

MORIARTY TRIBUNAL - DAY 148

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,
30TH OCTOBER, 2001 AT 11 AM.

MS. O'BRIEN: There will be two short witnesses, Sir,
whose evidence will be taken in advance of Mr. Michael
Lowry.

Mr. Colm Maloney, please.

COLM MALONEY, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Mr. Maloney.

Mr. Maloney, I think you furnished the Tribunal with a
memorandum of the evidence that you are in a position
to give and, I wonder, do you have a copy of that with
you in the witness-box?

A. I do.

Q. And what I propose doing, Mr. Maloney, is taking you
through your memorandum so that you can confirm the
contents of it, and there may be one or two matters
that I might wish to raise with you by way of
clarification, if that's agreeable to you.

A. That's fine.

Q. Now, in your memorandum you state that you worked as an
accountant for ESAT Digifone for a period of three to
four months from November 1995 to February 1996, is
that correct?

A. That is correct.

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Q. You state that at some point at the end of December, 1995, or the beginning of January, 1996, you were asked by Peter O'Donoghue, the Chief Financial Officer of ESAT Digifone, to do up a set of accounts to the end of 1995, is that correct?

A. That is correct.

Q. You state that in December of 1995, or January 1996, you probably asked Jan Edvard Thygesen, the then Chief Executive officer of ESAT Digifone, for details of any companies with which ESAT Digifone was dealing, is that correct?

A. That is correct, yes.

Q. You state that you then sent a fax to these companies asking for a note of their position vis-a-vis ESAT Digifone as at the end of 1995, is that correct?

A. That would be normal practice, yes.

Q. You state that one such fax would have gone to the Chief Financial Officer or financial controller of Telenor in Norway. You state that these faxes were probably sent without the name of the Chief Financial Officer or the financial controller being used on the fax, is that correct?

A. That is correct.

Q. You state that to this request, you received a reply in January 1996 by fax from which you abstracted the information on the handwritten document with reference

to Telenor Mobil, i;½31,600 re David Austin. Is that correct?

A. That is correct.

Q. You state that you then brought this information

/RS

IARTY TRIBUNAL - DAY 148

that is, the fax reply to the attention of Jan

Edvard Thygesen who seemed to be familiar with the

matter, is that correct?

A. That is correct.

Q. You state that Mr. Thygesen did not know who David

Austin was?

A. That is correct.

Q. You state that you told him that, to the best of your

knowledge, Mr. Austin was a full-time public relations

executive with the Jefferson Smurfit Corporation, which

you told Mr. Thygesen was one of Ireland's largest

public companies. You told him you knew this from

reading the newspapers, is that correct?

A. That is correct.

Q. You state that you also said that you were not aware

that Mr. Austin also acted in that capacity on a

freelance basis.

A. That is correct.

Q. You state that you concluded the conversation by

suggesting that in the absence of further

clarification, you would consider it as a public

relations expense and suggested that Mr. Thygesen direct you otherwise if and when he had better information?

A. That is correct.

Q. You state that in any case, you were a long way from completing the accounts, and you were of the opinion that these initial pieces of information should begin to make more sense for all concerned when the total picture began to emerge?

/RS

IARTY TRIBUNAL - DAY 148

A. That is correct.

Q. And that, I think, concludes your memorandum?

A. That's correct.

Q. And if we can just have on the overhead screen a copy of that handwritten document which, as you have stated in your memorandum, you were the author of that document, and you generated it from information which you gathered together from various sources as to the liabilities of ESAT Digifone, is that correct?

A. That is quite correct.

Q. Can I just ask you one or two things in relation to that document. You state in your memorandum, Mr. Maloney, that you would have discussed with Mr. Thygesen, or you would have asked him for details of any companies with which ESAT Digifone was dealing.

MR. FITZSIMONS: Sorry, the witness says "probably", in his memorandum. Probably asked for the record.

CHAIRMAN: Indeed, in that context, Mr. Fitzsimons.

MR. FITZSIMONS: Just for the record. It's terribly important, Sir, because when you come to write your report it will be dependent on the records. That's why I make these points about the record.

CHAIRMAN: Noted, Mr. Fitzsimons.

Q. MS. O'BRIEN: You state that you would probably have asked Mr. Thygesen?

/RS

IARTY TRIBUNAL - DAY 148

A. That is correct.

Q. Do you have a recollection, Mr. Maloney, at this remove of having asked Mr. Thygesen?

A. No, I have been very careful about what I wrote, and quite frankly, I wouldn't have known what companies in the Telenor family we might have had obligations with, so I would have gone to a reputable, an authoritative source to get that information, and Jan Edvard Thygesen would be the relevant person. That's why I am saying "probably".

Q. Is there anybody else within ESAT Digifone that you might have approached for this information at the time?

A. No, because quite frankly, the ESAT Digifone representation, or the Norwegian representation on the ground at that time in Dublin would have been quite

small, and the only relevant person that I would ask would be Jan Edvard Thygesen, if I did ask.

Q. If you did ask him?

A. Yeah.

Q. You state that you then sent faxes to a number of companies asking them for the position vis-a-vis ESAT Digifone at the end of 1995.

A. That's correct.

Q. So you would have asked them, presumably, whether there were liabilities owed to them by ESAT Digifone, and you would have asked them for details of those liabilities?

A. I would have asked them for a statement of their balance with us, or with ESAT Digifone, as at that time. It was clearly liabilities, in view of the fact that there was quite a large number of staff from

/RS

IARTY TRIBUNAL - DAY 148

Norway working in Dublin, and their funds and their expenses and salaries were obviously being paid by Norway. So there was clearly an expense there, so I wouldn't have been specific in terms of what the expenses might be. I would simply have just said, "I am drawing up accounts of the 31st December; please let me know how much we owe you."

Q. Exactly.

A. And in the sense, when that reply would have come back, I might have anticipated there might be some

clarification, but first of all I just want to get a recognition of the question.

Q. Initially it was a general query for all liabilities?

A. That's correct.

Q. You state that one such fax would have gone to the Chief Financial Officer or financial controller of Telenor in Norway, and you state that you probably would have sent that fax without the name of that person, just simply sending it to the person who held that particular function.

A. Well, that's true. That's more than likely what I did.

Because, quite frankly, it is standard it is fairly standard around the world, all over the world, for accountants to write to each other at the end of the year to ask each other how much we all owe each other.

No matter what company it is. No matter where it is in the world. It's fairly standard. So if you get such a request, it doesn't strike you you don't need who sent it to you as long as you know it's from the organisation which is purporting to send it. You don't

/RS

IARTY TRIBUNAL - DAY 148

need to know the person's name.

Q. You just sent one general inquiry to the Chief Financial Officer or the financial controller of Telenor; you didn't send separate inquiries to the various Telenor companies, or Telenor

A. I cannot respond accurately to that, in view of the fact that there was obviously a reply from Telenor Invest as well. I cannot you know, I couldn't be specific about that. More than likely, if I was to ask for the balance of probability, I more than likely if I had the information as to the number of companies in the family of Telenor with whom we had relationships, I would more than likely have sent it to every one of them. They would probably have numbered no more than two to three.

Q. Those faxes that you say you sent, Mr. Maloney, presumably you would have retained copies of those faxes?

A. I would have been building a leverarch file of any correspondence in relation to the preparation of the 31st December, 1995 accounts, I would have, yes.

Q. I am just bringing you on. We'll return to it in a moment, but you left, I think, ESAT Digifone in February of 1996, and do you recall that you were working on that file at that time?

A. No. I was at that time there was a lot of activity in Telenor or ESAT Digifone at that time. I had been working in January; these replies came through in January. There was a lot of other activities that I was assisting both the operational side, Jan Edvard's

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side, and Peter on, of a non-financial nature and of a financial nature, building financial models, making preparations of projections etc. So this was not a singular focus activity. I probably parked it I more than likely I can't, you know, to the best of my memory, I possibly I wasn't working on it exclusively; I would have parked it for a while possibly.

Q. What I am trying to get at is this, Mr. Maloney: Do you recall, at the time you left, whether that file on which you would have put a copy of the faxed queries was in existence at the time?

A. I cannot respond accurately to that question. Obviously that notation was on the file. I cannot recall what I left on the file or not.

Q. I see.

A. Do you know?

Q. Yes, I see. There is no difficulty on that.

You state that you received a reply in January, 1996, by fax, from which you abstracted the information on the handwritten document with reference to Telenor Mobil, i;½31,600 re David Austin. Now, can I ask you this, Mr. Maloney, have you a recollection of receiving the fax in January of 1996?

A. Well, to the best of my memory, the fax was on my desk. You know, yes, I can remember seeing the fax, is the answer to your question, yes.

Q. And can you recall from whom the fax was received?

A. No, I cannot.

/RS

IARTY TRIBUNAL - DAY 148

Q. And can you tell me this, did the fax well, to start with, what information do you recall that the fax contained?

A. Well, it would have contained that reference anyway to Telenor Mobil re David Austin. It possibly contained other information as well. I can't recall.

Q. Right. Would it also have contained the information there, Telenor Invest, 100,000?

A. It probably might have, it possibly might have been a global response, do you know?

Q. But you are clear in your mind that the information there that you abstracted from the fax was Telenor Mobil, re David Austin, i;½31,600?

A. It's quite clearly there. There is no dispute about that.

Q. At the time you were working for that information, or the time the information was furnished to you, do you recall that any copy invoices or any backing documentation or vouchers of any sort were also sent to you, or was it just simply the information in the fax?

A. With regard to invoices, I would, in the light of receiving that response, I would have gone looking, and I probably, possibly, would have asked Jan Edvard had

he received such an invoice. I saw no such invoices.

Q. I see. So you saw no invoices from Telenor Mobil re David Austin within the records of ESAT Digifone?

A. I did not.

Q. Was it that, Mr. Maloney, that prompted you to go and discuss this matter with Mr. Thygesen or to take it further, or was it just a general query you were

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IARTY TRIBUNAL - DAY 148

raising with him?

A. What prompted me to bring it to Mr. Thygesen's attention was that first of all, it was a considerable sum of money. The only knowledge that I had of a David Austin was, as I have stated in my statement, just from reading the newspapers, that he was a full-time executive with the Jefferson Smurfit Group. I thought it was a lot of money. I thought it was public relations. So they were my thoughts, and I just wanted to go to Jan Edvard to get his opinion about what it might be, in recognising the fact that he was the Chief Executive officer, and if Telenor Mobile were spending money on behalf of ESAT Digifone, they should be more than likely informing him.

Q. Do you have a clear recollection of your conversation with Mr. Thygesen on that occasion?

A. My memory of that is that it's a two minute one-and-a-half-minute conversation. I walked over to

his desk. I simply showed him the fax. I said, "Do you know who David Austin do you know what this is about? It's a lot of money for what I think is public relations." I explained to him the what I had understood to be David Austin's, the late David Austin's role in Irish business. And so I then said to him, you know I was looking for him to give me a clarification. You will recognise that I would have anticipated that he would know about it, being the managing director of the company. But there was no he wasn't instantaneously

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IARTY TRIBUNAL - DAY 148

giving me a response. Now, he had no obligation to tell me what it was about. So, by his lack of clarification, by his lack of by his lack of opening up to me about what it was about or explaining to me, I made the rather strange statement there, he seemed to know about what it was about, but at the same time, he didn't know who David Austin was. I am just trying to give you the context of why I made that statement.

Q. But you do say in your memorandum that Mr. Thygesen seemed to be familiar with the matter.

A. Well, because he wasn't saying, "God, I have to get onto those guys in Norway to see what this is about."

He didn't make such a statement.

Q. But he wasn't being forthcoming, or you felt at the

time that he wasn't being forthcoming with you as to what this particular liability was

A. To the best of my memory, he was not being forthcoming; but then I didn't see it as I didn't see it I mean, it wasn't I was of the opinion it was public relations. It was 31,000. I was only upset about it, or concerned about it, because it was a lot of money, do you know? I just thought it's a lot of money to spend on public relations.

Q. Were you also concerned because you couldn't find any backing invoices for it?

A. I would have probably asked him for an invoice, had he seen such an invoice; and in any case, I would have been quite comfortable about the fact that nothing would pass muster with the board or by the time we would eventually get to prepare accounts, that all

/RS

IARTY TRIBUNAL - DAY 148

these things would have to be sorted out. I didn't have to see there was a lot of things happening.

One would have to come back to that crossroads at some stage.

Q. I see.

A. Do you know? Otherwise it would never be accepted.

Q. You saw this as being a preliminary stage in a particular function that you were carrying out, and that a time will come when you would have to have

answers, or whoever was completing the documents, or for that matter the board of directors would have to have answers about it?

A. Absolutely. I would have to have answers for Peter O'Donoghue on that before I would, you know, because I would have if I ever got to the stage of completing accounts, I would have to be able to stand over and talk about them and know what it's about.

Q. I see. Now, you state that you concluded the conversation by suggesting that in the absence of further clarification, you would consider it as a public relations expense and suggested Mr. Thygesen direct you otherwise if and when he had better information?

A. I possibly said that. Probably said that. You know in other words, I concluded the conversation. I wasn't getting any clarification, to the best of my memory, from Mr. Thygesen, with whom I had an excellent relationship and who was a very nice man. And you know, I just decided to move on. And one could always, if further, better information came, when the invoices

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IARTY TRIBUNAL - DAY 148

came or whatever, and if it was I was incorrect in my assumption, one could deal with it then. It was just an interim parking arrangement.

Q. You would assume on an interim basis that this was

public relations because of your knowledge that Mr. Austin was involved in a public relations function for the Jefferson Smurfit Group, and that the matter would be taken up further down the line or clarified at a later stage?

A. That's correct.

Q. Am I correct in thinking that you never heard anything more from Mr. Thygesen in relation to this matter?

A. Oh that's quite correct, yeah.

Q. He never came back to you about it?

A. Well, to the best of my memory, no.

Q. And do you have any recollection of progressing the matter any further before you left ESAT Digifone in February of 1996?

A. No, I do not have any memory of progressing it any further.

Q. As regards the preparation of the accounts that you were working on when you left in February of 1996, who would have taken on that task?

A. Oh, Mr. Peter O'Donoghue.

Q. Mr. O'Donoghue would have taken it on?

A. Yes.

Q. Just the fax that you received in January of 1996 from Telenor in response to your query in which there was reference to the Telenor Mobil re David Austin liability, would you also have placed that copy fax on

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the file that you were preparing and keeping at the time?

A. Well, I have no memory of what I did with the fax.

It's possible I left it with Mr. Thygesen, or it's possible I put it on the file. Either one of those is a possibility.

Q. You have no clear recollection?

A. I have no clear recollection at all, no.

Q. Is there any possibility or any chance, Mr. Maloney, that you might have destroyed this fax of January 1996?

A. Absolutely not, absolutely not. No question of that.

If I was destroying primary documents, I would certainly remember that, and I certainly did not destroy it, no.

Q. Thank you, Mr. Maloney.

A. Okay.

CHAIRMAN: Has anybody any questions of Mr. Maloney arising out of that?

MR. FITZSIMONS: I have some questions.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FITZSIMONS:

Q. MR. FITZSIMONS: Mr. Maloney, when did you make your statement?

A. The statement which is being read into the court?

Q. Yes.

A. I made that statement when the Tribunal solicitor, solicitor for the Tribunal, contacted me, and I think

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IARTY TRIBUNAL - DAY 148

it was Wednesday of last week.

Q. Wednesday of last week?

A. Yes.

Q. And I see it's prepared in the third person. Was there some reason for preparing it in that manner?

A. The solicitor, Mr. Davis, had prepared well, let me give you a little bit of the history. On the 18th October I was contacted by Mr. Davis from the Tribunal and asked about this matter. I was contacted by telephone, out of the blue, so to speak. And so I spoke with him, and I made a statement. That was on a Thursday, and I recall that the matter, the content some of contents of what I spoke to him about was conveyed in the newspapers which I read on well, I didn't know about it until the following Tuesday, but it was carried in the Irish Independent on Saturday.

So what where I am coming from is that when Mr. Davis got back to me I did not know that when I was speaking with him on the 18th, that matters we were discussing were going before the Tribunal straight away.

And to cut a long story short, when we spoke on Wednesday, last Wednesday, he said he forwarded me a document which he had dictated as a result of our

telephone conversation. He forwarded that to me and asked me I had asked him for it, in any case, because I felt that you know, that it possibly

/RS

IARTY TRIBUNAL - DAY 148

wasn't exactly what I had said to him. So he then sent me what I had written, and which obviously had been presented to the Tribunal here on the Friday of the 19th when you met. So I had made some smaller amendments some amendments to that one.

Q. So are you saying

A. That one was written in the third party, so I was just being consistent in writing this one in the third party.

Q. Are you telling us, then, the Tribunal prepared your statement for you?

A. I prepared this one, the one that was being read out here in evidence, yes.

Q. Well, have you got the document that the Tribunal gave to you?

A. I have, yes.

Q. Could I see it please?

A. Certainly.

(Document handed to counsel)

Q. Were you given a copy of the Tribunal letter of the 18th October, 2001 that was sent to Kilroy's Solicitors?

A. This is a question to me, is it?

Q. Yes.

A. I don't know anything about Kilroy's Solicitors.

Q. You were not given a copy of a letter as well as this?

A. No, that's all I was given. Just a request to attend here today as well.

/RS

IARTY TRIBUNAL - DAY 148

Q. And in any event, you expanded on the memorandum in your statement?

A. I felt I had been inaccurately reported in the Independent newspaper.

Q. That's what I am just

A. That's all I knew what had been said here.

Q. It's just that there are significant differences between and important differences between the letter of the Tribunal of the 18th October 2001, which Mr. Thygesen has been asked about, and your statement.

I am just trying to find out why there should be differences in your recollection on the basis of interviews which took place in the space of a week.

A. Is that a question, Sir?

Q. Yes.

A. I will answer it: I was telephoned on the 18th, and I spoke to Mr. Davis on the phone. Mr. Davis drew up a memorandum for consideration by the Tribunal. I did not see that before it was submitted. The only

knowledge I had that any of this matter had been discussed at the Tribunal was on Tuesday, that's to say this day last week, when I returned to Dublin from a weekend in the country, and I received telephone calls from personal friends saying that I should read the Sunday the Saturday Independent newspaper. I read the Saturday Independent newspaper, and I was disturbed to see that there was that the spin, if you like, that was put on Mr. Thygesen's involvement was not as I had was not the way it was. And that's why I have clarified in my statement here.

/RS

IARTY TRIBUNAL - DAY 148

Q. In the letter of the 18th October, you were represented as saying that you inquired of Mr. Thygesen as to the identity of the companies or entities to whom Digifone might be indebted, but in your statement you simply say that you probably asked him. In other words, you are not sure whether you asked him or not?

A. Can you repeat the question, Sir?

Q. The letter from the Tribunal asserted that you had asked Mr. Thygesen as to the identity of the companies or entities to whom Digifone might be indebted. In other words, the Tribunal were saying on the 18th October that you had told them that you had spoken to Mr. Thygesen and made this inquiry of him. But when you made your statement, you qualified that, and you

said you probably asked him, and as you have said in your evidence earlier, you might not have asked him.

A. I would have had to go to an authoritative source to get the information.

Q. Yes, but you have said in your evidence that in fact you might not have asked him?

A. Well, who else would I have asked?

Q. You are the one that's giving the evidence.

A. Yes. This is an event six years ago. If I didn't ask him for that information, it would have been innocuous in any case I can't recall I have said probably asked Mr. Thygesen. I don't see that as being particularly fundamental to the argument.

Q. Very well. The letter the the Tribunal in its letter of the 18th October represented you as saying that you made contact with an employee responsible for

/RS

IARTY TRIBUNAL - DAY 148

financial matters in Telenor.

Now, in your written statement

A. With the greatest respect, I don't recall that I never saw

Q. This is what the Tribunal said you told them on the 18th October, but you are not saying that now.

A. Excuse me, with respect, Mr. Fitzsimons.

Q. This is what the Tribunal said.

CHAIRMAN: Let him answer Mr. Fitzsimons.

MR. FITZSIMONS: Of course.

A. I mean, I had a conversation with Mr. Davis at half four on Thursday, the 18th, on the telephone. He drew up a document which was presented here. I did not see that document. I knew nothing about that document.

All I knew is what I read in the Independent newspaper the following Tuesday when I returned from a weekend in the country.

So I mean, what I have said here today is the best of my memory, is exactly what happened. I have no axe to grind in any of this matter, so you know, maybe can you rephrase the question, or

Q. I am just telling you

A. I did not speak to anyone in Telenor in Norway at all.

Q. So Mr. Davis was wrong to say that you made contact that you told him that you made contact with an employee responsible for financial matters in

/RS

IARTY TRIBUNAL - DAY 148

Telenor?

A. I did not. I sent a fax. It all depends on what you mean by "made contact with". I sent a fax to Norway.

Q. Mr. Davis says that you told him that you made contact with an employee responsible for financial matters in Telenor on the 18th October.

A. Well I think it would be easier it's like 'Duir
bean liom; Duir bean lei'. If I tell you what

happened. I sent a fax to Norway, and I got a reply.

And I probably sent it "financial controller", or you know, from Colm Maloney. And that was it. You know.

Q. Well, do you see

A. I didn't speak to anybody in Norway at all.

Q. The problem is, Mr. Maloney, do you in fact remember anything, if you are giving different versions at different times to different people?

A. Well, Mr. Fitzsimons, I am giving you the best of my memory on this matter, and I have given it here. We have stuck in a new dimension into this: An interpretation of what I said to Mr. Davis of what Mr. Davis said to the Tribunal. I am not in the middle of that, do you know? I am telling you what I do remember.

Q. Mr. Davis, in the letter of the 18th October, said, quoting you, quoting you now, that "You believed that Mr. Thygesen may have attributed the expenditure to public relations."

A. I never said

Q. Now you are saying the opposite.

A. No, with the greatest respect, Mr. Fitzsimons. You are

/RS

IARTY TRIBUNAL - DAY 148

putting words in my mouth, and because you are putting you are attributing to me what Mr. Davis has said to the Tribunal. Let me tell you exactly what I

said to Mr. Davis when he phoned me. I said I couldn't speak for Mr. Thygesen because it was a long time ago, and it was I couldn't speak for him. The way I put to Mr. Davis on the phone and I do remember this, because this was a conversation ten days ago I said to Mr. Davis that I left my meeting with Mr. Thygesen with a clear understanding that I would be treating it as public relations. I can't remember how I reached that conclusion. That's what I said to him on the 18th October.

However, in the following days, I did remember the construction of the interchange between us.

Q. So you did remember

A. With respect, Mr. Fitzsimons, I never attributed to Mr. Thygesen an instruction to put the thing down as public relations.

Q. Well, are you saying that

A. I never did at any stage.

Q. So you are saying that Mr. Davis got it wrong when he spoke to you, then?

A. If we have to get into finger-pointing, yes, I am, yes.

Q. I see. Well, Mr. Davis is the Tribunal. You were speaking to the Tribunal when you were speaking to him.

A. Well, I said what I said to Mr. Davis, and it was misunderstood.

Q. He dictated a letter within probably an hour of

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speaking to you. Are you suggesting that he forgot what you said within that hour?

A. I am not making any construction what Mr. Davis said or does. I am telling you what I did say to him on the 18th October, and I am telling you now what further clarification has you know, has come into my head since then.

Q. Has come into your head since then?

A. Has come to my memory, if you like.

Q. Mr. Thygesen told us that he got the estimated costs for the operation each month. Do you recall that procedure?

A. No.

Q. You don't.

When you got when you prepared your document, can you tell us when you prepared it, in terms of the date?

A. Which document are we referring to, Sir?

Q. The hand-written document?

A. That would have been prepared possibly in early January.

Q. What date? Give us the date.

A. I can't recall. I can't recall.

Q. You can't recall?

A. I cannot recall, Sir. It was six years ago.

Q. Was it the first week of January or the last week of January?

A. It wouldn't be helpful for me to speculate. I just don't know.

Q. Were you puzzled that there were no more Telenor Mobil /RS

IARTY TRIBUNAL - DAY 148

expenses, having regard to the fact that Telenor Mobil was supplying personnel to Digifone and charging Digifone for them? Where is that figure on that?

A. That's a very good point, Sir.

Q. Where is it?

A. It's not there.

Q. Well, why not?

A. Possibly they hadn't got round to billing it.

Q. Why didn't you phone them and ask them for it, as one accountant to another, as you have told us?

A. I brought why didn't I?

Q. Why didn't you phone them and ask them for the figure, because this was to be an accurate year-end account?

A. Well, we hadn't come to that stage yet.

Q. Sorry?

A. I can't recall why I didn't ring them.

Q. Right. Why didn't you phone them to ask them about this Telenor Mobil re David Austin figure?

A. Because they didn't know who I was, and I was speaking to Jan Edvard Thygesen, who, to my in my still in my estimation is a very fine man and a very authoritative man. So I was asking the relative man,

as far as I was concerned.

Q. You are an accountant. He was running the operation here. A hectic time. Working 16 hours a day. You are the accountant liaising with your opposite number in Norway; why didn't you phone up and get these details from the people in Norway, the person who sent you the fax? Wasn't that the obvious thing to do?

A. I hadn't been introduced nor introduced to them nor /RS

IARTY TRIBUNAL - DAY 148

invited to ring them.

Q. All you had to do was pick up the phone: "Can I speak to the accountant, or the Chief Financial Officer, or the name on the fax?" There must have been a name on the fax?

A. I don't recall a name on the fax.

Q. But there must have been a name, mustn't there?

A. I presume so.

Q. Could you have picked up the phone and said, "Could I speak to Mr. X? What's this item? We are a bit puzzled by it".

A. I possibly could have done that, but I didn't do it, as far as I can recall.

Q. Why not?

A. I don't know, Sir.

Q. Are you seriously suggesting that you left the matter with the Chief Executive and you wanted him to check

this out, this, the accounts out for you, an accountant in the firm? Are you seriously suggesting this?

A. I am, yes.

Q. The Chief Executive was to check out a small item in the accounts for a junior accountant in the firm. You are not seriously suggesting that, Mr. Maloney?

A. I am suggesting I am not suggesting anything. I left the matter with him to come back to me.

Q. Yes, but he is the Chief Executive. If you are a junior accountant, you don't go in to the Chief Executive and leave matters with the Chief Executive on an item in the accounts?

A. Well, Mr. Fitzsimons, the colour was a little less /RS

IARTY TRIBUNAL - DAY 148

formal, the culture in that organisation was less pompous in a sense that if you had a problem, you went and got it solved, you know.

Q. But all the more reason for then picking up the phone

A. I didn't know

Q. and phoning Norway and solving the problem yourself?

A. I can't recall why I didn't. Maybe I did. I can't recall, Sir.

Q. Why didn't you pick up the phone to Mr. O'Donoghue, who was in charge of the accounts and presumably, if you hadn't seen an invoice, he might have seen

it "What's this item here?"

A. It's possible that I asked, but I don't recall.

Q. But it's possible that you asked him, Mr. O'Donoghue?

A. It's possible, it's possible, but I can't recall doing so.

Q. But you were given this task to do. I am sure you wanted to do it right, and I am sure you wanted the figures in the record to be correct. Surely you would have checked it out before you wrote it down?

A. I had requested I probably this is six years ago I probably requested, had Mr. Thygesen received the invoice for this document which hopefully might have provided further clarification as to what it was about. To the best of my memory, he said he hadn't seen such an invoice. I may have I may have asked but there was a lot of things going on, you know?

Q. You were with the company for four months, November to /RS

IARTY TRIBUNAL - DAY 148

February, isn't that right?

A. That's correct, Sir.

Q. My instructions are Telenor Mobil did not invoice any costs or expenses to ESAT Digifone at all, and that all invoicing was done through Telenor Invest. Not a single invoice from Telenor Mobil, in other words, was received by ESAT Digifone.

A. That may well be true.

Q. I mean, you are the accountant. You are the one who should know these things.

A. Mr. Fitzsimons, this is just a statement of intercompany that's just a statement that appeared on a fax. That's all I have been asked that's all I ever saw. I never saw an invoice. It may very well be true that it may very well be the case that all documentation was raised on Telenor Invest.

Q. If we get the fax, it may answer it. You seem to be a bit uncertain about whether the fax was there or not. Surely you would have put this fax on the file?

A. I have answered that question. I can't recall it would have been normal practice to put it on the file, and therefore I would conclude that I probably did put it on the file.

Q. Yes. Well, I mean, I take it you were assiduous in terms of record-keeping and file-keeping?

A. Mm-hmm.

Q. So therefore it would be on the file. It couldn't be anywhere else isn't that so?

A. Unless I was specifically asked to give it to somebody else, yes.

/RS

IARTY TRIBUNAL - DAY 148

Q. Why would you leave something like this open "unless you were asked to give it to somebody else"?

A. The honest truth is I don't recall where the normal practice would be to put that on the same file as that covering, or that summary sheet. So therefore that's all I can say.

Q. Therefore it must be on the file, on the ESAT file from which that document came, and we can access it and see what's in it?

A. Sure.

Q. Now, this David Austin conversation that you say you had: Mr. Thygesen has no recollection of being shown these documents or having this discussion with you.

A. He must have forgotten.

Q. But he does suggest that the faxes are the key, if we can only find them.

A. I don't know where they are.

Q. Okay. Well, either they exist or they don't exist, but if they don't exist

A. Sir, I didn't dream that notation out of thin air. I mean, I must have seen it from somewhere.

Q. Well, did somebody tell you about it? You see, that's the point

A. No, no

Q. you are working with Mr. O'Donoghue, you are working with other people, you are working with Norwegians.

Did somebody say to you casually, "There is this figure; stick it on the list." That could have happened?

A. No, no, I have quite clearly stated I had a primary

/RS

IARTY TRIBUNAL - DAY 148

document, and I did bring it over to have a conversation. I do recall that. There is no doubt about that in my mind at all.

Q. Okay. In relation to your suggestion Mr. Thygesen was familiar with the matter, he is quite definite in saying that he was not familiar with this item, if we'll describe it as such.

A. Fine.

Q. Quite definite there. Why do you suggest that he was familiar with it sorry, seemed familiar with it?

A. I have explained the context. I didn't casually leave that

Q. You haven't explained the context in which he seemed to be familiar with it. Why do you say from his demeanour, from his attitude, from what he said, that he seemed to be familiar with it?

A. Well, he didn't undertake to find out about it. He didn't give me a name or a relevant person I could speak to in Norway. He didn't seem to you know, he didn't seem to be giving me any clarification about it.

Q. I am sorry, there was a name on the fax, as you have told us. You did not need to get a name from him to speak to Norway, isn't that so?

A. I didn't get his authority or his instruction or his

clarification his you know, I would have anticipated, if he didn't know anything about it, he would have said to me something like, "Why don't you ring that guy and find out about it?" Or I would have anticipated he already knew about it, if it was money being spent on behalf of ESAT Digifone.

/RS

IARTY TRIBUNAL - DAY 148

Q. I am sorry, you were going to him to get an instruction to ring the man whose name was on the fax? Is that what you are telling us now?

A. I was going to him to discuss the matter with him, he being what I would have considered a relevant authority on the matter. That's why I went to see him.

Q. But couldn't you just ring the man whose name was on the fax?

A. That's not what I did. You know. I mean, we are talking about one a 30-second decision six years ago. I walked two paces down, from my desk to his, to discuss it with him. You know.

Q. But you are the man who is saying that he seemed to be familiar with it because he didn't give you a name to phone in Norway. I mean, that's surely

A. Well he didn't

Q. not supported by the facts, Mr. Maloney.

A. Well, I am giving you my impression or you know, that was my impression.

Q. Well, that's not a reason for the impression. Give us your other reasons why he seemed to be familiar with it.

A. In the sense that he wasn't outraged by it.

Q. Okay, we'll start by that. He wasn't outraged by it?

A. In the sense it was a lot of money for public relations.

Q. You are the one who said public relations.

A. Indeed, because he didn't know what it was about. So I was trying to help him out.

Q. Yes. So you said, "Oh, it's public relations", and

/RS

IARTY TRIBUNAL - DAY 148

should he have been outraged?

A. I would have thought it was an awful lot of money to spend on public relations.

Q. Did you say that to him, that "This is a terrible amount of money, and there is something wrong here"?

Did you say that to him?

A. No, no, no.

Q. No, no, you didn't?

A. No.

Q. Okay. Therefore he had no reason to be outraged, if you weren't suggesting, as the accountant, that there is something wrong with this item?

A. All as I say, this was a one-and-a-half-minute conversation. I brought over it to discuss with him.

I tried to well, I was hoping for clarification from him. I brought the document over. I said, to the best of my knowledge, this is you know, a high you know, a high executive in the Jefferson Smurfit Company. He is involved in public relations. You know, I was waiting for a response, some sort of indication. And I got nothing, you know, so now nor did I get any indication that he would that you know, that he would check it out. He didn't explain to me what it might be, considering it's money being spent on behalf of ESAT Digifone, of which he was managing director. That's all I am saying. That's all that happened. Now, if my conclusion from that is that he seemed to know about it is wrong, let it be.

Q. You see, that's why it's an important conclusion.

So we have dealt now with the outrage; we have dealt

/RS

IARTY TRIBUNAL - DAY 148

with the name. What other reason did you have for concluding that he seemed to be familiar with it, from his appearance, from what he said, or from anything he did? What other reason did you have?

A. It's more from what he didn't do. I mean, he didn't say he didn't grab the phone. He didn't say that he knew what it was. You know, it was all the things he didn't do. You know.

Q. Okay. Well, what about the Telenor Invest 100,000?

Did you have a long conversation with him about that?

A. No, I knew what that was about anyway. We had no money, or the company had no money.

Q. What about the 98FM, 2644?

A. 98FM, 2644. I can't recall what that was for.

Q. The Communicorp

A. I can't recall the others.

Q. The ESAT Telecom, 121375?

A. It might have been salaries for the other ESAT Telecom people.

Q. You had no conversations about any of those?

A. It was a joint venture, of course, so they would have come from the ESAT Telecom side of the house.

Q. What about the bid cost rebill 239,089, no conversation about that with him?

A. I didn't have any conversation.

Q. That's a fairly big figure, is it not, 239,000?

A. I knew what that was about. I mean, I didn't discuss that with him because that again came from the that again came from the ESAT the ESAT Telecom side of the house, you know.

/RS

IARTY TRIBUNAL - DAY 148

Q. Okay. So your third reason, I take it, is this, you can tell me if there is any other reasons for considering that he seemed to be familiar with was that when you spoke about it being a PR expense, he simply

said nothing?

A. That's all.

Q. And that's it?

A. That's it, Sir.

Q. Well, I suggest to you, Mr. Maloney, that you had no basis, on the basis of what you have described, for concluding that he seemed to be familiar with the actual transaction and, by implication, could have given you an explanation of it at the time. Because he says quite definitely, he absolutely knew nothing at any time about this transaction.

A. Well

Q. He is not saying you mightn't have mentioned it to him because he knew nothing about it.

A. One is a matter of opinion. The other is a matter of fact. I did bring it to his attention, and I did discuss it with him. The opinion bit of it is whether or not he knew something about it or not, and I can't get into that any further than I have.

Q. Okay. So you withdraw your evidence there to the effect that he seemed to be familiar with the matter?

A. All right.

Q. I take it you withdraw that. Thank you.

Now, as you say at the final paragraph, you were a long way from completing the accounts, and you were of the

/RS

opinion that these initial pieces of information should begin to make sense for all concerned when the total picture began to emerge. Did you make any other inquiries about this item yourself at all subsequently?

A. No.

Q. So you weren't terribly exercised about it either?

A. Well, with respect, the matter, as I have said already, that this crossroads would have to be crossed again.

An invoice would eventually have to come through. That would eventually have to be approved by the relevant officers. So the matter the crossroads would have to be crossed again, you know, so

Q. You weren't clearly too outraged or concerned yourself, if you just left it there and said "We'll deal with it down the road." It doesn't indicate great concern, Mr. Maloney, surely?

A. Well, as I said, I just considered it to be public relations expenditure.

Q. And if you, as the accountant, weren't terribly concerned, there was certainly no reason for the CEO to be terribly concerned, isn't that right? Isn't that so?

A. You know, you are asking me to make a conclusion about Mr. Thygesen. I brought a matter to I brought it to his attention. I was surprised by his lack of by his lack of interest in the matter, and that was it. But I mean, it would eventually have to be it would

eventually have to be dusted down. There is no question about that, and I knew that.

Q. Okay. Thank you very much, Mr. Maloney.

/RS

IARTY TRIBUNAL - DAY 148

CHAIRMAN: Does anybody have any other matters they wish to raise with Mr. Maloney?

You had a good relationship with Mr. Thygesen?

A. Excellent relationship.

CHAIRMAN: Within a short period of being colleagues.

In general, was he somebody who tended to share much information with you, or was he a somewhat, to put it colloquially, a somewhat strong and silent man?

A. I would put it the latter, strong and silent.

CHAIRMAN: Thanks for your assistance in coming here today.

THE WITNESS THEN WITHDREW.

MS. O'BRIEN: Mr. Michael Gaffney, please.

/RS

IARTY TRIBUNAL - DAY 148

MICHAEL GAFFNEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MS. O'BRIEN:

Q. MS. O'BRIEN: Thank you, Mr. Gaffney.

I think you are an executive with Irish Permanent in its Cork office, is that correct?

A. That is correct.

Q. And I think the Tribunal has asked you to give evidence

in relation to a document which you wrote to Mr. Michael Lowry on the 7th November, 1996, that's a letter of that date. I think you know about that document?

A. That's correct.

Q. And I think you furnished the Tribunal with a Memorandum of Evidence that you are in a position to give to the Tribunal regarding the document and its contents?

A. That is correct.

Q. And I wonder, do you have a copy of that memorandum with you in the witness-box?

A. I do, yes.

Q. What I propose doing, Mr. Gaffney, is I'll take you through that. We can confirm its contents, and there may be one or two minor matters that I wish to raise with you, if that's agreeable.

A. Fine.

Q. If we could just have it on the overhead screen, a copy now, you state in your memorandum that you are an executive in the commercial lending department of /RS

IARTY TRIBUNAL - DAY 148

Irish Permanent at 40 Patrick Street, Cork, is that correct?

A. That is correct, yes.

Q. You state that you wrote the letter of the 7th

November, 1999, in response to a telephone inquiry from Mr. Michael Lowry, 6th November, 1999, is that correct?

A. That is correct.

Q. You state that you do not recall the conversation of the 6th November in great detail other than Mr. Lowry's inquiry as to whether it was possible to increase the borrowings on his property at Glenreigh for the purpose of purchasing a UK property, is that correct?

A. That's correct.

Q. You state that you do not recall the identity of the UK property being mentioned?

A. Correct.

Q. You state that "I confirm that the Irish Permanent would be in a position to help towards the purchase of a UK property by either consenting to a second charge on Glenreigh in favour of another institution or advancing funds by way of a further advance," is that correct?

A. Correct.

Q. You did not hear again from Mr. Lowry in relation to the matter?

A. That's correct.

Q. And I think that concludes your memorandum.

A. That's correct.

Q. Now, I think you have stated to the Tribunal in the memorandum that this letter was written by you in

/RS

response to a query made by Mr. Lowry on the 6th November?

A. That's correct.

Q. I think you state that you have no particular detailed recollection of the precise terms of the query, but your recollection is he was inquiring as to whether it would be possible to raise funding in order to finance the acquisition of a property in the UK?

A. That's certainly correct.

Q. You wouldn't have made a note of that conversation at the time, Mr. Gaffney, would you?

A. No.

Q. Do you recall at all what your general impression was as to the level of funding that Mr. Lowry was seeking to raise?

A. I am not terribly sure. Basically there was a lot of equity within his property. His loan had reduced to an insignificant amount relative to the value, and it would be totally off the top of my head if I was to give you an amount.

Q. Well, was your impression I am not asking you to give me a particular figure, but was your impression that this was a modest amount of money or a substantial amount of money?

A. I would have thought that it was around $\frac{1}{2}$ 150,000.

Q. Around $\frac{1}{2}$ 150,000. Again, I suppose I am pushing you

slightly on this, but can you recall what it was that gave you the impression that it was around about £150,000?

A. Because in relation to the value of his property in /RS

IARTY TRIBUNAL - DAY 148

Holycross, I was prepared to consider a loan for up to that amount without any difficulty.

Q. I see. So that would have been, in your mind, having regard to the value, the unencumbered value of the property, that without any difficulty, you would have been prepared to give him a loan of £150,000?

A. That is correct.

Q. And can I take it therefore that if he was looking for any loan in excess of £150,000, that you might have to make further inquiries or get authority from higher up in the Society?

A. That is possible, yes.

Q. And I presume that if the property to be acquired that's the property in the UK was also available as security, that would have made it all the much easier for you to advance to Mr. Lowry a sum in excess of £150,000?

A. No, I wasn't considering the property in the UK as security at all.

Q. I see. So you weren't considering that at all?

A. No.

Q. But if that property was also available as security, I take it, it would have been relatively easy for you to provide a facility in excess of $\text{£}150,000$?

A. No. That is not correct, insofar as that we couldn't take a charge over a property in the UK.

Q. You couldn't take a charge over a property in the UK?

A. No.

Q. Did you tell Mr. Lowry that?

A. I can't recall.

/RS

IARTY TRIBUNAL - DAY 148

Q. You can't recall?

A. No.

Q. Now just looking at the letter, you say it's dated 7th November, 1999, it's re Glenreigh, Holycross, County Tipperary.

"Dear Michael.

"Further to our telephone of the 6th inst., I write to confirm the following:-

"A. The approximate redemption amount on the above home loan was $\text{£}28,000$."

That's all that was outstanding on the loan at the time?

A. That's correct.

Q. "B. Irish Permanent would agree to a second charge being registered by another financial institution."

So you would agree to that property being made

available to enable a charge to be registered to another financial institution which would be advancing the monies, presumably?

A. Yes. I think Mr. Lowry asked me if it was a case where some other institution were to give him the money, would we give him a second charge, or be prepared to give a second charge over the property.

Q. Would you be prepared to consent to a second charge in favour of another financial institution?

/RS

IARTY TRIBUNAL - DAY 148

A. That's correct.

Q. "C. Should you wish to remortgage Glenreigh in order to purchase a UK property, Irish Permanent would look most favourably on your request."

A. That's correct.

Q. You have lettered each of those points, A, B, and C, and could I take it therefore, Mr. Gaffney, that they were probably in response to specific queries raised by Mr. Lowry in the course of your telephone conversation?

A. I would expect so, yes.

Q. Now, you said that you did not hear again from Mr. Lowry in relation to this matter?

A. That's correct.

Q. So you received no response to this letter, and you received no further telephone query or personal query from Mr. Lowry?

A. No.

Q. And are you satisfied that there would have been nobody he recalls in Irish Permanent that Mr. Lowry might have approached regarding this matter other than yourself, subsequent to the letter of the 7th November?

A. I wouldn't expect so, no.

Q. Thank you, Mr. Gaffney.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: Mr. Gaffney, I appear on behalf of Mr. Lowry. Firstly, can I say that I appreciate that you have you say that you can't recall the details of all the conversation. Mr. Lowry has a recollection of

/RS

IARTY TRIBUNAL - DAY 148

having met you as well around this time, is that possible?

A. It is possible, yes.

Q. And certainly it's the case from your recollection that he discussed with you the purchase of UK property, the property was to be in the UK, and that he was purchasing it himself and was looking as an investment I think?

A. Yes.

Q. And in relation to that, what you were dealing with was you were your office had the mortgage, as it were, over the property at Holycross?

A. That's correct.

Q. And as you have said, that had now diminished, and there was a substantial equity on that property?

A. That's correct.

Q. But that property I think was a family home?

A. That is correct.

Q. And indeed, in addition to being a family home, was not in Mr. Lowry's sole name but was rather in the joint names of him and his wife at the time, I think?

A. I am not a hundred percent sure of that, but it was certainly in Mr. Lowry's name.

Q. And it's certainly a family home?

A. Yes, it is.

Q. And as a matter of I am sure it's something well known to you, Mr. Gaffney, but for the record, any lender advancing money on such a property, a family home, would require as a precondition to that advance, either by way of second formal charge by another lender

/RS

IARTY TRIBUNAL - DAY 148

or a further advance by you, the consent, prior consent in writing of the spouse in respect of any family home?

A. Yes, the Family Home Declaration Act. Mrs. Lowry would have to agree any loan being created on that property.

Q. Thank you, Mr. Gaffney.

CHAIRMAN: Anything to raise, Mr. Seligman?

MR. SELIGMAN: Nothing to raise.

CHAIRMAN: Thank you for your attendance on this

instance, Mr. Gaffney.

THE WITNESS THEN WITHDREW.

MR. HEALY: Mr. Michael Lowry, please.

/RS

IARTY TRIBUNAL - DAY 148

MICHAEL LOWRY, PREVIOUSLY SWORN, WAS EXAMINED AS
FOLLOWS BY MR. HEALY:

CHAIRMAN: Thanks for your further attendance, Mr.
Lowry. Please sit down. You are of course already
sworn from what unfortunately is quite a considerable
time ago.

Q. MR. HEALY: Thank you, Mr. Lowry.
Your attendance at these sittings, Mr. Lowry, is to
give evidence in relation to a number of matters that
have not been mentioned, that were not mentioned in the
course of your earlier evidence in 1999, and the
questions will in the main be based on new material
which was not available to the Tribunal in 1999 and
evidence concerning that material which has been given
by a number of witnesses in the interim, but mainly by
witnesses who gave evidence earlier this year. You
understand that.

A. Yes.

Q. You have provided the Tribunal with a further response
to a number of queries raised with you by the solicitor
to the Tribunal and what I propose to do is go through
that response first and then maybe to deal with a

number of the items mentioned in it in more detail.

A. That's the statement of what date?

Q. That's the statement dated it's not actually dated

in my copy. I don't think it's dated at all, but I'll

tell you what it is. It's a statement in response to a

/RS

IARTY TRIBUNAL - DAY 148

letter of Mr. John Davis of the 11th May of 2001.

A. Yes.

Q. And it starts off with an introduction. Do you have

that document? It says: "This statement is made by

me, Michael Lowry, in response to a request by John

Davis, solicitor to the Tribunal, as set out in his

letter of the 11th May, 2001, by my solicitors to Kelly

Noone & Company solicitors:

"In this statement I address the specific matters

raised in the said letter, and I deal with them in the

numerical order as therein listed."

Now, in his letter, Mr. Davis said, "Dear Mr. Kelly,

I refer to recent correspondence in connection with

your above-named client.

"The Sole Member of the Tribunal has now determined

that the matters pertaining to your client which the

Tribunal has been inquiring into in the course of the

investigative phase of its work are material to its

Terms of Reference, and that it is appropriate for the

Tribunal to hear evidence in relation to these matters

at public sittings which are due to commence next week.

"The matters in question are as follows:

"1. The payment of \$50,000 by Telenor in December of 1995 to Mr. David Austin on behalf of the Fine Gael Party.

/RS

IARTY TRIBUNAL - DAY 148

"2. The Joint Venture Agreement entered into between your client and Mr. Aidan Phelan and the acquisition of the properties at Mansfield and Cheadle.

"3. The payment of 147,00 by the late Mr. David Austin to your client in October of 1996."

The letter goes on: "The Tribunal will wish to hear evidence from your client in the course of the sittings, and in the first instance you might kindly confirm that your client is agreeable to attending to give evidence. I do not anticipate that your client will be required to give evidence before the week commencing on Tuesday 22nd May next. Insofar as is reasonably practicable, the Tribunal will facilitate your client's availability, and when replying to me you might indicate the dates during the two weeks commencing on the 22nd May next which will be convenient to him.

"I am also instructed to request that your client provide the Tribunal with a voluntary narrative Statement or Memorandum outlining the evidence which he

is in a position to give regarding all of these matters. Such statement or memorandum should set out in detail all of his knowledge, direct or indirect, and all of his dealings regarding these matters, and in particular, should address the following:-"

/RS

IARTY TRIBUNAL - DAY 148

Now, I intend to deal with the individual items and your individual responses.

The first item or itemised matter is the Telenor payment. And the first query is as follows:

Query A: "All of your client's knowledge, direct or indirect, regarding this payment and its source, together with details of all of his dealings with the late Mr. David Austin, Mr. Denis O'Brien, Mr. Frank Conroy, or any other trustee or member of Fine Gael regarding the payment."

Your response to that is as follows:

"I had no knowledge whatsoever regarding the so-called Telenor payment. In my capacity as a trustee of Fine Gael, I was aware that a fundraising activity was taking place in New York. I had no involvement whatsoever with the organising of this fundraising venture, and I had no contact with Mr. David Austin, Mr. Denis O'Brien, Mr. Frank Conroy, or other Trustees or members of Fine Gael regarding this fundraising activity or any payments made in connection with the

same.

"I was only aware that such an activity was being organised in a general way, and as stated, had no personal involvement. I became aware of specific details of this matter through media revelations earlier this year."

/RS

IARTY TRIBUNAL - DAY 148

You were then asked for your client's or your solicitor was then asked for your knowledge, direct or indirect, regarding the contact between the late Mr. David Austin and Mr. John Bruton in connection with this payment in February of 1996.

What you were being asked there was for your knowledge of the telephone conversation between Mr. Austin and Mr. Bruton in February of 1996. You understand that?

A. Yes.

Q. And your response is:-

"I have no knowledge whatsoever of any contact or discussion to which you refer as between the late Mr. David Austin and Mr. John Bruton in connection with any payment in February of 1996."

The third query concerns your knowledge, direct or indirect, of the payment in May of 1997 of $\text{€}33,000$ by the late Mr. Austin to Mr. Frank Conroy for transmission to the Fine Gael Party.

And your response is:- "I again confirm that I have no

knowledge of any payment in May of 1997 of $\frac{1}{2}$ 33,000 by the late Mr. David Austin to Frank Conroy. As I have stated earlier, I only became aware of these allegations through media comment over the past couple of months."

Then you were asked for details of your knowledge,

/RS

IARTY TRIBUNAL - DAY 148

direct or indirect, or your dealings, if any, with any person in connection with the obtaining by ESAT interests in November 1997 of a written confirmation from Mr. David Austin regarding the receipt and purpose of the payment of \$50,000 from Telenor.

And you say: "I again repeat that I have no knowledge, direct or indirect, or dealings with any person in connection with the obtaining by ESAT interests in November of 1997 of any written confirmation from Mr. David Austin regarding the aforesaid matter. I again repeat that I have no knowledge"

Sorry, on to the next inquiry, which is with regard to your knowledge, direct or indirect, or your dealings, if any, with any persons regarding meetings or discussion between Telenor and the Fine Gael Party in connection with this payment in February/March of 1998.

You say: "I again repeat that I have no knowledge, direct or indirect, nor have I had any dealings with any person regarding meetings or discussions between

Telenor and the Fine Gael Party in connection with the aforesaid payment in February/March of 1998. As the Tribunal is aware, at that point in time, I had long since resigned as a trustee and member of Fine Gael."

Now, the next item that you are asked to address in the letter was the payment of $\text{€}147,000$ by the late Mr.

David Austin. You were asked to set out all of the

/RS

IARTY TRIBUNAL - DAY 148

factual material you had regarding this matter, which was comprised in your solicitor's letter to the

Tribunal dated 24th April last, and in addition, you were asked to address a number of specific queries.

Firstly you say: "In an earlier statement to the Tribunal in June of 1999, I dealt with matters relating

to the purchase of 43 Carysfort Avenue, Blackrock,

County Dublin. In October, 1996, I entered into a commercial loan transaction with the late Mr. David

Austin, and as the monies involved were neither a payment nor a gift, I rightly or wrongly did not

perceive the matter as being material. I have provided the Tribunal with a copy of the loan agreement which I

signed at the request of Mr. David Austin. The

agreement quite specifically states that the loan was

to be repaid not later than October 18th, 2001, and was

to be repaid earlier in the event of the sale of 43

Carysfort Avenue, Blackrock, County Dublin. In the

event, and as the property at 43 Carysfort Avenue Blackrock County Dublin was disposed was in January 1997, the loan, together with accrued interest thereon, was immediately repaid, and I considered that to be the end of the matter."

You go on to say: "In the course of my earlier statement to the Tribunal, I explained the circumstances surrounding the purchase of the property at 43 Carysfort Avenue, Blackrock, County Dublin.

/RS

IARTY TRIBUNAL - DAY 148

"The property was effectively acquired by the late Michael Holly."

Now, you go on to refer to earlier information you had given the Tribunal, but not in fact to your evidence in 1999, is that right? I think what you are referring to here is not the evidence you had given concerning 43 Carysfort Avenue in the course of your attendance at the Tribunal in June of 1999; you are referring to an earlier statement, meaning earlier information you had given to the Tribunal just prior to this statement concerning your dealings with Mr. Holly regarding 43 Carysfort Avenue, isn't that right?

A. I am addressing the questions that were put to me at that stage by the Tribunal in your letter to my legal team of the 11th May.

Q. Yes, but I am just making it clear that you say "In the

course of my earlier statement to the Tribunal, I explained the circumstances surrounding the purchase of the property at 43 Carysfort Avenue. The property is effectively acquired by the late Mr. Michael Holly." Then you go on to describe dealings you had with Mr. Holly concerning repairs and renovations.

A. Yes, I am giving you a narrative of what happened.

Q. Am not I right in saying that information concerning your dealings with Mr. Holly regarding repairs and renovations is new information; you had never given that to the Tribunal in 1999?

A. Yes, I was asked

/RS

IARTY TRIBUNAL - DAY 148

Q. Is that correct or not?

A. Is what correct?

Q. That you hadn't given that information to the Tribunal in 1999?

A. The matter didn't come up in 1999, correct.

Q. You say: "The property, when acquired, was in a very poor state of repair, and this was recognised by Irish Nationwide Building Society at the time that they carried out their survey prior to providing me with a loan facility to effect the purchase.

"Mr. Holly was of the view that substantial funds needed to be spent on the property by way of restoration, renovation and ultimate fit-out. I

explained to Mr. Holly that in obtaining a 100 percent finance package from Irish Nationwide Building Society, it had, by inference, been inferred to the Irish Nationwide Building Society that the refurbishment costs would be self-financed. Mr. Holly indicated that through his building company, Cedar Building Company Limited, they would carry out the structural renovations for a figure in the order of $\text{€}190,000$. It was also recognised that there would be substantial expenditure on fitting out the premises to include decoration, furniture, flooring, tiling, etc. Mr. Holly indicated that we would have to put some arrangement in place to discharge the envisaged expenditure. Discussion took place between myself, Mr. Holly, and Mr. David Austin in relation to the matter, and arising out of these discussions, Mr. Austin agreed

/RS

IARTY TRIBUNAL - DAY 148

to provide the loan facility to which I have referred.

Mr. Holly and Mr. Austin had calculated that the total expenditure involved would be $\text{€}147,000$.

"The funds on foot of this arrangement were lodged to an account opened in my personal name with the Irish Nationwide(Isle of Man) Limited. As explained earlier, and in the circumstances, the property was shortly thereafter resold, and clearly the funds for the envisaged refurbishment works and other expenditures

were no longer required, and same were returned to Mr.

David Austin, together with interest thereon."

Then you say, "What I entered into with Mr. David

Austin was a commercial loan transaction on foot of

which I had agreed to pay a commercial interest rate.

The envisaged transaction did not proceed to fruition,

and the loan was repaid in accordance with the terms."

Then you go on to deal with specific questions raised

in Mr. Davis's letter. The first query concerns

details of your dealings with Mr. Michael Fingleton of

Irish Nationwide Building Society. And your response

is, "I have known Michael Fingleton of the Irish

Nationwide Building Society for a number of years. I

made an approach to Michael Fingleton in connection

with the funding of the purchase of 43 Carysfort

Avenue, Blackrock, and Mr. Fingleton agreed to provide

the necessary funds to assist the purchase, and I would

have intimated to Mr. Fingleton that as the Irish

/RS

IARTY TRIBUNAL - DAY 148

Nationwide were providing the purchase money, that I

would, through my own resources, fund the cost of

renovations.

"Irish Nationwide would not have been made aware of the

source of the funds intended to finance the

refurbishment of 23 Carysfort Avenue."

That's in response to a query as to whether the Society

or Mr. Fingleton or any officer or servant was made aware of the source of the funds.

The next query is for your information concerning the circumstances in which it was decided that the payment by the late Mr. Austin to you should be made into an account in Irish Nationwide (Isle of Man) Limited, and your response to that query is as follows:

"I did not decide that the payment by the late Mr. David Austin should be made into an account at Irish Nationwide (Isle of Man) Limited. Mr. Austin indicated that he wished to provide the funds in this manner in order to facilitate the transfer of the funds. If the transaction had gone ahead, then the monies would have been remitted to discharge accounts owing. As the transaction did not proceed, the monies were returned to the lender."

The next query is as to the circumstances in which the account in your name in Irish Nationwide was opened,

/RS

IARTY TRIBUNAL - DAY 148

including details of your dealings with any person in connection with the opening of the account.

And your response is as follows:

"David Austin obtained the necessary papers to open the account and asked me to complete same and return the papers when completed to Mr. Karl Tully, an executive of Irish Nationwide in the Isle of Man. I did all of

this and the account was opened."

You were then asked whether you had any previous dealings with Irish Nationwide (Isle of Man), and if not, for details of the circumstances of your introduction to the bank.

You say:

"I had no previous dealings with Irish Nationwide (Isle of Man) Limited. As stated, Mr. David Austin obtained the necessary papers to enable the account to be opened, and I completed same and returned same to Mr. Karl Tully. "

You are then asked for the date on which and the circumstances in which the documents in the handwriting of the late Mr. Austin were prepared and were signed by you and the late Mr. Austin.

So that it will be understood what we are referring to, I think we should put these documents on the projector

/RS

IARTY TRIBUNAL - DAY 148

at this point. That query concerned I think two certainly concerned one document; there is another one I'll mention in a minute.

I may as well start at this one. I was going to refer to your Irish Nationwide Building Society account-opening documentation, but in any case, this is a document which you have provided to the Tribunal and which you say indicates the nature of the dealings you

had with Mr. Austin, and you can correct me if I make any mistakes in reading it out. It's in Mr. Austin's handwriting, isn't that right?

A. Yes.

Q. Except for the signature at the bottom, which is in your handwriting?

A. Yes.

Q. It says: "I, Michael Lowry, of Finsbury House, Ballsbridge, Dublin, Republic of Ireland, acknowledge that I received, on the 18th October, 1996, from David FT Austin, of 109 Flood Street, London, SW3 England, the sum of 147,000" is that punts?

A. I haven't found the letter. What section is it in my folder?

Q. It's on the monitor.

A. It would be easier to read it if it's in this one.

Q. It's in folder number 2, document number 12. It's about the fifth- or sixth-last page in folder number 2.

Maybe a bit more.

A. Yes.

Q. "147,000 punts by way of loan bearing interest at the /RS

IARTY TRIBUNAL - DAY 148

lending rate of the Irish Permanent Building Society, such interest to accrue annually and to be repaid on the date of the repayment of the said loan, which I undertake to repay on the 18th October, 2001, or upon

the sale of property known as 43 Carysfort Avenue,
Blackrock, County Dublin, Republic of Ireland,
whichever shall be earlier."

Then it's dated the 24th October of 1996, and
underneath that I think your name is written by Mr.

Austin, is that right?

A. That's correct.

Q. And then it's signed "Michael Lowry"; is that correct?

A. Yeah, signed "Michael Lowry and David Austin".

CHAIRMAN: And you have done the date, Mr. Lowry, as
well? Mr. Lowry, am I right?

A. The date on the letter is my writing.

CHAIRMAN: Yes.

MR. HEALY: There is just one other document which I
assume is being referred to. This is the Irish
Nationwide (Isle of Man) account-opening form. This is
one or two pages towards the front of that same
document number 9 of schedule 2.

A. Schedule 2, document 9?

Q. Yeah. It should say, "Irish Nationwide (Isle of Man)
Limited" at the top.

A. Yes.

/RS

IARTY TRIBUNAL - DAY 148

Q. It's headed "Irish Nationwide (Isle of Man) Limited,
application form for fixed rate accounts." It looks
like there is some banking information in the top

right-hand corner, "Account number to be completed by"

I think "by the company" is what it says. But in any case, there is an account number. Then underneath that you have reference to account type required. None of those account types seems to have been mentioned, but there is in manuscript a reference to a 7-year I think a 7-year term of something, and then 55% 5.5%, I beg your pardon. Then underneath that, one or two lines down, is your name, "Michael A Lowry", in what I assume is your handwriting, is that right?

A. Yes.

Q. After that, in brackets: "Private and confidential. Date of birth." Then an address. "Brophy Thornton, The Gables, Foxrock, County Dublin." Underneath that, "Registered address as above," the same. Underneath that, "Correspondence address as above."

Underneath that, there is a note which says "No correspondence except on request".

"Nationality: Irish. Occupation: Company director.

On the next page of the document, in relation to the payment of interest, it says "Please add interest to the account." The account holder's name again. Some more information concerning the account. It's described as an Investment Account with the applicant, that is you, as sole beneficial owner. Then there is

/RS

your signature in a number of places.

You say that you believe that this documentation was signed in October of 1996 at 99 Salthill, Monkstown, County Dublin, a residence of Mr. Austin. "The paperwork was prepared by Mr. Austin and I read over and signed it."

The next item you were asked to address was described as the Joint Venture Purchase of the properties at Mansfield and Cheadle. Now, that's how you described it. In fact, in Mr. Davis's letter, it's described as the "Joint Venture and the purchase of the properties at Mansfield and Cheadle," because I think there is a difference between the circumstances in which the properties were purchased.

You were asked to set out the factual material regarding these matters comprised in your other letter of the 14th April last, addressed to the Tribunal, and in addition you were asked to outline all of your dealings with GE Capital Woodchester and Mr. Michael Tunney in connection with the loan advanced to Catclaus and in relation to any other matters.

And your response is as follows:

"In October/November 1997 I was introduced to a Mr. Kevin Phelan, who was a property consultant based in Manchester. Mr. Kevin Phelan is the principal of a property consultancy firm. Mr. Phelan and I had

/RS

IARTY TRIBUNAL - DAY 148

discussions in relation to the UK property scene. Mr. Phelan indicated that he believed that the market had considerable potential, and I in turn indicated to Mr. Phelan that I would be interested in pursuing investment opportunities in the UK market. In July of 1998 Mr. Kevin Phelan appraised me of a development site at Mansfield which had a lapsed planning permission for a 55-bedroom hotel. Mr. Phelan was of the view that the planning permission could be resurrected and possibly extended to incorporate a development of 110 bedrooms. In addition, there was an option to acquire a further 31.5 acres of land with potential for residential development.

"I visited with Mr. Phelan and inspected the site in September, 1998, and it was agreed that I would acquire this site. I further agreed to provide a 10% deposit on the signing of the purchase contract. Mr. Kevin Phelan undertook to seek investment partner/partners to become involved in the project. In the event I paid a 10 percent deposit and completed the contract documents and the solicitor recommended by Mr. Phelan to handle the transaction was Mr. Christopher Vaughan of Old Church Chambers, Sandhill Road, Northampton, England.

At this point in time, Mr. Kevin Phelan introduced me to Aidan Phelan as a potential partner. In the event and after some preliminary discussions, it was agreed

that Aidan Phelan would become involved in the
aforesaid property and an agreement of signed on the
basis of 90 percent to Mr. Phelan and 10 percent to
/RS

IARTY TRIBUNAL - DAY 148

myself, it being understood that Mr. Phelan had the
financial resources to fund the projects and would be
in a position to organisation commercial funding for
future projects.

"Aidan Phelan provided funding in the sum of $\pounds 300,000$
sterling in respect of the Mansfield site to cover the
balance of the acquisition costs and anticipated
expenditure for professional services in connection
with the obtaining of planning permission and other
related matters. The Mansfield property cost $\pounds 250,000$
sterling and the balance of the funds were lodged to
the client account of Christopher Vaughan. The
property and the development potential and related
matters are ongoing.

"In April/May of 1999 a partner of Mr. Kevin Phelan, a
Mr. John Eastham, contacted me and advised in relation
to the possible acquisition of a property at Handforth,
Cheshire. Having considered the matter, I agreed to
acquire the property for a consideration of sterling
 $\pounds 445,000$. I discussed the venture with Aidan Phelan,
and I indicated that this was a worthwhile project for
me personally. He indicated that he would assist me in

organising funding for the project, and as an interim measure, he allowed me to request Christopher Vaughan to discharge the deposit payable in the sum of £45,500 from the balance of funds in Mr. Vaughan's solicitor/client account in relation to the Mansfield project.

/RS

IARTY TRIBUNAL - DAY 148

"It was agreed that a shelf company controlled by Christopher Vaughan, namely Catclause Limited, would be used for this acquisition, and myself and my daughter were appointed as directors. Aidan Phelan advised me that he was in a position to arrange funding for this project through Investec Bank (UK) Limited but that they would require, in addition to a legal mortgage over the property, a guarantee from a third party. In the event, a long-time friend of mine in County Cork, Mr. John Daly, agreed to provide the necessary guarantees, and as the matter at that time had become urgent, John Daly faxed a copy guarantee to Investec Bank (UK) Limited. The funds to complete the transaction were provided by the bank, and sometime later it transpired that John Daly had not signed an original guarantee. He then indicated that he wished to withdraw from any commitment that he had made to provide such a guarantee. This was a matter of some embarrassment to Aidan Phelan, whom I understood had a

long-time business relationship with the bank and had negotiated the loan on my behalf.

"In the circumstances, and as the guarantee could no longer be provided, Aidan Phelan, not wishing to embarrass any personnel in the bank, simply took over this acquisition in its entirety. This was done with my consent, and I no longer have any beneficial involvement with the transaction.

/RS

IARTY TRIBUNAL - DAY 148

"In conclusion, I wish to state that I was not a party to any negotiations which Aidan Phelan had with Investec Bank Limited. I believe that on one occasion, I had an informal meeting with one official from the bank in the presence of Mr. Phelan, but I was not involved in any negotiations in relation to loans or otherwise. I recall that I had one meeting with Mr. Michael Tully" I think that should probably be "Mr. Michael Tunney", is that right?

A. Yes.

Q. "who was an executive with GE Capital Woodchester.

It is my recollection that this meeting took place in a hotel in Dublin, and we had a general discussion in relation to my company and personal finances.

In his letter, Mr. Davis went on to say that the Tribunal would also wish to hear general evidence from you regarding your relationship with the late Mr. David

Austin, Mr. Frank Conroy, Mr. Aidan Phelan, and Mr. Denis O'Brien, together with your function and role as Chairman of the Trustees of the Fine Gael Party. And with regard to your role in the Fine Gael as Chairman of the Trustees, you were asked to address a number of specific matters.

In relation to the general points, you say: "David Austin was an active member of Fine Gael, and I knew him for many years. David Austin and I were close personal friends, and we regularly attended social functions in each other's company. We also had common

/RS

IARTY TRIBUNAL - DAY 148

interests in sporting activities: Horse racing, football, etc. I enjoyed a similar relationship with Mr. Frank Conroy, who was an active member of Fine Gael, and the three of us would have been close personal friends. My involvement with Aidan Phelan was primarily of a business nature. I detailed my dealings with him earlier in this statement.

You say: "I knew Denis O'Brien from the early 1990s, and I would certainly have met him many times at social functions. I know Denis O'Brien well, but he would not be a close friend such as the late David Austin or Frank Conroy. I would be happy to regard him as a social acquaintance. At no time did he request any political favours from me during my terms as a

government minister. I never sought or obtained political contributions from him."

Dealing with your role as Chairman of the Trustees of the Fine Gael Party, you were appointed to this position soon after becoming Chairman of Fine Gael, and you continued in that position up to your resignation.

Then, with regard to the specific question you were asked, the date in which

CHAIRMAN: I suppose, Mr. Healy, we don't actually have those queries, so just perhaps

MR. HEALY: I am going to go to them now.

/RS

IARTY TRIBUNAL - DAY 148

The first query was as to the date you were appointed Chairman of the Trustees. And you say, "To the best of my recollection, this was in March of 1993."

You were then asked about the role of the Trustees and their functions. And you say, "The role of the Trustees and their function could be best described as carrying out an overall management in relation to party finances and budgetary planning. The executives, under the guidance of the General Secretary, would look after day-to-day matters."

You were asked about the additional role of the Chairman of the Trustees and his functions, and you say: "The position of the Chairman is more a title than anything else and did not confer any particular

status."

You were then asked to address a query as to the input and involvement of the Trustees, and yourself as

Chairman, in the collection of funds. And you say:

"The Trustees had meetings from time to time when matters in general were discussed, including budgetary matters.

You were then asked with regard to the role of the Trustees and your own role as Chairman as regards the ownership of the fund and assets of the Party.

And your response is: "As I understand it, the funds and assets of the Party were vested in the Trustees."

/RS

IARTY TRIBUNAL - DAY 148

You were then asked about the system which was used during the years that you were Chairman for the collection of funds, and in particular, the knowledge, direct or indirect, of the Trustees or your own knowledge as Chairman of the Trustees of the funds collected and of the identity of donors.

And your response is: "As I recall it, there were corporate donations, various collections, draws and social functions arranged with a view to raising monies. The role of the Trustees was to establish requirements, objectives and general strategy by implementation of the organisation.

You were then asked about the role of the Trustees and

your own role as Chairman as regards the Party's bank accounts, including the terms of the mandates, signing powers and so forth. And your response is that you believe that the rules of the organisation were that all cheques were signed by the General Secretary of the Party together with one of the Trustees.

Now, you then go on to refer in your statement to the GSM process. I don't think you were asked specifically to address it, but I take it you'd wish me to read it out at this stage.

A. Yes.

Q. You say: "I wish to state that the award of the licence has been the source of much speculation. I

/RS

PARTY TRIBUNAL - DAY 148

have outlined my involvement with the process to the Tribunal and given a full explanation. The process was conducted in a fair and impartial way by professional consultants and a project team. I did not at any stage interfere with or influence the outcome of their deliberations."

CHAIRMAN: Mr. Healy, since that concludes the statement of Mr. Lowry, it's probably a suitable time for us to adjourn for lunch.

And if it suits you, Mr. Lowry, we'll resume at five to two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

/RS

IARTY TRIBUNAL - DAY 148

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 PM:

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

Q. MR. HEALY: Thanks, Mr. Lowry. Now, I want to look at

some of the documents and some of the matters you

mentioned in your statement this morning, Mr. Lowry,

and I propose starting with the first item in your

statement: The Telenor payment.

Now, you have already referred to your knowledge of the

two individuals involved in this payment insofar as the

correspondence from the Tribunal to you is concerned,

Mr. Austin, and Mr. O'Brien. I appreciate that there

were a number of individuals involved, and I may come

back to their involvement later on.

Can you tell me, firstly, when you met Mr. Austin for

the first time, roughly when you met him for the first

time?

A. I would say that I met Mr. Austin seventeen years ago.

Q. In what context did you meet him?

A. I met David Austin I was introduced to David Austin

by Mr. Frank Conroy. Frank Conroy was a close friend

of David Austin's, and I met him on a social occasion.

I was introduced at that particular stage, I was I

think it was around shortly after I was elected to

Dail Eireann, in around that time.

Q. Around 1983 or '84, something like that?

A. In the eighties, yes.

/RS

PARTY TRIBUNAL - DAY 148

Q. You were elected in '83, was it?

A. '87.

Q. '87, I beg your pardon. And if you met him around seventeen years ago, you met him around 1984 or '85?

A. Sometime around that.

Q. Was it in a Fine Gael context?

A. Yes.

Q. Was that the Frank Conroy connection at the time Frank Conroy was heavily involved in Fine Gael?

A. Yes, Frank Conroy was involved.

Q. And at that stage was Mr. Austin involved with Fine Gael as an active party member, or was he simply a friendly supporter of the Party who was acquainted with Mr. Conroy?

A. Mr. Austin would have been known to be a party supporter and activist, but not actively involved in fundraising at any given time, actually, but particularly not back then.

Q. Is the impression that the Tribunal has formed, I think, from some of the evidence to date, that Mr. Austin was involved in latter years in other words, shortly before his death in a number of fundraising ventures of a fairly modest order, golf fundraisers and things like that, would that be right?

A. My understanding of David Austin's involvement as an active fundraiser would be that he was involved he was a supporter of a lot of events for the Party. He would support the events that would be organised by others. Obviously the others would in the Party who may be organising a particular event would contact /RS

IARTY TRIBUNAL - DAY 148

David with a view to, I suppose, using his contacts to support a particular event. That would be the main context, I think, in which David Austin would be seen to support the Party.

Q. I follow. And did you develop social contacts with Mr. David Austin apart from your Fine Gael Party contacts from that time in or around the mid-1980s?

A. Yes. We did. We regularly met on social occasions. We often had dinner. We often had drinks together, and we went racing together. We used to always do the Cheltenham Festival; there were various events that were standard, yes.

Q. And as I said a moment ago, could you just expand for me a little on the extent of the late David Austin's involvement in fundraising events? And what I have in mind is if you could expand on the extent to which he would either use his contacts to get supporters was this in the context of major, large sum contributions, or would it have been in the context, as I said a

moment ago, of golf fundraisers or things like that?

A. David Austin was a main board director with the Jefferson Smurfit Group. He was very much involved in corporate affairs generally. Obviously, in that context, he met people on a regular basis. David Austin would certainly be very well connected in the corporate area. And in the context of political funding, it's usually those people who have contacts that are asked to assist any political party in their endeavours to raise funds.

Q. Does that mean you are relying on Mr. Austin to

/RS

IARTY TRIBUNAL - DAY 148

encourage other people or put the Party in touch with other people who could be encouraged to make payments to the Party at election times or at other fundraising times?

A. There were people within the Fine Gael Party, and I am sure it's the same within other parties, that were particularly good at raising funds for the Party.

First of all, they had to be interested. Secondly, they had to be motivated and interested in the party to do it. And thirdly, they had to know people who were prepared to give generously for legitimate political funding.

Q. I am not quibbling with any of that, but am I right then in thinking that you would put David Austin into

that category of the kind of person that the Party fundraisers could rely on to pull in contributions, substantial contributions from the business community?

A. If he was required to do so, but I would have to say that obviously there was different times when he had different involvement, but David Austin's involvement wasn't consistently strong. David Austin would be known within the Fine Gael Party as being a very strong supporter of the Party, somebody who would encourage others to support the Party. But to my recollection, I don't think David Austin was ever formally on the Trustees or any other committee within the Party.

Q. Would I be right therefore in thinking that he was not an individual who'd be coming to you as Chairman of the Trustees and as someone presumably associated with Fine Gael finance, he wasn't a person that would be coming

/RS

IARTY TRIBUNAL - DAY 148

to you with a handful of cheques saying "I got these" or a handful of commitments from people saying you are going to get cheques from all the following individuals? He wasn't involved in fundraising in that detailed sense?

A. No, I think the fundraisers in actual fact, I don't remember anyone coming to me, never mind, say, David Austin with a bundle of cheques or a lot of cheques.

What would happen at trustee level is that we would

delegate responsibility to somebody to do a particular task, and we would then support them through the organisation in their efforts to achieve those objectives.

Q. But were you ever involved with David Austin in raising funds in that way?

A. I never had any direct involvement with David Austin in a fundraising venture. I would have seen David Austin supporting events and functions and fundraisers that I was there in my capacity as a TD, or in latter years as a minister.

Q. When you say supporting events like fundraisers and functions, do you mean dinners, golf classics, that type of thing, or do you mean straightforward cash contributions, if you like, to party funds?

A. I would say that David Austin was involved with both.

Q. Both the collecting or the encouragement of people to make cash contributions? I don't mean bags of cash, I mean cheques, or the type of golf classic, both those types of functions?

A. Yes. He'd be involved on both of those aspects on the

/RS

PARTY TRIBUNAL - DAY 148

basis of the first one on the basis of his corporate business connections and in the second, on the basis of his experience, he was obviously a very keen golfer; I think that he would have he would have been very

familiar with the management and the organisers of golfing events in particular, so that area, yes, David Austin was used regularly.

Q. Well, that, I suppose, would also stem from his involvement with Smurfit, or the Smurfit organisation, and I suppose his association with the K-Club in latter years?

A. Yes. The Fine Gael fundraisers, some of the golf outings that were held were held at the K-Club.

Q. How often do you think you'd make contact with David Austin during his life?

A. Me?

Q. Yes.

A. I would say that hardly I can definitely say that no week went by without having contact with David Austin, and I would say in the latter years of his life, hardly any day went by without I having contact with David Austin.

Q. I assume when you refer to the latter years, you must be referring to mainly telephone contact, would that be right?

A. Yes. And when I say contact, it would be two-way. David would ring me on a regular basis.

Q. I see. And prior to his developing a very serious illness, would that contact have been mainly by way of you know, face-to-face contact, in meetings or

/RS

social occasions, or would it have been mainly telephone contacts, the times you might contact him, once a week or twice a week or whatever?

A. While David was, as you say, diagnosed with a serious illness, it's important to remember that David was very active and showed tremendous bravery and courage in battling that illness, and I would say to you that David was the type of character that actually never saw himself as having been ill, and apart from the times when he was in hospital for treatment, he was out and about and enjoying life and living life as he had always done.

Q. The first document I want to ask you about is a letter addressed to you from David Austin, dated 4th July, 1995. It's at it's in the first leaf, and document number 1, the first schedule, if you want to call it that.

A. Yes.

Q. It's a letter from David Austin, as will appear in a moment, that he dictated it when he was in Spain, but it is in any event headed "David FT Austin, 99 Salthill Apartments, Monkstown, County Dublin." It's marked "Most private and confidential," dated 4th July, 1995, and addressed to you at your office in the Department of Transport, Energy and Communications in I think is that Kildare Street, would it be, Dublin 2.

It says: "Dear Michael.

"I would like to propose that we meet to discuss the

/RS

IARTY TRIBUNAL - DAY 148

following in greater detail, perhaps my secretary would

contact your office to ascertain your availability for

the afternoon of either the 20th or 21st July.

"However, I have set out below some brief details on my

ideas for a fundraising event in the United States for

the Fine Gael Party in November of this year.

"1. A private dinner to be held on Thursday 9th

November, 1995, with An Taoiseach as the guest of

honour.

"2. A maximum of 30 US business executives to be

invited.

"3. Suggested cost per head - I am recommending

\$7,500.

"4. My choice of venue would be either a private club

in New York or Park Plaza Hotel, this is to be

confirmed later.

"5. There should be a small committee formed, chaired

by Peter Sutherland, and I would liaise directly with

Peter with the support of Maurice Buckley in the US.

We could then call upon certain people on an ad hoc

basis who may be able to provide us with some help to

help us in order to achieve the 30 names.

"6. I will personally look after the organisation and

/RS

IARTY TRIBUNAL - DAY 148

make the necessary arrangement for the dinner, etc.

"7. I am suggesting that the following people should be in attendance for the dinner in the USA - the Taoiseach, Mr. John Bruton, Ministers Lowry, Barrett, Yeats, Kenny and Peter Sutherland.

"8. The Party could for the duration of their stay at the Fitzpatrick Manhattan Hotel in New York, and I would suggest that they could fly out on the morning of the dinner from Dublin. This is unless the Taoiseach has prior engagements or wishes to make alternative arrangements.

"9. I feel there should be invitations of the highest quality and an accompanying letter issued to each guest, some of which may need to be signed by either the Taoiseach or Peter Sutherland, or perhaps some of the ministers, as I feel that this would reinforce the support behind the event.

"As you know, I have briefly discussed the idea of fundraising in the United States with the Taoiseach and yourself. I have since had further discussions with Peter Sutherland and we have decided to secure names from both sides of Atlantic, that would be of an interest to us here in Ireland, and who would be interested in attending this very exclusive dinner.

"At these initial stages of the organisation, I have

/RS

IARTY TRIBUNAL - DAY 148

approached Solomon, Smurfits, Pamarco and Pratt, all of whom have shown a definite interest in their involvement. I attach a draft A-list for your perusal of those people whom I feel that we should make contact with over the coming months, with a view to extending an invitation, I would appreciate your comments on these.

"I do not feel that it would be necessary to have a large committee on this side with the support and commendation of the Taoiseach and yourself, I feel that the best course of action to follow would be to make contact with prospective guests on a one-to-one basis. For instance, it would be people such as Dan Tully of Merrill Lynch who have just set up their operation here in Dublin at the IFSC, who would be interested in making definite contact and to avail of the opportunities to discuss their future in Ireland under a Fine Gael government, and I am sure that there are many others in a similar position.

"I am dictating this from Spain as I am taking a few days' break. However, should you have any queries on the above, please do not hesitate to contact me. Again I am open to all suggestions, and I would appreciate any comments that you might have. As you are aware, this will not be an easy task.

"I look forward to discussing this in further detail
with you soon, or on the dates that I had suggested
/RS

IARTY TRIBUNAL - DAY 148

above."

It's dictated by David F S Austin and signed in his
absence.

Then there is a draft of potential people who might be
targeted with a view to attending the dinner and making
a contribution.

Firstly, do you remember getting that letter?

A. No, I have no recollection of actually getting that
letter.

Q. Who would normally deal with letters addressed to you
on a most private and confidential basis at the
Department of Trade, Industry and or Energy and
Communications?

A. It would be probably the private secretary the
private secretary.

Q. Is that the private secretary to the minister, or your
private

A. Private secretary to the minister.

Q. That's a civil servant?

A. Pardon?

Q. Is that a civil servant?

A. Yes.

Q. At this particular time, did you have a secretary who

attended to your diary, a personal secretary who attended to your diary and your political/government functions?

A. Yes, there would be an office diary.

/RS

IARTY TRIBUNAL - DAY 148

Q. Was that I see a reference here to a Ms. Fenneil, is that right? Did she have a role in

A. No.

Q. She had nothing to do with that?

A. Deirdre Fenneil could I put this letter in context, please?

Q. Yes.

A. Obviously, when this letter was brought to my attention, the first thing I can say I accept the letter was sent to me having read the letter. I had no recollection initially of getting this letter. I checked to see had I a personal file on this within the department out of the documentation that I had, and I didn't have any file. I had no recollection of this particular letter until the Tribunal brought it to my attention. I have since read the letter, and I want to put the letter in the context in which my recollection would put it.

What happened in relation to this function, from my perspective and my understanding, is this: That David Austin approached me as Chairman of the Trustees, and

his general commentary was that Fianna Fail had successfully fundraised in the United States on a regular basis. He felt that Fine Gael could emulate that. His reasons for that was that we were in government at the time. John Bruton was on the international stage because of his handling of the peace process. There was a general acceptance that progress had been made under his stewardship of that.

/RS

IARTY TRIBUNAL - DAY 148

The Irish American people appreciated the progress that had been made, and David Austin felt that it was a time for the Taoiseach to bring his policy message in relation to the peace process to the Irish Americans and that this opportunity should also be used to raise funds for the Party.

On when he said that to me, my immediate reaction to him was that this was a new venture, a new departure for the Fine Gael Party, as we hadn't previously fundraised in the United States. I told him that I would be unable to make such a decision. I explained to him that I was extremely busy, and I asked him to contact the Taoiseach, John Bruton, directly about it.

And it is my view that the letter which you have here on the screen is a letter which is a response from David Austin's approach to John Bruton, the Taoiseach it's my view that the Taoiseach would have

said to David Austin, "This is a matter for the Trustees. I see merit in the idea. Give us a proposal on it." And I would think out of courtesy, then, that that proposal, as is outlined in this document, was sent to me as Chairman of the Trustees and also to the Taoiseach.

Q. So, just to put get the chronology right, then.

David Austin, in the letter, says: "I would like to propose that we meet to discuss the following in greater detail." You say that that is a reference to some previous discussions you may have had with David Austin?

/RS

IARTY TRIBUNAL - DAY 148

A. Yes. I think if you look at the letter, you will see the first paragraph of the letter if you don't mind Mr.

Healy to assist the Tribunal to understand the letter.

First of all, I think, any reading of the letter, it is reasonable to say that it's an outline proposal; that it's a letter in which David Austin is sketching out his ideas on the function and how it would operate.

And it's my view that that letter was done at the request of the Taoiseach.

If you look at the letter itself, the letter is speculative. The first line says "I would like to propose". He then says "I would like to ascertain your availability." Now and he mentioned two dates, the

20th and the 21st July, and he asked to know, could I meet him on those dates?

I have since checked my diary, and obviously I didn't meet him, because on those two dates I attended a Council of Ministers meeting in Spain, so I was out of the country, so it wasn't possible to meet on those dates.

If you go down to the second paragraph, you will see:

"I have set out below details on my ideas for the fundraisers." Again, I think it was speculative, when you look at number 3, he says: "The suggested cost per head would be" he goes on even though the venue wasn't set. "My choice of venue would be either/or."

Then he goes on to say: "There should be a committee."

/RS

IARTY TRIBUNAL - DAY 148

I think

Q. I think it's perfectly clear, if this is the point you are seeking to make, Mr. Lowry, that this is a proposal.

A. Yes.

Q. At this stage in July of 1995, this is an outline, I suppose, putting a bit more flesh on an idea that Mr. Austin had at the time?

A. Yes.

Q. And as you say, you may have had some discussion with him about it. He then writes according to this

letter, he writes to you. You think he would have written to John Bruton as well, is that right?

A. Absolutely. Definitely.

Q. Can you remember what contact you had with him following the 4th July or thereabouts, concerning this matter, if you didn't meet him on the 20th or the 21st July?

A. What happened then was the Taoiseach brought it to the attention of the meeting of the Trustees of the Party, of which I was Chairman, and we discussed the proposal.

And it was agreed that the Party organisation the Fine Gael Party as an organisation; not me personally, or not John Bruton the Party as an organisation, through its executive, the Trustees, gave approval for the function to go ahead. The General Secretary attended that meeting, as the General Secretaries always do, a Trustees meeting, and the General Secretary was asked to provide for David Austin the necessary administrative backup and support that he

/RS

IARTY TRIBUNAL - DAY 148

required to run the function.

Q. When he says in his letter on the second page, at the end of the nine paragraphs in italics. "As you know, I have briefly discussed the idea of fundraising in the United States with the Taoiseach and yourself."

I know you say he had discussed it with you. Was his

discussion with you one that involved the Taoiseach as well, the then Taoiseach, John Bruton?

A. No. He approached me initially, and as I said to you, my opening comment, I didn't feel that it was something that I could adjudicate on. It was a new departure for the Party. We hadn't done it previously. I was aware of the Taoiseach's personal views in relation to fundraising in the States in general, and I said to him that it is an issue that he would have to take up directly with the Taoiseach.

So I just referred him to the Taoiseach. Subsequently I would think that this letter arrived to me, and subsequent to that, the Taoiseach raised it at the trustee level. Approval was given. The support systems were put in place, and the function David Austin took control of it from there on.

Q. Did you attend the function?

A. No.

Q. Do you remember being asked to attend it?

A. No.

Q. It was envisaged by David Austin originally that you would be one of the ministers that might be asked to

/RS

IARTY TRIBUNAL - DAY 148

attend it?

A. From the letter, that's quite obvious, but that's the only reference I see to me attending. I don't I was

not asked to attend the function because in the interim, I had made it quite clear that this was a function that I simply hadn't got the time at that particular stage to get involved in. And I didn't attend the function.

Q. Well, when you say this was a function you hadn't the time to get involved in, do you mean that it wasn't a function that you had the time to get involved in as a fundraising venture, or it wasn't a function that you had the time to attend?

A. It was both. I had no role, no responsibility, no function whatsoever in the organisation of that particular event.

Q. I appreciate that, but did somebody ask you "Would you attend the dinner, even if you don't become involved in the function?"

A. No. I have no recollection of anybody asking me to attend the dinner.

Q. And if David Austin knew you so well and he was in contact with you so often, wouldn't it be strange that he wouldn't have contacted you, after having initially envisaged inviting you and other ministers to attend, even if only to come to the dinner in New York?

A. I would have thought and obviously I am working on recollection here, but I would have thought that the Taoiseach probably indicated to David Austin that he didn't think it would be a good idea to have a number

/RS

IARTY TRIBUNAL - DAY 148

of ministers visiting the same centre and the same function at the one time. And I would have thought myself, as somebody involved in general events, that it would have been unnecessary that if your top man, if the Taoiseach of the country was leading that particular function, which after all was a small function, it doesn't surprise me that I wasn't asked.

Q. I see.

So after the Trustees approved the idea that Mr. Austin could promote this function and approved the putting of party officers at his disposal, that was the end of it as far as you were concerned?

A. That was the end of it. I have no recollection of any involvement in that after that.

Q. Just look at the other documents. You see the next document is schedule 1, document 2. It's a three-page document.

A. Yeah.

Q. The first three pages well, the three pages of the document consists of a list of names of various corporations and a list of contact names, then, on the right-hand column.

A. Yes.

Q. Have you ever seen that document before it was brought to your attention by the Tribunal?

A. The first time I have seen that document was in discovery to the Tribunal.

Q. If you go on to the next document, then, document number 3 on schedule 1.

/RS

IARTY TRIBUNAL - DAY 148

A. Yes.

Q. It seems to be an analysis of who attended, or was going to attend; how much had been committed from that individual or organisation; and how much had actually been received by that date, which is the 15th November of 1995. If you go to the bottom left-hand side of the document, do you see that?

A. Yes.

Q. So I suppose this is an analysis of who actually turned up, whether they had already paid their money and so on?

A. I would accept that.

Q. And there is a total of \$235,000 committed and \$122,500 actually received.

Document number 4, which is the next document, I don't want to mention it in any detail at this stage. It is simply a fundraising analysis.

The next document is a fax from Lisa Byrne to Deirdre Fenneil. As Deirdre Fenneil's name appears to be seems to appear a number of places in this documentation, can you explain to me who Deirdre

Fenneil is?

A. Deirdre Fenneil would have headed up the administrative support for David Austin. Deirdre Fenneil was an employee, an administrative employee of the Fine Gael Party at Fine Gael headquarters in Mount Street.

Q. And Lisa Byrne is a secretary to David Austin, is that right?

/RS

IARTY TRIBUNAL - DAY 148

A. Yeah. I have never met Lisa Byrne, but just looking at the documentation, I would say that yes, she is a secretary to David. Or was.

Q. The next document, then, is the next page of that document, document number 5, is I think what's called a follow-up list. Do you see that document?

A. Yes.

Q. I think we may have either seen similar documents or heard of fundraisers employing similar strategies in seeking to drum up support for fundraising functions like this. You identify who is to be targeted. You identified who is to do the targeting, and then you get the response from the person who is deputed to do the targeting, and then you decide what the next step is.

Have you got a positive, negative response? Do you go again, do you need more information, and so on. What's the sort of remarks that are made?

A. Yes.

Q. So this follow-up list presumably came into existence sometime after the initial proposal was put forward by David Austin.

A. I presume so. It's possible I am not familiar with the document.

Q. Inasmuch as it contains a list of targets, a list of individuals to do the following-up, and then an account or a description of the action actually taken and ultimately of the result. This seems to be an analysis of efforts made to drum up support for a function in order to enable the Party officials to decide what the next steps should be.

/RS

IARTY TRIBUNAL - DAY 148

The reason I want to ask you to comment on it is that your name is mentioned as an individual to do some of targeting or some of the following-up; I am sure you have noticed that?

A. Yes.

Q. Would you agree with me that that would seem to suggest that you had some role in assisting in the fundraising leading to the dinner in New York?

A. No. I did not have any I did not have any function.

I did not have any role. This list that was presented to me as part of discovery, I have no recollection of ever seeing it. I wrote to the Tribunal in response to your queries, and I told you that I had no recollection

whatsoever of ever contacting any of the people, the four people on this list, and I requested the Tribunal to if necessary, to write to those individuals to confirm that my recollection was accurate.

Q. I may have to come back to you on that, Mr. Lowry, because I am not quite sure of that latter point myself, but I am sure it can be clarified.

A. It's on Mr. Healy

Q. It's on the correspondence?

A. Yes, on my correspondence to you through my legal advisers, that I said in response to that was that I had no recollection whatsoever of any follow-up calls or any telephone calls or meeting with any of these four people with my name behind it. But I gave the Tribunal encouraged the Tribunal, if necessary, you should write to these people and ask them had they any

/RS

IARTY TRIBUNAL - DAY 148

recollection of it, because my understanding is they had none.

Q. I see, that's a good point. Can you clarify one matter for me: While you say you have no recollection of playing any role in this

A. If you could take them individually. I think that you know, you aptly described the procedures involved in these fundraising ventures. I suppose you would have what you could call a targeted a hit list. But

let me tell you that there is always a wish list, as

well, and many people fall down in terms of

Q. I notice many of the results are negative.

A. Apart from that, the biggest problem we always had in

fundraising is you delegate work to somebody, and they

simply didn't deliver on it. In this instance I was

guilty of that myself. That's my understanding of it.

Q. But to judge from the document, it seems that the

person who prepared this document was under the

impression that you had been delegated, as you say, the

task of following up a number of individuals. But

there seems to be a response from you indicating that

you either had or had not followed up, or you had or

had not got a result. There is some response from you

indicated here. Maybe you didn't get very

enthusiastically involved, but to judge from this

document, somebody got a response from you saying in

the case, for instance, of the first name, Mr. Tom

Mulcahy: "Michael Lowry spoke to the Taoiseach, not

attending, and it is not clear whether they are

contributing at this stage."

/RS

IARTY TRIBUNAL - DAY 148

A. I'd actually I think that would be an incorrect view

on that comment. What happened, I think, in that

instance I am surmising to an extent, but I would

think the reason my name was put down behind Tom

Mulcahy's name is simply because of the Tipperary connection. But I know for definite that I did not contact Tom Mulcahy. He is one that I'd be sure of.

But what that refers to is that the actual Taoiseach himself spoke to Tom Mulcahy and confirmed that he was not attending. It wasn't me, and the same goes for the other comments. The fact that those comments are down doesn't necessarily mean that those comments are attributable to me.

And I would also say that in the evidence given by Jim Miley, the General Secretary of the Fine Gael Party, it was his view, and he would have been very familiar with it, that I had no role or no involvement in organising the event or seeking funding or seeking support for the event.

CHAIRMAN: Mr. Lowry, please don't think I am being in the slightest sceptical, and I'll take everything you tell me with the greatest seriousness. But it occurs to me just at this stage that on this project you had three very evident hats. You were a close personal friend of Mr. Austin's; you were the supreme authority within Fine Gael as a fundraiser, a financier; and your ministerial portfolio gave you a very high prominence with the business community. Would it not seem in

/RS

IARTY TRIBUNAL - DAY 148

retrospect to have been very ill advised to have

sidelined you in the project?

A. I think, Mr. Chairman, he didn't sideline me. I sidelined myself.

CHAIRMAN: I see.

A. You have to put this in the context that as minister, I was in the busiest government department without delaying the Tribunal, but I think it's important that you understand, Mr. Chairman, why I wasn't available.

I was in the busiest government department. I had responsibility for eleven semi-state companies at a time when we were in for liberalisation of the market.

There was huge challenges. There was many difficulties, many problems. We also were preparing for the European Union presidency, at which I was involved as Chairman. In Europe, the Department of Transport, Energy and Communications are treated as three separate departments in Europe. So effectively, I was involved three times over.

So it was an extremely busy time for me politically, and for that reason, I actually made my intentions known early on. I said I had enough work on my plate or my desk, and to be quite honest with you, I actually didn't feel there was a lot more I could contribute to it. The Taoiseach was actively involved, and David Austin himself had his own contacts. And I would have to say, when I look at the list, many of the people that I see, names that I see on the list would have

/RS

IARTY TRIBUNAL - DAY 148

been contacts of David Austin himself, through his own business connections.

CHAIRMAN: Thank you.

Q. MR. HEALY: You notice that next to the first four targets that you were deputed to follow up, Mr. Lowry, according to this document, is a notation consisting of five dots, which denotes "Highest priority"; do you see that?

A. Which one is that, Mr. Healy?

Q. If you look at the top left-hand corner of the document

A. Yes.

Q. you see, I think it's five dots. "Denotes highest priority." Do you see that?

A. Which name?

Q. Top left-hand corner of the document. Above the

A. Oh yes, yes, sorry. I was looking in the box. On top of the box, yes.

Q. "Denotes highest priority." Then underneath that you have "Mr. Mulcahy" - highest priority; "Mr. Chris Galvin" - highest priority; "Mr. Gary Tucker" - highest priority; "Mr. Michael Younger" - highest priority.

And so on. Do you see that?

A. Yes, I do.

Q. So somebody regarded these people as very high-priority

contacts, and you are listed as being deputed to look after them.

A. Yes.

/RS

IARTY TRIBUNAL - DAY 148

Q. Would it suggest

A. I don't know how many more of them are

Q. There are others

A. There is a lot of them with high priority. In fact, I would say, you know, all of them were high priority.

Q. All of them weren't denoted high priority, now. Not that many were denoted high priority, but of the ones that were denoted high priority, I think you are the person with the largest number of high priority contacts?

A. Well, I can say, Mr. Healy, to assist you, first of all, I have explained in relation to Mr. Mulcahy, it is my view that it was the Taoiseach that contacted him.

I have no recollection of any contact with him. I would say in relation to the second one, I think for fairly obvious reasons I wasn't the one to make the phone call there.

Q. Is that because Motorola were involved in the GSM licence?

A. Yes, and there was plenty of publicity even at that stage in relation to that decision. So you could exclude me from making that call.

The next one was who?

Q. I think it looks like Michael Younger, is that right?

A. I never heard of the man. I don't know the man.

Q. Then it's Arthur D Little.

A. Yeah, I wouldn't have definitely I wouldn't have any contact whatsoever with him.

Q. And the one after that?

/RS

IARTY TRIBUNAL - DAY 148

A. I wouldn't have any reason I cannot understand why my name, because that name and that company wouldn't mean anything to me, so you know, I think, as I said to you earlier on, this was more of a wish list than an actual

Q. Surely at this stage it had gone past a wish list, on to the final analysis of who was and who was not going to turn up?

A. Someone obviously reported back on it, but it wasn't me.

Q. This was something being organised by one of your closest friends now, isn't that right?

A. David Austin, a very close friend, yes.

Q. And a new venture for Fine Gael, a new venture for Fine Gael, fundraising the US?

A. Yes.

Q. You had achieved quite a lot in fundraising in Fine Gael by this stage, isn't that right?

A. Yes.

Q. Part of your profile in Fine Gael came from your success as a fundraiser?

A. Part of my profile in Fine Gael

Q. And indeed outside it?

A. Yeah, as a fundraiser, yeah, outside for supporting organisations and the GAA and for Fine Gael, yes.

Q. And here was your best friend involved in a major, and for Fine Gael a novel way of raising funds, and you don't think you were involved?

A. I was not involved.

Q. Or would have wanted to be involved in support of your /RS

IARTY TRIBUNAL - DAY 148

close friend?

A. I never said I wouldn't want to be involved. I would certainly I would certainly have encouraged the function. I would certainly have been supportive of the function. But in terms of my involvement, my involvement was restricted because of my burden and pressure of work at that particular time within the department.

Q. I think the other names on the first page there are Mr. Ronald my printout isn't very helpful; I can't decipher the rest of the name Delta Airlines, I think. The next one is Morgan Stanley.

A. I have no recollection whatsoever of ever making

contact with either of those companies in relation to

it and with a view to

Q. You may not have contacted them, but do you recall

getting back to the person who was running the

competition, or running the

A. No, I think that's the point, Mr. Healy. I think that

you are wrongly attributing the commentary on that to

me. I think that that I think that when I wasn't

doing it, I would think that others followed up, and

that is their comments attributed to whoever did

actually make the follow-up call.

Q. You think that other people got these responses, and

they were attributed to you because your name was in

the list?

A. I would say what happened is my name was on the list,

and they just literally typed in the responses they had

received for whoever took over the responsibility of

/RS

IARTY TRIBUNAL - DAY 148

doing it. Like in the first instance with Tom

Mulcahy

Q. Wouldn't that make it very difficult to follow up

thereafter, the person who got the response? For

instance, follow-up call, etc., or other there are

other remarks here, you know, indicating what needs to

be done or what does not need to be done. If you are

analysing this venture with a view to deciding what the

next step should be, you'd need to know who to go to, wouldn't you, in relation to a follow-up call?

A. Yes, I would think that the people who were analysing it actually knew the accurate position, either the administrative staff within the Fine Gael Party or David Austin and his support staff.

Q. I think the only other one that you were deputed to follow up, according to this, was Mr. AJ I presume that to be "Mr. AJ O'Reilly, Arcon Holdings, to be followed up by Mr. Lowry," follow-up call, etc., and "Result: Yes, €1/220,000." It's on the last page of the document; have you got it?

If I said €1/220,000, I should have said \$20,000.

A. I would think I don't have any recollection of speaking that's young Mr. O'Reilly, I presume.

Q. I see.

A. I never I have no recollection whatsoever of ringing him in relation to funding, but I would say in this instance again that it was probably David Austin himself, because David Austin would be on very good, friendly terms with all of the O'Reilly family. If I

/RS

PARTY TRIBUNAL - DAY 148

was contacting anybody in that company, I would say it would have been I think, is it Brendan Gilmore is his name, he would have been the person that I would have known within that company.

Q. How did you know Brendan Gilmore? Was it through your Tipperary connections?

A. No. I knew Brendan Gilmore through my departmental connections in the department. And I knew him through his connections with the hotel business in Dublin.

Q. Now, evidence has been given by Mr. Denis O'Brien that he was approached by the late Mr. Austin to participate in this fundraising venture, and it's Mr. O'Brien's evidence that he indicated that it was inappropriate for him to get involved, and he put Mr. Austin in contact and he himself made contact with Telenor with a view to putting Telenor and Mr. Austin in contact with one another. That, I think, is a reasonable summary of what Mr. O'Brien's evidence is.

Then you have the evidence of Mr. Arve Johansen of Telenor that he had a conversation with Mr. O'Brien. There are disputes between Mr. O'Brien and Mr. Johansen as to what transpired between them, but according to Mr. Johansen, he subsequently contacted Mr. Austin and agreed with Mr. Austin that he would pay the sum of \$50,000, as he put it, by way of a political contribution to be made by ESAT Digifone, but the payment was to come from Telenor. I think you are probably aware of that evidence?

A. I have to say that all of I was not aware of any of /RS

the issues that have arisen until they came into the public until they came into the public domain and were the subject of investigation, inquiries, and examination by this Tribunal.

Q. So therefore Mr. Austin, in the course of your fairly frequent contacts, never mentioned to you that he was organising this dinner, after the initial idea was promoted, and he never mentioned to you what level of success he was having in gathering together enough people to make it a worthwhile fundraising venture?

A. What was the first question?

Q. He never contacted you, apart from the initial idea that he brought to you and that he brought to Mr. Bruton, he never contacted you after that or never spoke to you about this fundraising venture?

A. No, that would not be correct.

Q. That would not be correct?

A. No.

Q. He did speak to you about it. What did he say to you about it?

A. I spoke to him what happened was when the that particular function was over, it was reported on by the Taoiseach, and the Taoiseach informed the Trustees that it had been a very successful event, that it was very worthwhile. And he praised David Austin for his role in the organisation of the event, and I would have communicated that complimentary comments to David

Austin as Chairman of the Trustees.

Q. Can you think of when you would have communicated that those comments by the Taoiseach to David

/RS

IARTY TRIBUNAL - DAY 148

Austin?

A. I would say shortly after the event, whenever the first meeting of the Trustees was held after that.

Q. Well, the event was held, it looks like, in or around the 9th November. There was presumably a meeting of the Trustees to which this document of the 15th November of 1995 was made available, so would it have been sometime around then?

A. No, no. That would be incorrect. The process that continued at trustee level was that you we all we would have a general discussion in relation to what the objectives and the targets and the requirements of the Party would be. We would then set ourselves tasks to do; people would be delegated to look after those tasks, and from there on, the reporting would be to the Party General Secretary and to the administration of the Party.

The document that you are referring to, I have never seen that document. In actual fact, up until this became public, I was never sure of what kind of funds was raised from that particular venture. I knew that it was in the region of \$250,000. That was the figure

that I had in my mind, but the detail of it I have never seen. And in fact I have also checked since this became an issue with the Fine Gael Party, and it is confirmed that there was no communication with me during the remainder of my time after the event as Chairman of the Trustees. And

Q. When you say that you think that \$250,000 was

/RS

IARTY TRIBUNAL - DAY 148

collected, are you aware that with the documentation provided to the Tribunal by Fine Gael was a fundraising analysis showing gross income of \$230,000? Is that possibly where you got that figure from?

A. Probably. Not from that document; I think from the newspaper.

Q. I am not suggesting you got it from the document, but presumably the two figures are related, somebody at a meeting indicated that somewhere close to \$250,000

A. I think, when I read subsequently you have to understand, Mr. Healy, that there has been so much written and said about this particular 233,000, it certainly is confusing, to say the least. But what I am giving you is my state of knowledge, and my state of knowledge of this is that while I resigned as Chairman of the Trustees in at the same time as I resigned from the parliamentary party and at the same time as I resigned my membership of the Party, all of this

controversy and the to-ing and fro-ing and the communication that existed between the Party and Mr. Austin and others, and what have you, I simply knew nothing about it.

Q. I am just trying to find out or put some date, or approximate date, when you would have conveyed the Taoiseach's good wishes to Mr. Austin.

A. I can't say for definite. If I had access to the Fine Gael notes, it might be possible to determine when was the next meeting. But I would say that certainly it would have been the trustee meeting, the first trustee meeting following the event.

/RS

IARTY TRIBUNAL - DAY 148

Q. How often did you have trustee meetings?

A. They were irregular, to the extent that it was always difficult to get the Taoiseach and the various other people that should be at the meeting, to get them all together at the one time. So we didn't have a set formula, but we would meet unfortunately, the nature of it was we met more so when we had to rather than as a regular feature.

Q. Would I be right in thinking that this must have happened sometime in December or January December of 1996 or maybe January December of 1995 or maybe January of 1996?

A. I would I actually don't know.

Q. You'd hardly let three months go by without a meeting?

A. It's possible.

Q. It is possible?

A. It is. Especially when John Bruton was Taoiseach, with the busy schedule he had as Taoiseach, it was difficult

Q. We know from the evidence of John Bruton that there was a proposal for him to meet with and have lunch with David Austin as a sort of thank you for what he had done, and arrangements were being put in place to set this lunch up for sometime in February. Do you remember that evidence?

A. Well, that would obviously be a personal thing between the Taoiseach and David Austin. I had no knowledge of that lunch, and I certainly wasn't at the lunch, if there was such a lunch.

Q. It would seem to suggest that if that lunch was being /RS

IARTY TRIBUNAL - DAY 148

arranged for February of 1996 in recognition, as I said, of Mr. Austin's efforts, that whatever information you had for Mr. Austin concerning the Taoiseach's good wishes was probably conveyed to him before the lunch or before the arrangements for the lunch?

A. I cannot be certain, but when I say "convey his good wishes", it wouldn't be that I was going out of my way.

I would simply have said to him, you know, in a phone call, I would say, "David, the Taoiseach was very pleased with your efforts. The function went very well, and thank you very much for doing it for us."

Q. I am not suggesting that you would have conveyed his good wishes in any formal way. Simply you'd have said to David Austin, in one of your meetings or regular contacts, "Look, John Bruton was very happy in how well you organised that meeting and collected over a quarter of a million dollars." Something like that?

A. Something like that. The reason I put it in that context was the Taoiseach was the front line contact on it; he was the one with direct communication. It's natural, when you return from an event like that, the first question everybody asks is, "How did it go? How well was it?" The message was it was very successful, and the message was it is down to David Austin's organisational ability and that he should be thanked for that.

Q. And surely there would have been opportunities for you to mention this to David Austin or for him to mention it to you during your many contacts over this period of /RS

IARTY TRIBUNAL - DAY 148

time from July 1995 right up to the dinner in November and up to I suppose, December '95, when all the money would have come in, you must have discussed it?

A. There was no I can tell you, we definitely had any discussion there was no discussion. All it would be was whatever reference would have been made to it would have been a passing reference. And as I say, at that particular time, there was a lot happening. We were all quite busy, and we were involved in organising and delegating responsibility for a vast amount of fundraising. You have to and you know

Q. This was a proposal, in any case, that Mr. Austin went with only after getting the imprimatur of the Taoiseach and the actual support of the Party, not something he would have done off his own bat or could have done off his own bat?

A. I can say clearly that not even I, as Chairman of the Trustees, felt that I should take the responsibility or give an approval for the function. It was brought to the attention of the Trustees by the Taoiseach at the time, John Bruton. The full meeting of the Trustees gave its approval, so David Austin had organised approval from the executive of the Fine Gael Party to organise such a function.

Q. And judging from the correspondence that we have seen on the overhead projector, his initial letter of the 4th July, David Austin clearly believed, himself, that he would need the authority or the stamp of authority of the Taoiseach and the Party to proceed with

/RS

IARTY TRIBUNAL - DAY 148

something like this?

A. He did, because his initial discussion with me which was a brief one, and he refers to his brief discussion with me in his letter at that brief discussion, the one thing I was quite clear of, because as I said already, because of my understanding of the Taoiseach's views on fundraising in the United States, I said that you'd have to take it up with him directly, and I asked him to go directly to him, and I know that he did that.

Q. Now, one of the documents that was mentioned in evidence by Mr. Johansen was a Post-it that he used to make notes of a conversation he had with David Austin sometime toward I think the middle of December of 1995.

This is schedule 1, document number 8.

A. What number?

Q. Number 8.

A. Yes.

Q. And this document contained a number of telephone calls, and according to a number of telephone numbers, and according to Mr. Johansen, was the result of a conversation he had with David Austin with Denis O'Brien, sorry, and David Austin. And in particular, the latter part of that document, below the words "IE pounds" do you see that "Irish pounds", do

you see that?

A. Yes.

Q. He says that section of the document based on his conversation over the phone with David Austin. And in

/RS

IARTY TRIBUNAL - DAY 148

that conversation, David Austin mentioned, in connection with the contribution, John Bruton's name, Denis O'Brien's name, and your name. Do you see that?

A. Yes.

Q. Did David Austin ever mention to you that he was getting a contribution from Denis O'Brien or from Telenor on behalf of ESAT Digifone?

A. Definitely not.

Q. Do you think that he was the kind of person who would use your name in this way if he thought you weren't behind something?

A. I have no idea what that reference to my name is. I think that the only person who can actually give you an indication of what that was about was is it Mr.

Johansen, is he the guy who is

Q. Yes.

A. I have no idea.

Q. Do you think that David Austin or do you think it would have been appropriate for Denis O'Brien or for any company with which he was associated to make a contribution to Fine Gael in December of 1995 or in

November of 1995?

A. You are asking me?

Q. Yes.

A. Personally?

Q. Yes.

A. Personally, I would have had absolutely no difficulty

with it, in the context of I being the one who knew

exactly what happened. I was the one who was in a

position, more so than anybody else, to know in my

/RS

IARTY TRIBUNAL - DAY 148

heart that the licence was adjudicated on with equal

opportunity to everyone. It was done in a fair and

impartial manner. The process was independently

assessed by people of repute, people of the highest

integrity in the public service. I did not, at any

stage, interfere

Q. That's not the question I asked you, Mr. Lowry

A. I am answering the question, Mr. Healy.

Q. You are answering my question?

A. Yes. I am answering your question, because I think

it's important that I put it in the context into

context.

I did not interfere in any level of the process, and I

certainly, certainly did not at any stage exert

political influence in the outcome of the decision.

Now, in that context, having said that, I wouldn't have

had any difficulty in funding being provided to the Fine Gael Party from any of the competitors in that competition, but but I am wise enough politically to know that you wouldn't do it, on the basis of the perception that it would leave. And I certainly wouldn't look for a contribution at that particular time, on the basis that the licence had only been announced, when we had people running around to journalists and others with big baskets of sour grapes saying that there had to be something wrong with the licence.

Q. Could I just go back: Do you think it would have been /RS

IARTY TRIBUNAL - DAY 148

appropriate for Fine Gael or for you you can deal with it on both bases to have asked any competitor for a contribution in the period between the 4th July and the day of the the date of the award of the licence?

A. Say that could you repeat that question?

Q. Do you think it would have been appropriate for you or Fine Gael to ask any person involved in the licence competition to make a contribution to Fine Gael funds at any time between the 4th July of 1995 and the date of the granting or awarding of the licence?

A. No, personally I would not think it appropriate.

Q. Do you think it became appropriate at some point to do

it, then, after the licence had been granted?

A. No. I have already made the point

Q. I just want to be clear about that

A. I have already made the point that I would not consider

it appropriate on the basis of the perception of

seeking such funding. But I would take it a stage

further and say to you that with the knowledge that I

had, with the knowledge that I had that the licence was

completely free of any interference or outside

political influence, in that knowledge, you know, could

you consider it, but personally, would not have had

because I would have seen the political implications of

it.

Q. So your evidence is that during the process, it

wouldn't have been appropriate to ask anybody, but

after the licence had been awarded, you would have

understood a perception that might have criticised

/RS

IARTY TRIBUNAL - DAY 148

asking, but you yourself felt there would have been

nothing wrong with it because you believe the process

to have been a fair one, is that right?

A. What I would say is that I think anybody involved in

politics would have been acutely aware that from the

moment the decision was made, from the moment the

independent assessors made their decision, from the

moment that decision was accepted by me as the then

minister, and from the moment that that was collectively accepted by the government in which I was a member, from that moment on, and arising from that then and the how would I put it the outrageous innuendo, rumour and gossip that enveloped this country and still does, I would say that against that background, against that background, would not be looking for political donations.

Q. So you mean that it would be, as a practical matter, a bad idea to go looking for political donations after the licence had been granted, even though you think there would have been nothing actually ethically wrong with it?

A. What I am saying

Q. If you just answer my question first. You can tell me afterwards what you think, but

A. What I am saying is that political reality was that because of the adverse publicity, you would not be seeking funds from any person, any group involved in that licence, because it became so controversial.

Q. And did that include the period between when the winner of the competition was announced and when the licence /RS

IARTY TRIBUNAL - DAY 148

was actually granted, which was about six months later?

A. Yes, of course it would include it.

Q. So during that period you don't think anyone should

have asked, or are you saying that during that period it would have been okay to ask but for the perception?

A. No, it would not have been okay during that period.

Because the process had not been finalised.

Q. So it would have been wrong to ask, therefore, for a contribution for Fine Gael at any time from when this venture was first mooted in July of 1995, up to, I think about 16th May of 1996?

A. I think it would be politically unwise, yes.

Q. Well, which is it now? Wrong or unwise? The process was not finished.

A. The process was not finished if the process is still underway, it would be wrong to seek political funding, yes.

Q. Now, the evidence we have to date is that Mr. Austin did seek political funding from a person known to be involved in the process: Mr. O'Brien. And that he took up the question of splitting up funding with another person known to be involved in the process, Telenor, through Mr. Johansen. And you would think this was wrong?

A. Yes, I think that it was unwise.

Q. Well, was it wrong or unwise? This was in the middle of the process.

A. I think it was both wrong and unwise, but Mr. Healy, I am very reluctant to say something which is seen to be critical of the judgement of somebody who is

/RS

IARTY TRIBUNAL - DAY 148

exceptionally kind and a good friend of mine.

Q. I accept that, Mr. Lowry. But the fact is that this Tribunal does not have the benefit of Mr. Austin's benefit, although, had all of this information been brought to the Tribunal's attention, it might have had the benefit of his evidence prior to his untimely death. Do you realise that?

A. Yes, I would like to have Mr. Austin here to confirm the veracity of everything that I have told you to date.

Q. We will be coming back to that in the context of some of your evidence later on. Do you think Mr. Austin would have been sensitive to the political ramifications and the ethical ramifications of seeking money from somebody who was in the middle of this process?

A. Like, that's I don't know.

Q. You knew him for many, many years. He was involved with your political party. Do you think he would have been aware of the political ramifications of what he was doing?

A. I can't speak for David in this instance.

Q. After he got this contribution, he put it into an offshore bank account. We know that from his own banking documentation. He left it in that offshore

bank account, then, for he left it in that offshore bank account until the General Election of 1997. In order to get the money out of Telenor and into his offshore bank account, he raised a false and fraudulent invoice. Are you aware of all of those facts?

/RS

IARTY TRIBUNAL - DAY 148

A. I am not aware. I was aware of none first of all, I was not aware let me make it quite clear that I was not aware that Telenor, ESAT Digifone, or whoever was approached, I was not aware of any approach to them on behalf of the Fine Gael Party.

Secondly, I was not aware that any funds had been provided on foot of that request.

And thirdly, I was not aware that the funds had been transmitted even to Fine Gael.

My level of awareness on this particular issue was through the evidence given at this Tribunal

Q. But you are aware now

A. and through media commentary.

Q. But you are aware now, is the question I am asking you.

A. I have to say I am confused.

Q. What are you confused by?

A. I am confused, the same, I think ,as practically everyone is, that there are several issues here.

Q. Let's get this clear, Mr. Lowry: There is no confusion here. A false invoice was raised with Telenor

A. Mr. Healy

Q. Sorry, are you aware of that?

A. Mr. Healy, I am not going to sorry, sorry it's not my position it's not me, my position. I know nothing about this documentation. I was not involved in the documentation. Please don't ask me to adjudicate on whether a document is false or not.

/RS

IARTY TRIBUNAL - DAY 148

That's not my role or my function.

Q. I am going to have to take you through this document these documents one by one now, Mr. Lowry. I didn't think I'd have to do this. If you look at document number 9 on the first schedule.

In fact, if we go back to document number 7 on the first schedule. Back earlier, even. The documents are not in order. Document number 6.

Now, document number 6 is an invoice. That document was sent with a letter, which is document number 9, addressed by David Austin, according to the documentation, to Mr. Arve Johansen. If you look at document number 9, it's from David FT Austin, 109, Flood Street, Chelsea, London SW3, 5TD, England.

It says: "Dear Mr. Johansen,

"Please find invoice for consultancy work for the duration of 1995 as agreed with Mr. Denis O'Brien.

"I hope you will find this in order."

Then, if you go back to document number 6, you will see the actual invoice, and that document reads:

"David FT Austin, 109 Flood Street, etc., invoice for consultancy work 1995 as per agreement." Date 14th December, 1995 to Arve Johansen, and so on. Amount US\$50,000, there is a conversion into kroner in

/RS

IARTY TRIBUNAL - DAY 148

manuscript.

Underneath that, it says: "A bank draft can be made payable to David FT Austin and forwarded to account number 66064, Bank of Ireland (Jersey) Limited, PO Box 416, Templar House, Don Road, St. Helier, Jersey."

Now, you have, I think, been aware of this documentation for some time, is that right?

A. Pardon?

Q. You have been aware of this documentation for some time?

A. No. This documentation I received this the only knowledge that I have of this Telenor/ESAT Digifone/Fine Gael event is what I have read through the media and what I have read subsequent to the Tribunal's sittings here. The particular document and folder that I have in front of me here now, I received that on late Friday night. I have glanced I have gone through the documents, and on these documents that I have, I have to say

Q. Have you ever seen a document like this before?

A. Have I seen a document like this?

Q. Yes.

A. First of all, the first question that you have asked me is, have I seen this document, these documents? I have not seen any of these documents. I have not been aware of the existence of those documents other than reference that's been made to it

Q. I don't know if we are at cross-purposes, Mr. Lowry.

/RS

IARTY TRIBUNAL - DAY 148

The documents were sent to you in May?

A. These documents Mr. Healy mean nothing to me.

Q. You have never seen this document before?

A. No, never.

Q. Until last Friday?

A. Yes. Until this weekend when I started to prepare maybe my advisers and others had them. But I have no requirement to study these documents in detail because I have no knowledge of them, I have no involvement with them, I know nothing about them.

Q. I am loath to get involved in an argument with you about this, Mr. Lowry, but my impression is that these documents were sent to your solicitors last May.

A. They may have been, Mr. Healy. But I have, as you know yourself, and as I am sure you will remind me, I have many, many issues in which I am directly involved. I

have not given this particular issue or this documentation attention up to this weekend, on the basis that they weren't relevant to me. I had no involvement in them.

Q. I see. I just don't want the impression being created that the Tribunal only gave them to you last week. It may be that you didn't look at them, but they were made available, certainly, earlier.

A. Yes, I accept that my legal and accountancy advisers, what have you, would have been in possession of the documentation. I have been concentrating my efforts in assisting the Tribunal on areas where I am directly involved.

Q. Well, then, we'll just go through the document, then,
/RS

IARTY TRIBUNAL - DAY 148

slowly.

Mr. Arve Johansen has given evidence that he received the letter that I have just read out to you, and the invoice that I have just read out to you on the overhead projector, following the phone conversation he had with Mr. David Austin in which he made the notes on the Post-it that I showed you a moment ago. Now, that evidence has been given to the Tribunal.

A. By who?

Q. By Mr. Arve Johansen.

A. That's his evidence.

Q. That's his evidence. You are not suggesting he'd have any reason to make this up, are you?

A. Pardon?

Q. You are not suggesting he'd have any reason to make this up?

A. Who?

Q. Mr. Johansen.

A. No, I am accepting, whatever evidence has been given that's not my job, to adjudicate on evidence.

Q. I am giving you an opportunity to help me because of your relationship with Mr. Austin. There can be no suggestion, can there, that Mr. Johansen no suggestion by you that Mr. Johansen invented these documents?

A. I haven't suggested anything, Mr. Healy.

Q. He says he got these documents, and on foot of these documents, he sent the \$50,000 to Mr. the late Mr. Austin; that he sent them, as directed, to a Bank of /RS

IARTY TRIBUNAL - DAY 148

Ireland account in the Channel Islands.

We know from Mr. Austin's account records that the money was received in his account in the Channel Islands. We know that he did not remit the money to Fine Gael. He retained it in his account until the 1997 General Election. He then remitted it to Fine Gael, but not as a Telenor contribution, not as an ESAT

contribution, but as a contribution as a personal contribution from himself. And he did this through Mr. Frank Conroy.

The money therefore lay in his account for just over a year, I think, and maybe five months, maybe four or five months the election in '97 was around you'd remember it better than I; was it May of '97 or June of '97?

A. June.

Q. So the money lay in his account in the Channel Islands for about one year and five months. Now, during that time, on the 19th February, 1996, he wrote another letter to Mr. Arve Johansen this is schedule 1, document number 7 in which he says "Dear Mr. Johansen:

"My sincere thanks for the payment of the invoice in relation to consultancy carried out in 1995. Please forgive the total oversight on my part in not acknowledging receipt of payment and indeed passing on my thanks.

/RS

IARTY TRIBUNAL - DAY 148

"This was certainly not something that was taken lightly on my part and not on those from who have received payment. Please be assured of their appreciation and thanks.

"Once again, my sincere apologies for my tardiness.

"Yours faithfully."

Now, you would have been in regular contact with Mr. Austin during all that period, isn't that right?

A. Yes.

Q. And while I appreciate you have told the Tribunal that you never saw these documents until recently, have you had any conversations with David Austin in which he referred to obtaining this money, or any contribution at all from Telenor, and putting it into an offshore account?

A. I can say clearly and categorically that David Austin never, never discussed that particular fundraising effort with me. And furthermore, I take comfort from the fact that Mr. Miley, the General Secretary of the Fine Gael Party, gave evidence to the effect that he discussed it with Mr. Austin and that he confirmed that he hadn't discussed it with anybody other than the Taoiseach of the time, John Bruton. I want to say clearly, clearly and unambiguously, I knew nothing about the donation itself. I knew nothing about the manner in which it was routed or handled, and I knew

/RS

IARTY TRIBUNAL - DAY 148

nothing and know nothing about the documentation in relation to it.

Q. During your time in Fine Gael, did Fine Gael ever, or did you ever agree to the transmission of fundraising

contributions through offshore accounts?

A. No, not I have I certainly personally was not aware of it.

Q. And would I be right in thinking it's not something that the political party would have approved of?

A. I would I would presume they wouldn't, on the basis that you know, the accounts of any political party would have to be established and have the approval of the Party and that they would be channelled in a way that's acceptable to the Party.

Q. At the time that this money was raised, the Party did of course have an involvement in foreign fundraising in New York, but that was all done in accordance with the quite strict laws that operate in America for foreign fundraising. Are you aware of that?

A. Yes. This is the function you are referring to?

Q. Yes.

A. Yes.

Q. So the Fine Gael Party would have been anxious to comply with whatever strict laws operated in America where foreign fundraising was concerned?

A. Yes.

Q. And would I not be right in thinking, as I think Mr. Miley may have confirmed, that the Fine Gael Party wouldn't agree to raising money from Norwegian telephone companies in the middle of a GSM licence

/RS

process and passing that money through a Channel

Islands offshore account?

A. I would accept that correct.

Q. And wouldn't I be right in thinking that anyone who engaged in that would know that he was engaging in a fairly risky activity?

A. I can't speak for David Austin.

Q. Well, what's your opinion? Wouldn't you think that anyone involved in an activity like that would know that he was involved in a very risky activity if it became exposed?

A. I have already given my view in relation to what approaches I would make and when I would make an approach to any of the competitors in that competition.

Q. If David Austin had in fact died in 1997, prior to remitting this money to Fine Gael, and indeed during all the period up to when he did remit it to Fine Gael, he was running the risk of having been seen as having stole the money himself, isn't that right?

A. I have no idea what way it would be seen.

Q. What way could it be seen? If Telenor had got on to Fine Gael and said, "Where is the record of our \$50,000 contribution?" Fine Gael would have said, "We have no record of any \$50,000 contribution."

A. It's quite clear from what I have read about this issue that David Austin did receive it as a political

donation, and I can't say what his state of mind was or what his reasons were for holding it up, other than that he seemed to have returned it as a personal contribution to coincide with a time when the Party

/RS

IARTY TRIBUNAL - DAY 148

needed it an election.

Q. Up until that time, he ran the risk that Telenor, if they wanted to find out how this contribution had been received by Fine Gael, he ran the risk that he'd be exposed as not having remitted it to Fine Gael, isn't that right?

A. I am absolutely sure of one thing: That David Austin, David Austin's personality, David Austin's character would allow him to do nothing other than to return to Fine Gael the funds that he had collected on its behalf, and that's what he did.

Q. That's precisely the point. Mr. Austin wouldn't have exposed himself he wouldn't have engaged in any activity that would have involved abstracting or appropriating the money for himself, isn't that right?

A. David Austin, if he collected the funds on behalf of the Fine Gael Party, which he did, he routed them to the Fine Gael Party in rather unusual circumstances, I will accept, but I can't speak for David Austin. David Austin did this transaction the way he did it, and only he knows why he did it in the way that he did. I had

no involvement in it. I had no role in it. I wasn't

aware of it.

Q. Would you have approved of remitting money to the Fine Gael Party by that roundabout route?

A. No, I wouldn't.

Q. And would David Austin know that you wouldn't have approved of it?

A. If he had asked me, I would have said it to him.

Q. Do you think, from your relationship with him over the /RS

IARTY TRIBUNAL - DAY 148

years, that he would have known that you wouldn't have approved of it?

A. Yes.

Q. Are you surprised he never told you that he was holding this money in his account without remitting it to Fine Gael for all that time?

A. I was surprised, yes.

Q. And although you'd meet him every single week and he knew he had that money in his account, he never mentioned it to you once?

A. Mr. Healy, I can say to you again, in the strongest possible terms, I did not know, number one, that there was an approach made for the contribution; number two, that it was remitted in the way that it was. I was not aware of the internal controversy within Fine Gael about this donation until it became public. I had

resigned from the Party, for the most part. I left the Party I had no contact with the party whatsoever from 1996, December 1996 onwards. I simply didn't know anything about it. And yes, I was surprised when it broke and the controversy surrounded it.

Q. You know that in 1997 there was an IPO, an Initial Public Offering or flotation of shares in ESAT Digifone?

A. Yes.

Q. In fact, technically, there was a flotation of ESAT Telecom on the New York and I think subsequently the Irish Stock Exchange, but part of the value in ESAT Telecom was its shareholding in ESAT Digifone. I presume you are aware of that?

/RS

IARTY TRIBUNAL - DAY 148

A. Yes.

Q. And in the course of that flotation, or in the course of the preparation of the documents to lead to that flotation, there was at least a debate or an internal controversy surrounding this contribution, and it involved getting a document or it involved making contact with David Austin to get him to sign a document indicating that he had collected this \$50,000 from Telenor and that he had given it to Fine Gael. You are aware from evidence given at the Tribunal at least of that?

A. Yes, I am aware from the evidence that was given here publicly, yes.

Q. And again, although this involved Mr. Austin in some highly controversial activity, he never told you about it?

A. Absolutely not.

Q. And then, as you have said, he didn't contact you either in 1998 when Fine Gael made contact with him through Jim Miley at a time when Telenor were seeking to track down their \$50,000?

A. I knew nothing about that particular contact and not alone did David Austin not contact me, Mr. Healy; Jim Miley or anybody in Fine Gael didn't contact me.

Q. Mr. Miley was asked about that at the time.

A. Mm-hmm.

Q. And they didn't contact you at the time. That's true?

A. They did not contact me.

Q. Yes.

A. Again, it's important that that would be clearly

/RS

IARTY TRIBUNAL - DAY 148

understood. I had no contact from anybody in relation to this particular donation or any of the matters that transpired later, including the one you mention now.

Q. Now, during all the time that you were associated with Mr. Austin, am I right in thinking that he never made any substantial personal contribution to Fine Gael?

A. I wouldn't be aware of that. I wouldn't have access to the contributions from individuals.

Q. Well, from the records that have been made available to the Tribunal, he never made a large contribution to Fine Gael. Never more than a few hundred pounds, according to the records.

A. If you have that on evidence, I will accept that.

Q. And in 1997, he made a contribution of $\frac{1}{2}$ 33,000 to Fine Gael, which would have made that one of the larger certainly, I suppose, one of the top ten contributions to the Party at that time. He never discussed that with you?

A. When did he make that contribution?

Q. According to the Fine Gael evidence, he made it in May of 1997, at the time of the election.

A. I know absolutely nothing about that contribution. At that particular time, as I have said already, I was in the involved in the survival stakes. I was outside the Party. I was actively involved in running my own campaign

Q. But you were still

A. as an independent in North Tipperary. David Austin, in any conversation I ever had, again, he never mentioned any of the detail involved.

/RS

IARTY TRIBUNAL - DAY 148

Q. And Mr. Conroy, who was also a friend of yours, never

mentioned to you that David Austin had just made a staggering contribution to Fine Gael?

A. Why? I would say that Mr. Conroy probably didn't know, because since this Tribunal sat

Q. But he did know, because

A. Since this Tribunal commenced its investigation of this, Frank Conroy was as surprised as I was, and I was as surprised as him. And Frank Conroy never discussed this with me until it became a public issue, and that can be checked with Mr. Conroy. Mr. Conroy never discussed it with me. He never advised me of what was happening, or no one in Fine Gael did. And I wouldn't have expected them to do that at that particular stage because of where I was politically.

Q. So your evidence, then, is that you had no hand, act or part in getting the contribution; you had no involvement in it one way or another. That's right, isn't it? You knew nothing of the contacts Mr. Johansen had with Mr. Austin. You knew nothing of raising an invoice. You knew nothing about the transmission of the money to an offshore account. You knew nothing of the fact that the money was kept in the account until May of 1997. And you knew nothing of the fact that it was eventually remitted to Fine Gael under cover of a personal contribution of David Austin?

A. I want to say again, you are correct. I knew nothing about this transaction.

Q. So the people involved in this transaction were not only anxious to keep it under wraps, in the sense that /RS

IARTY TRIBUNAL - DAY 148

they used a false invoice, an offshore account; they kept it under wraps during a public flotation, they kept it under wraps during an internal investigation in Fine Gael, and one of the individuals involved, David Austin, a close personal friend of yours, never even told you about it?

A. Never. And I think that the Mr. Bruton and others who have given evidence have given evidence to the effect that I was never consulted about it, that nobody within the Party ever spoke to me about it. And I am confirming to you that David Austin never mentioned to me, never, about this particular contribution.

Q. I acknowledge that, Mr. Lowry. I am simply trying to establish the degree of secrecy that surrounded it. It seems to have been an incredible degree of secrecy, doesn't it?

A. Around the contribution?

Q. Yes.

A. What I would have to say is you asked me earlier on, and I said that like many people, I have been puzzled about it myself. And the knowledge that's available to me is available to me from what I read in the media and what has transpired at this Tribunal.

Q. But on your evidence, and on the evidence of the other people we have heard, you'd agree with me that it involved secrecy at any number of levels and amongst any number of individuals, all of whom would have known one another and might have had contacts with one another?

A. Well, I am not going to I am not in a position to,

/RS

IARTY TRIBUNAL - DAY 148

because I am not knowledgeable enough to apportion blame or criticism on anybody.

Q. I am not apportioning blame. I am simply describing it as a highly secret contribution.

A. It was certainly an unusual contribution.

Q. Would you simply describe it as an unusual contribution? That's all, nothing more nothing less than that?

A. I would have to say the circumstances on which the contribution was routed was certainly unusual.

Q. Would you agree with my description of it as a secret contribution?

A. I am not into the detail of it sufficiently. I mean, that's I would have to say, in relation to this, all I can do is give you my knowledge and give you my evidence in respect of it. I have given it to you as openly and clearly as I can. I simply did not have any knowledge of it, and for whatever reason, I was not

told about it. And you'll have to accept that when the main activity in relation to this money happened, I was long gone from the Fine Gael Party and would have had no access to documentation or to personnel who were conscious or aware of it.

Q. Well, you would have had access to Mr. Austin, wouldn't you?

A. Mr. Austin

Q. At all times?

A. Mr. Austin, I have said to you on numerous occasions, numerous occasions, Mr. David Austin, the late Mr.

David Austin never at any time discussed the fact that

/RS

IARTY TRIBUNAL - DAY 148

a contribution was sought, received or routed to the Fine Gael Party in the manner in which it was.

Q. I want to pass on to your Carysfort Avenue purchase.

Now, you gave evidence to the Tribunal in 1999

concerning this purchase. I think that you said that

you were spending a lot of time in Dublin. You were

living in rented accommodation. You had some

discussions with your accountant, and you decided you

were better off to get a house or buy an apartment

yourself. Would that be a summary of what motivated

you to make the purchase?

A. I required appropriate residential accommodation in

Dublin. At that particular time also I was conscious

of the fact that there was incentives there for ministers, an acknowledgment of the fact that they had to reside for a considerable amount of time in Dublin.

I was conscious of the fact that there was incentives there that I hadn't taken up, and I decided that I should do that that I should acquire accommodation in Dublin, and I did that.

Q. I think you said that you had some discussions with your accountant about it. Would you have discussed the incentives, the Dual Abode Allowance, I think it's called, with your accountant as a way of financing this project?

A. No, I wouldn't have done that.

Q. What was your discussion with your accountant about?

A. My discussion was in relation to determining what incentives existed under the ministerial residential

/RS

IARTY TRIBUNAL - DAY 148

guidelines that were there at government level.

Q. That's my point. You would have discussed that with your accountant and decided

A. I would simply have asked him to get access to the documentation and in general terms tell me, was I actually accurate in assuming was there something there from something I had heard from another minister, and we got the information available on it.

Q. And you decided then that you'd go off and make this

purchase, and I think you say you put out a number of feelers through a number of auctioneers and individuals you knew, and eventually a property was identified. It was identified, I think, by the late Michael Holly, and because you were away in Brussels chairing some meeting or other, Michael Holly rang you and indicated he was going to put in a bid on your behalf. Would that be a fair summary of your evidence?

A. Yes. I had approached various people in the construction and residential development sector, I think between eight and ten in all, and Michael Holly I asked him to look out for something that was suitable and let me know if something suitable came on the market. Michael Holly informed me at short notice that such a property had come on the market, and it was purchased at public auction.

Q. You went to Irish Nationwide Building Society to raise loan finance for the purchase, is that right?

A. Correct.

Q. And that was through Mr. Michael Fingleton?

A. Yes.

/RS

IARTY TRIBUNAL - DAY 148

Q. And you got 100 percent finance from Michael Fingleton?

A. Yes.

Q. You say by inference that meant that you were going to fund the reimbursement work which was needed to make

this house habitable from your own resources?

A. Yes.

Q. At that stage, what own resources did you envisage using to fund the refurbishment?

A. At that stage, I had monies available to me which I had intended to use I had an account, I had an account with I had the £140,000 in the Channel Islands, which has already been the subject of discussion.

Q. And you intended to use that for refurbishment?

A. Yes, that was my intention at that time.

Q. So you weren't going to borrow any money for refurbishment?

A. At that particular time, when I discussed it with Mr. Fingleton, that's what was in my mind, yes.

Q. You didn't tell Mr. Fingleton at that stage, did you, where those own resources were or what they consisted of?

A. He didn't we had no discussion on it. He just asked me the question about the refurbishment of the house, and I said that I would refurbish it from my own resource, that I wouldn't be calling on him to provide any funding for the refurbishment.

Q. Because there was a refurbishment element, I presume that you went to Mr. Fingleton sometime after you actually purchased the house?

A. Pardon?

/RS

Q. I presume you went to Mr. Fingleton sometime after the purchase of the house?

A. Yes.

Q. Obviously, because you identified a particular property to him, and you knew it would require work.

A. Yes.

Q. Did you know, at the time that you went to Mr. Fingleton, what the work would entail in terms of cost, time and so forth?

A. No, not at that particular time.

Q. You purchased the property I think on the 17th July of 1996. Mr. Gahan, who was a solicitor working for Mr. Holly, actually carried out the legal end of the transaction on your behalf, would that be right?

A. That's correct.

Q. How did Mr. Austin become involved in this transaction?

A. Mr. Austin and David Austin and Mick Holly and I, we were friends. Mick Holly and David Austin would know each other very well. At that particular time, David Austin had a considerable amount of time on his hands.

I was extremely busy, as I have indicated to the Chairman previously. We were right in the middle of the European Union presidency, which involved me being out of the country on a regular basis. First of all, we had and secondly, when I was at home in the department, the department was extremely busy. We were

preparing for the presidency, and that involved numerous trips to other capitals in Europe to meet counterparts as ministers. It also involved

preparation with the European Union in terms of

/RS

IARTY TRIBUNAL - DAY 148

legislation to be enacted during Ireland's European presidency. So it was an extremely busy time, and

Q. Was Mr. Austin one of the people that you told you were going to buy a house?

A. He was one of the people that suggested I should buy a house, on the basis that he and Mick Holly and others had been to see me in my accommodation where I was residing up to that, and it the standard of that accommodation was quite poor.

Q. And did he know how you intended to finance the purchase of a house?

A. We discussed it I discussed the relationship that I had with David Austin in respect of my own personal and private affairs was a very open one with David Austin. And yes, I discussed all of my personal financial position with him.

Q. So presumably you told him that you had bought had property?

A. Yes. Well, I was aware he was one of the people that, as I say, encouraged me to do it.

Q. And you told him that it would need work to be done?

A. Yes.

Q. And you told him that you planned to get the work done and pay for it out of this money you had in the Channel Island?

A. What happened was first of all, in

Q. Just, is that correct, first? That was your plan; did you tell Mr. Austin that?

A. Which I did, yes, I told him.

Q. Okay. So you were a busy man. Mr. Austin now knew /RS

IARTY TRIBUNAL - DAY 148

that you identified a property, that with the help of the late Mick Holly, you bought it. You were going to have to borrow money to pay for it, but that you had plenty of money abroad to enable you to do it up?

A. I had a general overall discussion with Mick Holly in terms of what was required for the house. I said yes, substantial funds were required to refurbish the house. He was anxious that I would assure him that the funds were able.

Q. He was anxious that you would assure who?

A. That I would assure Mick Holly of Cedar Buildings that the funds would be available for such a purpose, refurbishment.

Q. I want to know, to be clear in my head, that Mr. Austin knew you had bought a house; that he knew that it required work to be done; and that you had the money

through your Channel Islands account to pay for it. He knew all of that?

A. Mr. Austin yes, Mr. Austin I informed Mr. Austin of my exact financial position, and arising from that, arising from that discussion, the offer of a loan of a voluntary offer of a loan was made to me, and I accepted that loan and repaid the loan with interest.

Q. Why did Mr. Austin offer you a loan in response to your telling him that you had all the money you needed?

A. Because there were other factors which were personal, private, a domestic family situation had developed, and also because, at that particular time, I was conscious of the possible potential tax liability arising from my dealings with Ben Dunne. And I informed Mr. I

/RS

IARTY TRIBUNAL - DAY 148

informed David we had a general discussion, an open discussion, and I gave him the complete background.

And arising from that, David Austin, as I said, made a voluntary offer of a loan, and I accepted it. And, as I said, I honoured the terms of that loan and repaid the money in accordance with the terms.

Q. Did you tell your accountant at that stage how you were proposing to fund this purchase and refurbishment?

A. My accountant at that particular stage

Q. Which was Oliver Freaney's were your accountants at that stage.

A. No, I wouldn't have any reason to tell them at that stage.

Q. The account on the what you spoke to about the dual allowance, what accountant was that?

A. My recollection of it was that it was within Oliver Freaney's, that I just asked for them to get the circular that was available from whatever department it was available from I presume the Department of Finance and see would I qualify for it.

Q. Do you remember getting a letter from the Revenue Commissioners the day you came into office, informing you of the benefits of the dual allowance?

A. Informing me of?

Q. The benefits of the dual allowance.

A. I have no recollection of getting that.

Q. After you arranged the finance, in any case, you didn't tell your accountants that you were proposing to finance this project by borrowing from a friend of yours?

/RS

IARTY TRIBUNAL - DAY 148

A. No. I had no discussion with any accountants in relation to that particular transaction. My discussions were with David Austin, when I outlined my exact financial position, my own particular circumstances. And arising from that, we in mutual cooperation, came to that decision.

Q. And up to the time that you had that discussion with Mr. Austin, you were going to rely on your Channel Islands money?

A. Yes.

Q. What made you change your mind?

A. Because

Q. You had a plan to rely on it; why did you change your mind?

A. Because after having the discussion with David, and after giving him the details of the circumstances, he felt it was better to do it this way. He suggested that we do it this way.

Q. Why did he suggest you should do it this way?

A. Why did he suggest it?

Q. Yes.

A. It was an act of friendship.

Q. You didn't actually need the money at that stage. You simply didn't want to use money that you knew was in a certain location and maybe that that might embarrass you to use it, is that it?

A. I would say, Mr. Healy, that the account that you refer to is well documented. It's been in the public domain for a number of years now. And yes, I would say that it was a contributory factor.

/RS

IARTY TRIBUNAL - DAY 148

Q. Now, in your statement you say that "Mr. Holly

indicated through his building company, Cedar Homes, that they would carry out the structural renovations for a figure in the order of $\frac{1}{2}$ 90,000. It was also recognised that there would be substantial expenditure on fitting out the premises, to include decoration, furniture, flooring, tiling, etc. Mr. Holly indicated that we would have to put some arrangement in place to discharge the envisaged expenditure. Discussion took place between myself, Mr. Holly, and Mr. David Austin in relation to the matter, and arising out of these discussions, Mr. Austin agreed to provide the loan facility to which I have referred."

Now, is there not a difference between what you have just said to me a moment ago and what's contained in your statement here?

A. There is no difference. There is certainly no intention of any difference.

Q. What you say here is that a discussion took place between yourself, Mr. Holly, and Mr. David Austin in relation to the matter.

A. Correct.

Q. "And arising out of these discussions, Mr. Austin agreed to provide the loan facility to which I have referred, and Mr. Holly and Mr. Austin had calculated that the total expenditure involved would be $\frac{1}{2}$ 147,000."

A. That's correct. That's a synopsis of exactly what happened. What happened was I initially we

initially had the tri-party meeting. That was to

/RS

PARTY TRIBUNAL - DAY 148

determine the extent of the refurbishment required, to get some idea of what needed to be done, to get indicative figures in terms of costings. And arising from that, then, David Austin and myself had our own personal discussion in relation to my overall financial position and how that particular refurbishment would be funded.

Q. Did Michael Holly know that David Austin was providing the finance for the refurbishment?

A. That, I don't know.

Q. Did you tell him?

A. No.

Q. Did you tell him that you had money in the Channel Islands?

A. No. I told him that the funds were in place and would be available to conduct the refurbishment.

Q. But why do you say here "Mr. Holly indicated that we would have to put some arrangement in place to discharge the envisaged expenditure"?

A. Obviously he was undertaking a refurbishment work, and he wanted an assurance that funds would be available to pay him for the work that he had done.

Q. But didn't you have plenty of funds available in the Channel Islands?

A. He didn't know that.

Q. And you didn't tell him?

A. At that particular time, I didn't tell him.

Q. Did you tell him at any particular time?

A. I don't think, Mr. Healy, you'd be telling your builder, you know, your personal financial details.

/RS

IARTY TRIBUNAL - DAY 148

What I said to him was

Q. This wasn't just any builder. This was a man who had gone into an auction and bid all this money for you, whose own solicitor did the conveyancing for you, who carried the purchase price for you until you came back from Brussels. It wasn't just any builder. He was a friend of yours, wasn't he?

A. Yes, and Mr. Holly was a very astute and good businessman. Mr. Holly looked at the property, decided that the property was in a good location, that the property was exceptionally good value. And what Mr. Holly did was he recognised it as being a good purchase. And he gave me first option; in other words, if I was not in a position to take the house, he clearly said that the value that he had purchased it at would stand his company in good stead if I didn't take it. So he wasn't necessarily buying the house for me. I was away at the time. He gave me first option on it.

Q. I understand that, Mr. Lowry; he wasn't buying it for

you. But he did go along to the auction for you. He bought the property. His own solicitor because presumably you were a very busy man at the time carried out the conveyancing

A. You are missing the point, or else I am getting it wrong. The point is, Mr. Holly was going to purchase this house anyway. He advised me that the house was available. After he gave me the option of looking at the house, if I deemed it suitable, he would then pass on the house to me at the price that he purchased it for. That's exactly how it happened.

/RS

IARTY TRIBUNAL - DAY 148

Q. I accept all of that. But he knew from the outset that you might be interested in it, and he was prepared to go along with it, with the fallback that if you didn't want it, he was quite happy to go along with this purchase anyway?

A. Yes, he was quite happy to retain it himself. From day one, Mr. Holly felt it was a good purchase.

Q. You knew Mr. Holly for some considerable time at this stage?

A. Did I know Mr. Holly?

Q. Yes.

A. Yes, I knew Mr. Holly, again, through again, social contacts and through sporting events again, what have you: Racing, hurling, football. That type of thing.

Q. Mr. Holly and Mr. Austin would have been well known to one another, wouldn't they?

A. They would be. They would have mixed in the same social circles.

Q. Not only that, wasn't Mr. Holly associated with many building projects of Smurfits?

A. Mr. Holly yeah, his company does a lot of development

Q. And wasn't Mr. Holly in fact a frequent guest of the Smurfit organisation at its annual dinners in the K-Club?

A. I am sure he was, the same as hundreds of others, including myself, may I add, Mr. Healy. I have been to a few of them.

Q. But I suggest to you Mr. Holly and Mr. Austin would have been well known to one another.

/RS

IARTY TRIBUNAL - DAY 148

A. Mr. Eddie Holly his brother gave evidence that he didn't realise there was a big friendship, but I can confirm that there was a friendship between David Austin and Mick Holly.

Q. So Mr. Austin agreed to make you a loan, but he didn't just give you i;½147,000, isn't that right?

A. Mr. Austin

Q. Yes.

A. voluntarily agreed to facilitate me with a loan

facility, yes.

Q. But just to cut to the chase, he didn't just give you

€147,000; he transferred €147,000 to an offshore

account in the Isle of Man?

A. Mr. Austin himself was a non-resident. Mr. Austin

Q. Sorry, what does that have to do with it?

A. Pardon?

Q. What does that have to do with it?

A. Mr. Austin was the one as a non-resident, Mr.

Austin was the one who made the suggestion and made the

decision as to how the funds would be transferred for

the purpose of the loan.

Q. I see. So he made the decision as the non-resident.

Now, I don't necessarily follow why being a

non-resident gives him any particular standing in this,

but he made the decision as to how the money would be

transferred to you, a resident in Ireland, by putting

it into a non-resident account in the Isle of Man?

A. Yeah, Mr. Austin made the decision as to how he would

transfer the funds. Mr. Austin facilitated the opening

of that particular account, and all I can do all I

/RS

IARTY TRIBUNAL - DAY 148

can say is I assume that it suited his particular

financial circumstances, and the fact that he was a

non-resident, and whatever implications that would have

for him.

Q. Did you approve of it?

A. Did?

Q. You approve?

A. Yes, I went along with it. I accepted it. I saw nothing wrong with it.

Q. This was not a non-resident account you brought to the attention of the Tribunal or, I suggest, to your accountants?

A. Yes, I did bring it to the attention of the Tribunal. I voluntarily discovered this account to the Tribunal.

Q. When?

A. I discovered this account to the Tribunal in, let me see if I could check my file here the background to this discovery is that on sometime about March, the Tribunal were in contact with me about the two UK properties. These that particular transaction, I couldn't understand why the Tribunal would be interested in something which was outside what I considered these Terms of Reference, because it was post it was after 1996. And in the course of a conversation as to how that could be relevant with my solicitor and my accountant, I asked about this particular loan, would that have relevancy, despite the fact that the account wasn't functional, that I only had the loan for three months and that it had been repaid? And they felt that I should, and at that

/RS

IARTY TRIBUNAL - DAY 148

particular stage, on the 24th April, we made a full and open disclosure to the Tribunal. And we followed it up with all of the necessary cooperation and documentation that was required from the Tribunal.

Q. Just to be clear about that: On the 24th April, 2001, you made a full and open disclosure to the Tribunal of all of this material?

A. I think it was in around that time.

Q. You hadn't told your accountant about it before then?

A. No.

Q. You hadn't told the Tribunal about it. You hadn't told the McCracken Tribunal about it. You hadn't told the Revenue Commissioners about it. You hadn't told Oliver Freaney about it. Are all these things correct or incorrect?

A. Mr. Healy

Q. Answer my question. Are these all correct?

A. I realise the time we have obviously I can't answer you those questions in one yes or no. I am sure the Chairman will give me a chance to

CHAIRMAN: Mr. Healy, we are right on four o'clock

Q. MR. HEALY: We might just finish that. Had you told your accountant about it?

A. Mr. Chairman, I would ask that I be given time. I would have to say that I follow the proceedings of this Tribunal, and it's a feature, Mr. Healy, of the

Tribunal, that just on the dot, somebody lobs something that someone hasn't a chance to respond to. I will /RS

IARTY TRIBUNAL - DAY 148

deal with your questions in detail tomorrow morning, but I can't give you yes and no I can't give you

Q. No, Mr. Lowry. Did you tell your accountant about this?

A. You have put a sequence of questions to me. I have no difficulty answering them, but I'll have to put them in the context in which they arose at the particular time.

And I am prepared to do that.

Q. I want to know, did you tell your accountant about this?

A. Which? About?

Q. Did you tell your accountant about this account you opened in the Irish Nationwide let me ask the question did you tell your accountant about the account you opened in the Irish Nationwide in the Isle of Man?

A. I did not tell my accountant, or I didn't tell I didn't mention this account, on the basis that I didn't think it was material or relevant. And let me point out to you, Mr. Healy, that this account and this loan facility was only available to me for approximately three months. In accordance with the terms of the loan, I repaid the money with interest. I did not use

the money. There was no other transaction on that particular account.

Now, whether I was right or wrong, I formed the view that it wasn't relevant. When I realised that it could be relevant, I voluntarily disclosed it to the Tribunal and gave you all of the cooperation and the assistance

/RS

IARTY TRIBUNAL - DAY 148

you required to look at the account.

Q. Did you tell the Tribunal am I not right that you didn't tell the Tribunal about this when you described the Carysfort transaction to the Tribunal in 1999?

A. It didn't arise, because at that particular time, I had the I didn't proceed with the house. I sold the house. I didn't refurbish the house, and I didn't use the loan.

Q. Did you tell the Tribunal about the Carysfort transaction in 1999?

A. It didn't arise.

Q. Did you tell the Tribunal about Carysfort then? You did

A. I was asked about the purchase of the house, and I dealt with the purchase of the house.

Q. You didn't tell the Tribunal that you were going to refurbish the house with money in an offshore account.

A. I didn't tell the Tribunal.

Q. You didn't. Now

A. Because the Tribunal incidentally, Mr. Healy, it wasn't you are giving the impression that the offshore account that that wasn't known to the Tribunal. That had previously been discovered to the Tribunal.

Q. What offshore account?

CHAIRMAN: Mr. Healy, lest there be an apprehension on Mr. Lowry's part that the procedures be other than fair, I propose to give him an option.

/RS

IARTY TRIBUNAL - DAY 148

If you want, Mr. Lowry, you can reflect overnight and deal with the matters in more detail tomorrow morning at eleven o'clock; or if there is any immediate response you would care to give at this stage, by all means feel free to say something, whatever you may wish. I'll give you your own preference on the matter.

A. I appreciate your fairness, Mr. Chairman. What I want to say about this loan in general, I want to say about the loan that it was a loan facility that was made available to me for a specific purpose. The loan was available to me for approximately three and a half months. I never used the money. I sold the house. I did not refurbish the house, and because I didn't have a specific need for the loan the loan was targeted for the refurbishment I repaid it, and I honoured the arrangement that I had with Mr. David Austin.

Rightly or wrongly, I deemed it not material to the investigation. When I realised that it had relevance, I brought it to the attention of the Tribunal in a voluntary way. I regret the fact, I regret the fact that I didn't bring it earlier, but it wasn't intentional.

Q. MR. HEALY: I understand. So just so we'll understand the position, you were well aware of it when you gave evidence the last time. You were well aware of all the details just a minute but you decided it wasn't relevant?

A. I decided, yes, for the reasons that I have outlined /RS

IARTY TRIBUNAL - DAY 148

already, that I had the money was repaid. It was never used.

Q. And you didn't ask your advisers about it at the time?

A. Mr. Healy, we were talking here about a very short time span. It was a time it was a time when I was under a lot of pressure from, I suppose, possibly five different organs of the State. It wasn't on my mind. It wasn't a factor.

And as I say, when I felt that it was relevant, because you felt that the properties were relevant, I voluntarily disclosed it to you and Mr. Chairman. It was never there was never any attempt, never any attempt to do anything other than cooperate and to

facilitate the Tribunal fully. And when I did that, I instructed my advisers to give you all of the information at their disposal, and they obliged in doing that.

Q. Do you remember at one point in the course of your evidence, the last time you were giving evidence, you say that you instructed your advisers to track down all of your income and all of the money in your bank accounts? Do you remember that?

A. Yes.

Q. And you said you were anxious to establish that all of the money in your bank accounts came from a source of earned income; do you remember giving that information?

A. Yes, my accountants and my advisers did an excellent job. As I have already accepted, before the last Tribunal and this Tribunal, my finances were organised

/RS

IARTY TRIBUNAL - DAY 148

in a haphazard way, and what my accountant was asked to do was to look at the functional accounts and to provide an explanation for the lodgements and for the disbursements from each particular fund. And that was done, and I think it was of major assistance to the Tribunal.

Q. It was of huge assistance. Especially because the Tribunal believed, and I think the Sole Member said that the Tribunal believed that it was getting the full

cooperation of you and your advisers and that you had asked your advisers to track down every penny you had earned and every bank account you had so that the Tribunal would know that every penny in every bank account, give or take a few thousand pounds, was earned income.

Now, at that time you knew that you had had an account in the Irish Nationwide bank in the Isle of Man, and you never told your accountants about that account.

A. It was I felt it was I felt that it didn't arise.

The matter wasn't functional. And could I also say, Mr. Healy, that it is not fair to present this issue in some way that it was kept from you.

You will recall, Mr. Healy, that when this Tribunal was established, you will recall the manner in which the Tribunal exercised its discovery powers. And I think you will also recall that in the conduct of that particular process, there was a legal challenge to the High Court by others to stop the scope of that

/RS

IARTY TRIBUNAL - DAY 148

particular investigation or that particular invasion.

At this particular time, the Tribunal had rightfully done its work, and the Tribunal contacted me and asked me was it okay, in view of the High Court judgement, if it could retain and use all of the financial information that it had gathered on my finances under

that process. I readily agreed to do that.

Now, that was hardly the action of somebody who was hiding an account.

Q. You are absolutely right. You did not hide any of those accounts in Irish banks to which the Tribunal had access from the Tribunal, and as you quite fairly pointed out, the Tribunal afforded you the opportunity of relying on the Haughey decision or not relying on it, an opportunity it gave any number of other people it was dealing with; and many of those people, like you, decided that they wouldn't rely on the decision, and the Tribunal would keep the documentation. But of course you did know about one particular account all that time, and you didn't tell the Tribunal about it.

A. Mr. Healy

Q. Is that right?

A. That account wasn't relevant, in my mind. And subsequent to that, Mr. Healy

Q. How did you know the account the Tribunal was getting access to was irrelevant

A. If you'll allow me finish.

/RS

IARTY TRIBUNAL - DAY 148

Subsequent to that, I was presented with numerous specific waivers from this Tribunal to sign ,and I willingly obliged and did that. That is hardly the action of somebody who was trying to conceal something.

What happened, Mr. Healy, was that in my mind, I didn't see it of relevance. When it did become relevant, I immediately disclosed it.

Q. You see, Mr. Lowry, I think you gave the Tribunal full access to all of the various banks in which you might have accounts by giving the Tribunal a waiver, isn't that right, to enable the Tribunal to gain access to the banks?

A. Yes.

Q. Isn't that right?

A. In the first instance

Q. Isn't that right

A. Excuse me. In the first instance, the Tribunal under its discovery powers had access to any institution, and arising from that, I gave you permission to hold all of the documentation that you had.

In the second instance, you asked me for a specific waiver for different institutions through my legal team, and I signed them and willingly gave them to you.

And in the third instance, you asked me and you asked me for and you received from me through my legal representation a waiver in the widest possible terms, giving you access to any financial institution either

/RS

IARTY TRIBUNAL - DAY 148

within the State or outside the State, and I willingly gave it to you.

Now, that's hardly the action of somebody who is trying
to conceal the account.

CHAIRMAN: Mr. Healy, I readily accept this needs to be
looked into. I realise we have had the witness in
excess of some two hours now. It's preferable to defer
till eleven o'clock in the morning.

MR. HEALY: Thank you, Chairman.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 31ST OCTOBER, 2001 AT 11 AM.

/RS