think that Dr. Fitzgerald had a

relationship with Grafton Street branch for many years.

I think it was, in fact, his branch?

A. That's correct.

Q. And he approached Grafton Street in 1988. The loan obtained from Grafton Street, I think, served two purposes: It served to consolidate previous borrowings and also served to finance the purchase of shares?

A. That is correct.

Q. GPA shares, so that there was an element of his borrowing which related to matters other than GPA shares?

A. Correct.

Q. And I think although it's not it is in the papers supplied to the Tribunal but not in the papers before us, between 1988 and 1989, I think there were some small increases in his facilities at the branch for various personal purposes?

A. That's correct.

Q. So that at the time of the Capital Markets loan to purchase additional shares again, there were, in fact, two loans, one from the branch which related partly to the purchase of GPA shares and partly for other personal purposes?

A. Correct.

Q. And then there was the Capital Markets loan which I think in all cases would have been afforded to borrowers solely in relation to the purchase of GPA

shares?

A. Correct.

Q. Now, it may be only Dr. Fitzgerald can answer, but it may have been that in 1992, this approach to the bank was prompted by a wish that rather than dealing with two different arms of the bank, that particularly having regard to the fact that part of his borrowings related to matters other than GPA shares, that perhaps he wanted all his relationships dealt with with the bank, dealt with in one area, by one arm of the bank?

A. That was probably the case, yes.

Q. And I think that, just for a complete picture, at the time of the settlement with Dr. Fitzgerald, there is a slight difference between him and other GPA borrowers in that there was a portion of his indebtedness which related to matters other than GPA shares.

A. That's correct.

THE WITNESS WAS EXAMINED FURTHER BY MR. COUGHLAN.

Q. MR. COUGHLAN: There was just one question, I should ask you, if you can be of assistance to the Tribunal, Mr. Nugent. If the GPA flotation had been all right, can I take it that not only Dr. Fitzgerald, but the other employees and directors who and the bank would have been well covered in respect of all outstanding loans?

A. Yes.

CHAIRMAN: Thank you for your assistance, Mr. Nugent.

Well, Mr. Coughlan because of the deferral until tomorrow of remaining evidence pertaining to Dr. Fitzgerald because of availability of certain witnesses, it means that this afternoon's witness has been notified that he has been requested to attend at or about two o'clock, so the preferable course is sit at perhaps ten past two for Mr. Malone.

Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL 2.10PM.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2.10PM:

MR. HEALY: Yes, Mr. Joseph Malone please.

MR. COLLINS: I should say, Sir, I appear with Mr. John Donnell instructed by Pearse Mehigan & Company.

CHAIRMAN: Thanks for your further attendance Mr. Malone, you are already sworn.

JOSEPH MALONE, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

Q. MR. HEALY: Thank you Mr. Malone.

You have provided the Tribunal, Mr. Malone, with assistance in recent times in connection with matters

which were already dealt with in part in some of the evidence you have already given to the Tribunal, and more recently you provided the Tribunal with an affidavit which was opened in the course of the Tribunal's proceedings and with a further narrative statement which deals with some of the matters that you have already dealt with and also amplifies on some of the evidence you have already given in the light of queries addressed to your solicitors by the solicitor to the Tribunal, is that a fair summary?

A. That's fair.

Q. In your narrative statement you say and I think you have a copy in front of you? You say in 1951 you joined Ryan's Car Hire where you were appointed its managing director and where you remained until in or about 1956/1957. You say that you then left that company to start-up your own business Joe Malone Self-Drive Limited which you eventually sold to the Kenny group Kenny Motor Group in England in 1964 and you say that you worked for that company for some years following the sale. You say when you left that business you took up an appointment as chairman at the Rehabilitation Board, a position you were appointed to by the late Donagh O'Malley TD and Minister for Health. And it was during that time that you were approached by the then-marketing director of Bord Failte, Michael Whelan, who had invited you to become the general

manager in North America for the Irish tourist Board.

You took up that position in early 1967 and you held it until 1976 when you were then appointed Director General of Bord Failte by the Inter-Party government led by Liam Cosgrave TD.

You say you left Bord Failte in 1982 when you joined the Smurfit Group where you held the position of executive vice-president of marketing for approximately twelve months. You subsequently joined General Automotive Corporation for a five-year contract and you worked with that company from 1983 to 1988 and during that time you were based in Ann Arbor in Michigan.

Following that appointment you took a position as president of the Saunders Hotel Group in Boston where you remained for five years, but you resigned from that position when you were diagnosed as having a serious illness in 1992, is that right?

A. That is correct.

Q. You say you had no real executive functions for the next few years although you did start-up a new business called Malone Car Rental in 1995 and that that business has since been sold. You say that throughout your career and as previously outlined, you made a number of payments to various politicians over the years and you can recall some of these payments. I don't want to go into the names of all of the individuals at this point

because I am not sure that they are aware that they were due to be mentioned in connection with this evidence. But I think suffice it to say that you have made payments to a number of politicians, am I right in thinking that they're mainly Fianna Fail politicians and one Fine Gael politician, is that right?

A. That is correct.

Q. And that those payments, you say, were made to them to help them fund political campaigns?

A. That is correct.

Q. From that am I to understand that the payments were made at election times?

A. That is correct.

Q. You say that in or around 1984 and 1985, Mr. Charles J. Haughey approached you and asked you would you consider becoming Chairman of a new helicopter company that his son, Ciaran, was setting up at the time. You say that in view of your then-position as director of Aer Lingus you declined the invitation because of a possible conflict of interest.

As previously stated on affidavit you say that you recall a meeting which took place in Abbeville, Kinsealy, and at which you discussed a possible investment in Celtic Helicopters with Mr. Haughey along with your good friend the late Mr. PV Doyle. You say that the discussion was very general in nature and on your way home from the meeting, you discussed the

investment again with Mr. PV Doyle and following which you decided to make an investment on behalf of your son Joseph Junior. You say: "I did this partly to mend fences with Mr. Haughey as I felt he was offended by my earlier refusal of the Chairmanship, partly because of the friendship between my son and Ciaran Haughey and partly as an investment for my son's benefit."

I understood from our discussions that it was Mr. Doyle's intention to invest in Celtic Helicopters, but you say: "I have no knowledge as to the amount of his investment, whether or not he intended taking shares in Celtic Helicopters or the source of the funds which Mr. Doyle intended to use for his investment. I was satisfied that there was no conflict of interest for me in this investment as it was for Joe" meaning your son "And very different to the offer of Chairmanship as it did not involve me," meaning yourself," in any policy or executive decisions. You say that: "Some year subsequently, when again approached by Mr. C. J. Haughey for an additional investment, I decided against doing so on the advice of my then financial adviser and good friend Mr. Desmond Traynor. I would again like to point out that my original investment in Celtic Helicopters was made for the benefit of my son Joseph Junior and was not intended for the benefit of Charles J. Haughey or

anyone else."

You say that you made no secret whatsoever of your friendship over the years with Mr. Haughey or the late PV Doyle or the late Desmond Traynor, but you say that it was a friendship that never extended to any one of these gentlemen reposing in you their financial confidences and accordingly you say at no time would you have been made aware of or are familiar with the financial circumstances and dealings of these individuals and their families or any of the people they may have advised. "It quite simply would never have arisen in the course of our friendship and nor would I have expected it." Consequently, you say you are unable to assist the Tribunal in any way as to the financial dealings of Mr. Haughey's wife or children or members of his extended family for that matter and you make that statement to the Tribunal in respect to queries concerning any potential dealings you may have had with other members of his family apart from Ciaran Haughey, isn't that right?

A. That is correct.

Q. And the Celtic Helicopters matter.

I don't think I need to say that by Mr. Haughey, you mean Mr. Charles Haughey?

A. Mr. Charles J. Haughey, that is correct.

Q. Or his wife or his children?

A. That is correct.

Q. Other than the evidence you have given in relation to Ciaran Haughey?

A. That is correct.

Q. You say you know absolutely nothing about Feltrim Mining and less again about Larchfield Securities.

You also want to say that you have at all times cooperated fully with the Tribunal and responded promptly to repeated demands for information through your solicitors.

Now, in addition to the information contained in your main statement, you have also provided the Tribunal with some further information in the past few days concerning another individual mentioned in the course of evidence at the Tribunal sittings as having been an original investor in Celtic Helicopters. By that I mean an investor who put money into the company in or around 1985. And I think that was a Mr. Cruse Moss?

A. That is correct.

Q. From the information that was given by a number of other witnesses to hearings of the Tribunal, it would appear that in or around 1985, Mr. Cruse Moss invested several thousand pounds in this company and that in or around September of 1990, his shares were sold back to one of the other shareholders I think for in or around the same amount of money that he invested the first

day, there might have been some slight uplift?

A. There was a modest profit and I understand it was sold back to the one of the family.

Q. I think it was sold back to another shareholder, that shareholder was in fact a company, a family company.

A. Okay.

Q. I think you were aware of Mr. Cruse Moss's associations in Ireland and I think you were the person who prompted him to make this investment first day, would that be right?

A. I was asked by him for suggestions regarding investment in Ireland and I made a number of suggestions; one, some exploration shares, and I suggested CRH. I also suggested his wife was particularly interested in paintings, so there was a Jack Yates painting for sale at that time in Grafton Street for $\frac{1}{2}$ 12,500 and I know that they went to look at it. I am not sure whether they bought it or not. And I also then suggested that if he would like to invest in a high flyer, quote/unquote, that he might consider taking some shares in Celtic Helicopters. And my understanding is he bought about $\frac{1}{2}$ 5,000 worth of shares.

Q. And was your association with him connected with the fact that you were, at that time, an executive with General Ottawa Motive Corporation?

A. That is correct.

Q. And was his interest in Ireland, did it arise from some

dealings General Automotive Corporation had in this country or was it solely as a result of your connection with him in the States?

A. No. Cruse Moss owned the company General Ottawa Motive Corporation which in 1983 took over the operation of bus building on behalf of CIE in this country in Shannon.

Q. Was that the GAC Bombardier venture?

A. Bombardier was the predecessor and GAC bought out Bombardier sometime in the summer of '83.

Q. I understand. And was he in Ireland in connection with that?

A. From time to time.

Q. Did he spend time in Ireland in connection with that?

A. From time to time he visited Ireland on his trips abroad.

Q. And when you say that you mentioned to him that there were a number of potential investments you might have recommended from the high flyer, as you put it, of Celtic Helicopters, to perhaps the more solid CRH or even as events transpired perhaps even the Jack Yates painting, did you leave it to him to decide what way he proceeded?

A. Absolutely.

Q. But how

A. He is not the type of person you could tell.

Q. Not the kind of person that you'd go and make decisions

for?

A. He was a top executive, had been with General Motors and as I worked with him, I just gave him the suggestions and he made the decisions.

Q. But how did he, having made a decision as we know, to invest in Celtic Helicopters, how did he arrange for that investment to be made?

A. I can't recall but I am sure, I mean, I must have had some part in it because otherwise how would he do it? But I just don't recall exactly the circumstances but I am sure that I would have facilitated him.

Q. Do you remember how the $\frac{1}{2}$ 5,000 or I forget exactly how much money you put up now $\frac{1}{2}$ 15,000 I think, is that right?

A. No, he put up 5,000 I don't know it was $\frac{1}{2}$ 5,000 or \$5,000.

Q. Do you remember the investment that you put up which I think was about 15,000, was it?

A. I put it up on behalf of my son, yes.

Q. I presume it was you put up the money?

A. That is correct.

Q. Do you remember how that money was transmitted to Celtic Helicopters?

A. Through Des Traynor.

Q. Is it likely then you would have arranged, if asked, for Mr. Cruse Moss's investment to be transmitted to the company in the same way?

A. It would have been, yes.

Q. Do you remember the sale of the shares in or around 1990 by Mr. Cruse Moss?

A. I do.

Q. Did you have an involvement in

A. I did.

Q. the sale of the shares? Can you say what that involvement was?

A. I was contacted either by Ciaran or Eimear Haughey to say that the family wished to purchase back the shares and could I make contact with Cruse Moss and ask him would he be prepared to dispose of them? And I did that. And he said yes. And the shares were bought back.

Q. And who did the haggling on the price, do you recall?

A. There was no haggling on the price.

Q. Was there if there was no haggling on the price, who stipulated the price at which they would be sold?

A. My understanding it was Ciaran Haughey stipulated the sale price and it was accepted by Cruse Moss.

Q. I see. At that time, did Ciaran Haughey say to you why he wanted the shares bought in, if you like, or bought back?

A. I thought I mentioned that already; that they wanted the family wanted to recover the shares.

Q. So as to consolidate family control?

A. I don't know, I didn't ask.

Q. Did they ask you at that time would you be prepared to sell your shares back?

A. Well, I got the impression that that offer was there too, but it was never specifically asked.

Q. Did you consider at the time suggesting that they might buy your shares as well?

A. I did.

Q. And did you make that suggestion?

A. No.

Q. I may come back to that in a minute.

You say in your narrative statement that when you were first approached by Mr. Haughey, and I think you may have touched on this in your evidence on an earlier occasion, you were asked whether you'd be prepared to become Chairman of a new helicopter company.

A. That is correct.

Q. And I think you have told the Tribunal in evidence that that proposition was put to you, I think, at Kinsealy, is that right?

A. That is correct.

Q. And at that time, was that was that an occasion on which you were accompanied by Mr. PV Doyle or Mr. Desmond Traynor, can you recall?

A. I was on my own.

Q. And you say that you declined the invitation because of a possible conflict of interest due to your directorship in Aer Lingus?

A. After consultation with Michael Dargan who was then the Chairman in Aer Lingus.

Q. You spoke to him about it?

A. I did.

Q. I take it you indicated to Mr. Haughey you considered the matter and you'd come back to him?

A. That is correct.

Q. He had appointed you a director of Aer Lingus?

A. I was appointed as a director of Aer Lingus in 1980, and it probably was Mr. Haughey.

Q. Presumably

A. No, it wouldn't have been

Q. He was Taoiseach in 1980, he was?

A. Okay. Mr. Haughey, he it would have been by his Minister for Transport.

Q. It would have been by his government in 1980?

A. Yes. There was a precedent for that appointment because a former director general was also appointed by the Inter-Party government as a director of Aer Lingus.

Q. Mr. Haughey would have been aware you were a director of Aer Lingus? He would have been aware at the time when you told him you'd consider the position, did you indicate to him at that stage that there might have been a possible conflict of interest and that would be something that you'd want to think about?

A. I don't recall, but I don't recall, but I didn't feel comfortable about the offer.

Q. In any case what I am anxious to explore with you is what you said to you Mr. Haughey. Is it likely then what you said to him was I'll think about it without explaining what it was was exercising your mind, you went off and spoke to Mr. Michael Dargan?

A. That's correct.

Q. What discussions did you have with him about it?

A. I just told Michael what had happened. And he said that it could be conceived as a possible conflict of interest and he said if I was anxious to go ahead with it, that he personally would have no objections and that he would take me and we could talk to the then-minister of the day and I decided I said no, I wasn't disposed to doing that.

Q. So you canvassed the matter with Mr. Dargan. He said to you that he didn't

A. Canvassed?

Q. You discussed it with him?

A. Discussed, yes.

Q. And that he didn't think that there would be a difficulty but that he thought that you should discuss it, accompanied by him, with the current minister for responsible minister, whoever that was, transport and power probably?

A. Yeah.

Q. You yourself decided in any case that notwithstanding Mr. Dargan's views and his own suggestion that you

wouldn't proceed with it?

A. That is correct.

Q. And did you take up Mr. Dargan's suggestion and go with him to the then-minister, relevant minister?

A. I thought I already made that clear. No.

Q. You never went?

A. Never went to the minister. I decided there and then

I was not I was not going to do it and told Michael

Dargan. But I thought I had made that clear.

Q. And then you went back to Mr. Haughey and indicated that you didn't want to take up the offer?

A. Sometime later.

Q. The offer in any case came directly from Mr. Haughey, not from Ciaran Haughey?

A. Directly, yes.

Q. And when you went back to Mr. Haughey, however much later it was, and when you told him that you didn't want to take up the offer, did you say to him at that point that it was because of a possible conflict of interest?

A. I did.

Q. And did you explain what the possible conflict was?

A. I did.

Q. And I think there can be no doubt that at that time Aer Lingus, apart from being an aircraft company flying fixed-wing aircraft, also had its own helicopter operation?

A. That is correct.

Q. And this helicopter operation of Mr. Ciaran Haughey's was going to be operating in the same market as the Aer Lingus helicopter operation, isn't that right?

A. Well, my understanding, as far as I can recall, was not that they were going to not compete with the type of business that Aer Lingus was getting, which was mostly offshore business, taking people to oil rigs and they have contracts with lighthouses and that, Ciaran was more interested in the corporate business and also in the weekend social business affairs and things like that.

Q. Regardless of whether there would have been a conflict on the face of it, there would undoubtedly have been, as you no doubt correctly decided, a perceived conflict, isn't that right? Here you were a director of a helicopter company in part and you could hardly be a Chairman of another helicopter company?

A. Yes, because I would have been involved in policy decisions and I would have known exactly what the I mean, I would have been far more, you might say, involved in the business than I really knew nothing about as opposed to the shares which I bought, which I'd like to put on record, that the shares that were purchased were purchased in 1985 in June. I gave up my I knew at the time that I bought those shares the then-Minister for Transport had advised me that I would

not be reappointed to the Board of Aer Lingus, it was an Inter-Party government. And in any case the shares which I bought were B shares, non-voting shares, so I would have had no, you might say, policy decisions in Celtic Helicopters. And as far as Aer Lingus is concerned, the helicopter business was a very, very small part of the Aer Lingus business and rarely came up, from memory, as far as I can recollect at Board meetings for decisions.

May I just, sorry may I make a point? It's just something I said earlier on in case I'd like to correct it now. In the narrative that I have given you, it's slightly different than the affidavit that I provided for you because I didn't make it clear in the narrative that I never knew whether or not PV Doyle bought shares in Celtic Helicopters. I was never sure.

Q. I think that's clear from your affidavit as well.

A. That's okay. I just wanted to correct it just in case there was a misunderstanding.

Q. That's the meaning I took from your affidavit in any case.

A. All right. Thank you very much.

Q. And just to be clear about it, the point you are making in relation to a possible conflict of interest, leaving aside your view of the operations of Aer Lingus and the operation of Celtic Helicopters, was that the shares

that you would have been or that you did, in fact, acquire or that you acquired in your son's name that you paid for, were, in any case, non-voting shares?

A. That's correct.

Q. And your view was that that wouldn't have or that would have precluded you from having any voice in the company?

A. That is correct, or my son.

Q. I know that you feel that the operations of Aer Lingus and Celtic Helicopters were, to some extent, distinct but you yourself nevertheless believed there was a possible conflict of interest. Can you tell me what possible conflict of interest did you think there could be?

A. Well, if I was Chairman of the company, I'd be much more interested in making it a success. I would have been involved, you might say, from an executive point of view, so there could be a conflict of interest, and then human nature being as it is, I would possibly be much more interested in what other competitors were doing.

Q. Yes, I understand.

In investing in the company, you were still, nevertheless, to some degree, were you not, or through your son, was your son not investing in the future prosperity of this company, the future profitability of

this company?

A. True.

Q. And wasn't that a profitability or would you agree with me that that was a profitability which potentially or even possibly, to use your word, conflicted with the profitability of Aer Lingus?

A. It could be construed that way.

Q. You say that one of the reasons you say there were three reasons which prompted you, having declined the offer of a Chairmanship of this company, there were three reasons which prompted you to proceed with an investment on behalf of your son and this was, firstly, to mend fences with Mr. Haughey as you felt he had been offended by your earlier refusal; secondly, because

A. I'd say offended is too strong a word. Disappointed

Q. I'll go back to the three of them. The second one was partly because of the friendship between your son and Ciaran Haughey and the third one was partly as an investment for your son's benefit.

Now, in relation to Mr. Haughey's reaction you say that you think offended might have been too strong a word.

A. Correct.

Q. And that disappointment might be a better word?

A. Correct.

Q. And the other expression you use is to mend fences.

Do you want to change that word or do you think that word should stay in your narrative statement?

A. Well, in the broadest sense, it should stay, yes.

Q. After you had refused the Chairmanship, or declined it as you put it, do you think it was your declining it or the reasons that might have prompted you to decline it that caused some disappointment, as you put it, on Mr. Haughey's part?

A. Well, Mr. Haughey was not a person to whom many people would say no.

Q. And saying no to him ran the risk, if not offending him, at least perhaps not being in his, maybe we will put it more colloquially, quite in his good books?

A. Well, the family were very close because my two sons, Sean and Ciaran, were very close friends and my son was here I was living in the United States working for the tourist board and my son was in Castleknock and he visited every weekend with the Haughey home. So there was much more of a family situation and it was the first time that he really ever asked me to do something. And he wasn't too happy about it.

Q. And you felt that in some way in order to ensure that he wouldn't continue to be unhappy, it might be preferable if you made some show of even friendship or whatever you want to call it, by putting up some money for this company to get his son off the ground?

A. I talked to my son about it and my son was very anxious would I do it because of Ciaran and to help Ciaran get off the ground.

Q. After the investment of $\text{€}15,000$ was made, I presume although it was made in your son's name, it was your money and, therefore, you'd expect to have been kept up to speed if the investment turned out to be very good or turned out to be very bad as the case might be?

They were hardly going to be Ciaran Haughey and his associates were hardly going to be writing to your son?

A. I don't understand the question. Is it a question?

I don't understand what you are saying.

Q. Let me put it this way, I'll take it more slowly.

After you invested or after you put up the $\text{€}15,000$, what did you find out about the company?

A. I didn't find anything out about it. I left it to my son to keep in contact with Ciaran Haughey.

Q. Did you ever get a dividend?

A. No, I never got a dividend, I never got a report.

Q. He never got a dividend?

A. I would say no, not a dividend, but did he get reports from time to time.

Q. What were those reports?

A. I don't know.

Q. Surely you must have had some idea how the company was doing, whether it was doing good, bad or indifferent?

A. All I knew was they were adding more helicopters.

Q. That doesn't mean the company was doing well or not doing well?

A. You asked me the question, that's the only way I knew.

Q. That was only way you knew?

A. That's the only way I knew.

Q. You knew that from your general knowledge?

A. Yes, sir, because I was living in the States at the time. I was backwards and forwards.

Q. What do you mean by that?

A. I would be back here for meetings. So in other words I mean, I wasn't living in Ireland, so there was no way of knowing from day to day what was happening. From time to time, I would ask how Celtic Helicopters was going? I'd ask my son because he was living here at the time and he said it seems to be going great guns, dad.

Q. How old was your son at this time?

A. 27, 28.

Q. And he was under the impression they were going great guns?

A. Yeah.

Q. Even though as far as you know, and I think this is the case, no dividend was ever paid?

A. No dividend.

Q. And were you aware that, in fact, by in or about 1992, this company was in bad shape?

A. Well, I was approached the possibility of a further investment was presented to me at that time and I then it's in my affidavit. So I gathered at that time that things weren't going well.

Q. Were you told things weren't going well?

A. Not by the person who asked me to invest, but I talked to Des Traynor and it was Des Traynor who advised me.

Q. And was it not Charles Haughey who asked you to invest on the second occasion?

A. It was, that's part of my

Q. On that occasion he never told you and it was only from somebody else you found out that the company was not in good shape?

A. It was again a very informal it wasn't a set down meeting. He said, Ciaran is restructuring the company, perhaps you'd like to take some further investment in it. And I said, I don't really know. He said, well, if you want to find out all about the company, why don't you talk to Des Traynor.

Q. And what did Des Traynor tell you, can you recall?

A. He just advised me he said I can't recollect exactly what he said, but my recollection, as far as I can recall, was that he said, okay, it's doing all right, and I wouldn't recommend you invest in it. And by us doing all right my understanding of that was that he already had sufficient investment for the company.

Q. He said it's doing all right and I wouldn't recommend any further investment?

A. Yeah, he said

Q. Don't those seem to be slightly contradictory statements?

A. Not necessarily.

Q. Perhaps you'd explain it to me. Seems to me to be contradictory.

A. If he said he needed $\frac{1}{2}$ 15 million and he was oversubscribed by 16 million, then he wouldn't have needed me.

Q. Why do you think Mr. Haughey asked you so?

A. I didn't that didn't occur to me to ask at the time.

Q. Why do you think Mr. Haughey would have asked you if the only reason Mr. Traynor had for not promoting the investment was that you had enough people already? It doesn't make sense, does it?

A. Does to me.

Q. Why would Mr. Haughey ask you to become involved in a company in 1992 when, in fact, according to what you tell me, Mr. Traynor was conveying to you that there was no need for any further investors?

A. Maybe Mr. Haughey didn't know what was going on in the company and maybe because I was an original investor he was offering me the opportunity of putting more money in. You are asking me for you know, my answer to that is I don't know really.

Q. Well, that's the meaning I take from it. It doesn't seem to make too much sense.

A. Yeah, it makes more sense

Q. Two last things, Mr. Malone. Do you remember did you tell Mr. Haughey that you had been to discuss the

matter with Mr. Michael Dargan?

A. Yes.

Q. You did say that to Mr. Haughey when you went back to him?

A. Yeah.

Q. Thanks very much, Mr. Malone.

A. Thank you very much.

CHAIRMAN: Mr. Collins?

MR. COLLINS: No questions, Sir.

CHAIRMAN: Only one matter, Mr. Malone. Am I right in recalling that there were, in fact, two gentlemen by the name of Michael Dargan both involved in business life?

A. I only recollect one, Your Honour. That was Michael Dargan, the Chairman of Aer Lingus, who was also before you here. That's the Michael Dargan.

CHAIRMAN: Yes, there may have been another person I think who played field sports for a couple of games for Ireland.

A. I don't remember I don't remember.

CHAIRMAN: Well, it's the person who was here anyway.

A. It was.

CHAIRMAN: Thank you very much for your attendance again.

MR. COUGHLAN: Those are the available witnesses, Sir,
until tomorrow morning.

CHAIRMAN: Tomorrow morning at half past ten so.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY 6TH DECEMBER 2000 AT 10.30AM.