

TRIBUNAL OF INQUIRY

(PAYMENTS TO MESSRS CHARLES HAUGHEY AND MICHAEL LOWRY)

DAY 149

Appointed by instrument of An Taoiseach dated

26th day of September 1997

pursuant to the

Tribunals of Inquiry (Evidence) Acts 1921 and 1979

TRANSCRIPT OF PROCEEDINGS HELD IN DUBLIN CASTLE

BEFORE MR. JUSTICE MICHAEL MORIARTY (CHAIRMAN),

ON FRIDAY, 31ST OCTOBER 1997, AND FOLLOWING DAYS:

TRANSCRIPT OF PROCEEDINGS ON WEDNESDAY, 31ST OCTOBER, 2001:

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan SC

Mr. Jerry Healy SC

Ms. Jacqueline O'Brien BL

Instructed by: John Davis

Solicitor

FOR MICHAEL LOWRY: Mr. Donal O'Donnell SC

Mr. David Barniville BL

Instructed by: Kelly Noone & Co.

Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

WITNESS: EXAMINATION:Q. NO:

MICHAEL LOWRY Mr. Healy 1 - 516

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,

31ST OCTOBER, 2001 AT 11 AM:

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

Q. MR. HEALY: Thanks, Mr. Lowry.

Can you tell me, Mr. Lowry, did you ever discuss with David Austin the evidence that was coming out at the McCracken and the Flood Tribunals up to the time of his death?

A. Pardon?

Q. Did you ever discuss the evidence and your involvement in the evidence that was coming out at the McCracken and sorry, and Moriarty Tribunals up to the time of the late Mr. Austin's death?

A. Not specifically, but obviously Mr. Austin, like many other people, were following that evidence.

Q. You were meeting him fairly regularly during that time, presumably?

A. Yes.

Q. And did you confide in him any of the troubles that you were having because of the revelations at the McCracken and subsequently at this Tribunal?

A. David Austin was well aware of those from I didn't have to confide in him because it was public knowledge at that stage. The Tribunal was sitting in public.

Q. I see. But can I take it that it must have come up in conversation on a day-to-day basis, even if only to wish you well in getting on with the evidence you were giving and so forth?

A. That would be correct. Mr. Austin certainly was sympathetic to my position, and at that particular time, obviously during the course of the Tribunal, I wouldn't have been in as regular a contact with him, no more than I am now even with my immediate family. You don't get time, when you are sitting in these for results, to do the things that you'd normally do in life.

Q. Now, you said yesterday that you were surprised that Mr. Austin didn't tell you about the Telenor payment or the difficulties that he was clearly having in processing that payment, i.e. in getting it to Fine Gael, isn't that right?

A. That's correct.

Q. I take it you are surprised that he never thought to confide in you that the controversies that developed concerning this payment in 1997 at the time of the ESAT Telecom IPO and in 1998 at the time of the Fine Gael inquiries, that he never thought to confide in you about these controversies, which were occurring behind closed doors but which had implications for you that perhaps you should have been warned about?

A. I had as you know from the evidence, they had no implications for me because I was not involved.

Q. Well, they did, Mr. Lowry. Wasn't the problem that Telenor had, as you say from the evidence, that they wished to be sure that their money went to Fine Gael

and that it didn't go to you, for instance?

A. That was as far as I was concerned it never arose.

I never knew anything about the donation itself.

Q. Of course you never knew anything about it?

A. Yes.

Q. That's your evidence?

A. That is the facts.

Q. But it was causing considerable trouble at the time of

the IPO of ESAT Telecom. So much so, that Mr. Austin,

who was receiving quite distressing and demanding

treatment for his medical condition, had to be

disturbed and had to be persuaded to write a letter

which was to be used in the course of the preparation

of the Prospectus for the ESAT Telecom launch or

flotation. Isn't it surprising that he wouldn't have

told you that these controversies were developing and

that they were connected with your name, even if you or

he didn't think you were involved?

A. I was not aware of any of those events

Q. You said that to me already. I am just asking you, are

you surprised he didn't tell you about it or warn you

about it?

A. I am repeating the answer. The answer is that nobody

at any stage, either David Austin, Telenor, ESAT, Mr.

O'Brien, or any representative of Telenor or Fine Gael,

which included the General Secretary of the Party who

was aware of it, the Taoiseach or the leader of the

Party at that stage, John Bruton, none of those individuals or groups made any contact with me whatsoever in connection with this payment.

Q. But David Austin was your close friend, and the question I am asking you is whether you were surprised that he wouldn't have warned you about all the trouble this payment was causing and the connections that were being made between the payment and your name?

A. David Austin never advised me of those happenings, and he obviously had his reasons for it, but he never contacted me or mentioned it to me.

Q. I am just going to ask you again. This is the last time I'll ask you. Are you surprised he didn't warn you about these things?

A. I am not surprised.

Q. I see. You are not surprised he didn't confide in you that there were these difficulties that were being caused for you, behind closed doors, at a time when you were involved with other tribunals?

A. I have obviously surmised why, in my own mind, why David Austin, why Denis O'Brien, why anybody in ESAT, Telenor or more particular, why anyone in Fine Gael, even though I had left the Party, I would be surprised and surmised why none of them in actual fact made contact with me to ask me about it.

Q. Well, if you have surmised

A. I would have been very happy had they done so, because

I would have been able to say quite clearly that I had absolutely no connection or contact with it.

Q. Absolutely. And wouldn't it have been valuable to you to have been forewarned of these things?

A. It is irrelevant to me, in the context that it had nothing to do with me.

Q. Would it have been valuable to have been forewarned of them before they became matters of public controversy in the media?

A. Not necessarily.

Q. I see. I think you said a moment ago that you surmised why none of these people actually told you about any of these things?

A. I didn't say I surmised why they didn't. I am surmising I surmised as to why nobody ever made contact with me in relation to it.

Q. I am sorry, I just understood you to say, and I am reading it: "I would be surprised and surmised why none of them in actual fact made contact with me to ask me about it." And I asked you, well, if you surmised, and I am now asking you again, what did you surmise? Or did you intend to use a different word?

A. When I say "surmised", what I mean by "surmised" in this context is when this became a public controversy, yes, it did cross my mind as to why none of the previous ones that I had mentioned didn't contact me.

In particular, in particular I would have to say I was

surprised that the Fine Gael Party did not make contact with me. But again, if I am allowed to surmise, in the evidence I have got the answer to that in the evidence that has been given to this Tribunal in connection with this matter by John Bruton and Jim Miley. Both of them established to the Tribunal that it was never discussed with me. And Jim Miley gave evidence he was the General Secretary of the Fine Gael Party; he gave evidence to this Tribunal to the effect that he in actual fact, when he discussed it with David Austin, had asked David Austin had David Austin discussed it with Michael Lowry, and the answer was that he had not discussed it with me.

Q. Well, we know all that evidence already.

A. Very important evidence.

Q. Yes. I just want to come back and ask you again: Did you surmise why David Austin wouldn't have told you?

A. It obviously crossed my mind, and all I can say is that David Austin must have had some reason, which is unknown to me, why he didn't mention it to me. But what I can say to you is he definitely did not say it to me at any stage.

Q. So David Austin, a very close friend of yours, kept from you the fact that Telenor were looking for him to sign a letter to make sure that money he got from them went to Fine Gael and not to you?

A. It would have absolutely no connection with me

whatsoever.

Q. Your name being mentioned in connection with the potential payment from Fine Gael?

A. David Austin would have been quite well aware that this donation that he sought had absolutely nothing to do with me, that I had no involvement with it either in seeking it, sourcing it, or rerouting it, or whatever was done with it, back to Fine Gael. I had absolutely nothing whatsoever to do with it.

Q. You know how important to any company a public flotation of its stock is?

A. Yes.

Q. And I think you'd know from your business background how demanding the period leading up to a public flotation can be?

A. Yes.

Q. And if something was likely to scuttle a public flotation, it would have very serious implications for a company in the value of its stock, isn't that right?

A. Yes, I understand that.

Q. And the closer you get to the flotation, the more people are expecting the flotation to occur, and therefore the harder it is to reverse engines and pull back, isn't that right?

A. That would be a fair assessment.

Q. Now, close to the actual issue of this Prospectus on the 7th November of 1997, Mr. Austin was, if you like,



disturbed from his sick bed by somebody, from Aidan Phelan and another individual I am not sure who was actually dealing with him; I know Aidan Phelan spoke to him, maybe somebody else spoke to him as well and he was asked to sign a letter, the purpose of which was to exclude any suggestion that you got money from Telenor and so as to make clear that the money that he got from Telenor went to Fine Gael. You understand that?

A. Yes, I know nothing

Q. I know you know nothing about it. You have said that at least 20 times today

A. If I have to say it 20 more, I will.

Q. Attend to what I am saying. Are you surprised that when your name was mentioned with something as important as that, and when as serious a suggestion as was being made was being canvassed with Mr. Austin, that your close friend never told you about it?

A. Obviously it never obviously he dismissed it so lightly that there was no necessity, he felt no necessity to bring it to my attention. He never brought it to my attention because it was total and utter rubbish.

Q. The people who were involved in the flotation did not dismiss it lightly. They were very serious and quite senior and experienced businessmen in this town, and they took it incredibly seriously, so much so as to disturb a sick man. Now, I suggest to you that it's

hard to believe that that man wouldn't have said to you, "Look what I have been asked to do here."

A. I can tell you that that man that you referred to, Mr.

David Austin, did not refer the matter to me and did not discuss it with me. And yes, I do understand that the IPO and this particular issue was discussed in great detail, and as you know, this Tribunal has already taken evidence to the effect that they carried out an exhaustive and thorough examination of the various funds that they had and that they found, at the end of that process, that no monies of any description were remitted to Michael Lowry.

And let me say to this Tribunal, that I had no connection whatsoever with the \$50,000 donation from Telenor, and I never received any money, any money, not a brass farthing let me repeat: Not a brass farthing from Denis O'Brien, ESAT Digifone, Telenor, or anybody connected with them.

Q. We'll be coming back to the examination that was carried out by the people involved in the IPO at a later stage, and to the bank documentation they looked at.

I now want to go back and look at some of the account-opening documentation that we looked at yesterday. And I think that's in divider 2, document number 9.

A. Pardon?

Q. Document number 9 on divider 2, a two-page document.

A. 2?

Q. Yeah.

Have you got it?

A. Sorry, what document is it?

Q. Document number 9. If you look at the monitor, Irish Nationwide application form for fixed rate accounts.

Do you see that?

A. Okay, yes, I have it.

Q. Now, we went through the bare bones of this document yesterday.

A. Yes.

Q. Because you referred to it in your statement, and this was the document that you signed to open the account; it was a document that I think was given to you by David Austin, is that right?

A. That's correct.

Q. Tell me, how did he give it to you?

A. To facilitate the opening of the account.

Q. How did he give it to you? Did he post it to you?

A. I think it came to me by post. I am not certain, but I am almost certain it came to me by post.

Q. And from where did he send it, do you know?

A. I don't know.

Q. Where did you sign it and fill it out?

A. In here at home.

Q. I see. "At home", you mean in Dublin or in Tipperary?

A. Either Dublin or Tipperary.

Q. You are not sure which, I see.

And you have given your name, and then you have next to that "Private and confidential." What does that mean?

A. Exactly what it means, private and confidential, which a lot of people would put on correspondence if they wish it to be private and confidential to themselves.

Q. I see. Then you have "Brophy Thornton"; I take it you intended to write Brophy Butler Thornton?

A. Yes, well, I know them it's Butler Brophy Thornton now, or the other way around.

Q. It's Brophy Butler Thornton. And that's the address of that firm of accountants: The Gables, Foxrock, County Dublin?

A. Yes.

Q. Now, you didn't give any address you had in Dublin, and you didn't give your address in County Tipperary.

A. Correct.

Q. And amn't I right that you didn't give your accountants permission to give their address?

A. Not directly, yes, that's correct.

Q. What do you mean, "not directly"?

A. I didn't ask my I didn't say to my accountant, is it necessary I didn't think it was necessary to look for permission to put their address on it.

Q. Well, the answer to the question, then, is you didn't ask for their permission to put their address on it?

A. Yes.

Q. And you had no authority from them, although you may think you had, you certainly now know you had no authority from them to put their address on it, isn't that right?

A. It was I had commenced doing business with that company, in particular with one of the partners in that company, Denis O'Connor; he had already been working for me. I had expressed my attention to move my account there at a future date, in full, and it was for that reason that I was familiar with that company.

Q. I see. So you felt "Look, I'm going to be moving to" "BBT", I think, is the easy way to refer to it, so that we don't get into any difficulty about which is first "I am going to be moving to Denis O'Connor in BBT because they are the people who are going to be handling all my affairs"? I think at that time you were still formally with Freaney's, is that right? When I say "formally", they were formally still your accountants?

A. Freaney's were formally accountants to the company.

Q. Yes.

A. Denis O'Connor had already done some work for me at this stage, a considerable amount of work.

Q. I see. I might have to come back to that in a minute, because I am not sure that's exactly his recollection of the arrangements he had with you. In any case, you

felt you are moving to BBT; Denis O'Connor is taking over; you felt you could write their name down?

A. Yes.

Q. But you didn't have their permission to do so?

A. I didn't think it was necessary to ask permission to do so.

Q. And more importantly, you didn't tell them you had done this?

A. If I could put it in perspective, if you'd allow me an opportunity to do so.

Q. Mm-hmm.

A. The background to that is that this account, as you know, was targeted for the refurbishment of the house at Carysfort. I had previously met with Denis O'Connor who signed as a witness to the contract for the restructuring of that house which I had with Cedar Buildings, and as I explained to the Tribunal in some detail yesterday, which I don't wish to recall, I informed the Tribunal that I was extremely busy, and during the course of that brief meeting with Denis O'Connor when I asked him to witness that contract, I did say to him that "When this gets up and going, Denis, I will be asking you to look after the administration of the drawdown of the funds." And it is in that context that that name is on that, Brophy Butler and Thornton.

Q. And you signed that document on the 20th September,

1996. Is that right?

A. Yes.

Q. So you told Mr. O'Connor, on the 20th September of 1996, "Look, I am going to be asking you to look after the administration and the drawdown of the funds from this account"?

A. I didn't say this account. I said when it gets up and running

Q. Okay, the drawdown of the funds?

A. At that stage, at that stage I was probably using my own money, but what I asked him to do what I asked Denis O'Connor to do was that when the refurbishment got up and running, would he look after such things as architects' certificates, invoices, and the disbursement of whatever funds were required.

Q. administered the funds. The cheques would come in to him, and he would pay them out to the various architects or whoever were entitled to them?

A. Yes.

Q. That would seem sensible. But then you still didn't tell him a month later, when you opened the account, isn't that right?

A. Yeah, what happened was as I said, I was to revert back to him. And in actual fact, there was the necessity never arose to tell him because I sold the house, didn't proceed with the refurbishment and did not use the money, so there was no necessity.

Q. So now you had used his name on an account in an offshore bank, you hadn't told him about it, and his name was still there on the account in the offshore bank?

A. The company name was on the offshore. My name

Q. Well, you know what I am referring to.

A. The address, not his name. Well, his name the company name and address, yes. And how that arose, as I have already indicated to you, was that David Austin made the arrangements and facilitated the opening of this particular account. He asked me he knew that I was busy. He asked me who was going to look after the financial dimension of it, and I said "I don't know as yet." So he said, "Who is your accountant?" And I said, "Well, at this stage it's Denis O'Connor in Brophy Butler and Thornton." He said, "Use your accountant's address; you can channel the money through there, and you'll be able to keep a track of it".

Q. Who made a submission to the Revenue Commissioners on your behalf sometime in November of 1996 seeking to make a voluntary disclosure?

A. Who made?

Q. The submission to the Revenue or contact with the Revenue Commissioners, I think it would have been November of 1996?

A. It would have been Ernst & Young, with Denis O'Connor's involvement.



Q. The whole purpose of this was to make voluntary disclosure which concerned matters which, or had been at that stage revealed in the media so you could get your affairs with the Revenue Commissioners in order, is that right?

A. Yes.

Q. Now, your tax agents as of that moment were Ernst & Young, is that right?

A. My tax agents were Ernst & Young, and my adviser was Denis O'Connor.

Q. And you hadn't told either your tax agent or your adviser that you had just opened an account with  $\text{€}147,000$  in it in the Isle of Man?

A. For the simple reason, I have already explained this to you, that from a taxation point of view, I never accrued any benefit from this account, and in layman's language, I didn't take any interest from it, and I didn't see any necessity to report it to the Revenue or to anybody else.

Q. At that moment you were seeking to make a full disclosure to the Revenue concerning your affairs, and neither of your accountants knew that you had a bank account in the Isle of Man?

A. It was a loan facility

Q. At that moment, you had a bank account in the Isle of Man?

A. It was a loan facility which was available to me which

was never used, and because there was no benefit to me from that particular account, I didn't see that it was relevant, either to the Revenue or to anybody else.

I would also say at this point, Mr. Chairman, that I am very conscious of the fact that in the body of this hall, there are representatives of the Revenue Commissioners with whom I am dealing and with whom I am under caution. So I have no I think I must have some constitutional right in relation to the evidence that I give on taxation matters, particularly concerning particularly in regard to the fact that information that has already been given at this Tribunal has been used against me in another forum.

Q. I think, Mr. Lowry, you are well aware that this Tribunal has in the past gone to inordinate lengths to try to ensure that your taxation, how shall I put it, dealings with the Revenue Commissioners are kept distinct from your evidence here; but at that time, and while the Tribunal was taking all those steps, the Tribunal was not aware nor were your accountants, of course; Mr. O'Connor wasn't aware, your advisers, your lawyers weren't aware, that you had an account in the Isle of Man?

A. Mr. Healy

Q. Isn't that right, firstly?

A. I have already explained to you, I didn't consider it an account, on the basis it was a loan facility that I

never used, that I never drew down, that I never benefited from in any way. The interest on that account was returned to the provider, to the lender.

Q. That's true. But as of that moment, in October of 1996, and in November of 1996 as well, you never told your accountants that as of that moment, you had an account in the Channel Islands or in the Isle of Man.

MR. O'DONNELL: Sorry, Sir, I am just not clear at what moment Mr. Healy is referring to here. These are obviously matters of some delicacy of which the Tribunal is well aware. But as I understand it, the voluntary disclosure was made in May of 1997, so if Mr. Healy is putting a proposition that something that was there was a point at which disclosure was made in October or November of 1996, perhaps he can identify it.

And perhaps we can just move cautiously through this area, because the Tribunal is I think well aware that members of the Revenue are here taking notes of Mr. Lowry's evidence; that he has been formally cautioned; that evidence obtained at this Tribunal has been used in respect of other matters by the Revenue

MR. HEALY: The Tribunal is aware of that.

MR. O'DONNELL: An application has been made which relies on evidence given by Mr. Lowry at this Tribunal and the McCracken Tribunal. And I know the Tribunal is

conscious of its obligations in this regard, and I am not making a formal objection. I am just asking that the matter be dealt with with some precision, and therefore, if we are going to start at the point and say that at the time that this account was being opened there had been a disclosure made which didn't disclose this account, that that should be identified.

Because frankly, Sir, I am somewhat confused. What I understood is that the voluntary disclosure was made in April/May 1997, after this account had been closed after all these events came, after the events which led to Mr. Lowry's resignation as a director.

Now, I am simply asking at this point that we identify what it is that we are talking about and what's being put to Mr. Lowry, and I am asking that we identify clearly what its relevance is to the core issues of this Tribunal to which Mr. Lowry is asked to give evidence, given the other constraints upon him in giving that evidence, Sir.

CHAIRMAN: We will clarify very promptly the precise date of the voluntary disclosure as regards the general tenor of Mr. O'Donnell's observations let it be repeated, as has been said before, that the tax affairs of Mr. Lowry are not within the remit of this Tribunal, but the circumstances that have arisen have made it essential that the Tribunal inquire with some particularity into all the circumstances over this

period, and insofar as incidentally some tax considerations may obtrude, the Tribunal must examine these overall circumstances carefully.

But I am certainly entirely of the view that the Tribunal is not concerned with advancing or dealing in any way with any proceedings or applications or investigations being conducted by the Revenue Commissioners, and of course Mr. Lowry will have been very fully advised by you and your colleagues as to the privilege conferred by statute in relation to what is stated in the course of the evidence.

But it is a part of the job that this Tribunal has to do to investigate, in a somewhat painstaking manner, these very crucial circumstances at this particular point in time. I will not lose sight of the matters that you have again reminded me of.

Q. MR. HEALY: Now, Mr. Lowry, I am going to come back to this in more detail because I am conscious of the fact that you may want to be absolutely certain about what dates I am talking about and so that you can make your own inquiries.

My understanding is that sometime in early November of 1996, accountants, on your behalf, wrote to the Revenue Commissioners indicating that they wished to make a voluntary disclosure; is that right or wrong, according to you?

A. That is not my view of it.

Q. And that subsequently they did go ahead and make a voluntary disclosure sometime in 1997. Neither of those things happened?

A. Certainly a voluntary disclosure was made. The dates I am unsure of, but I would think that you are incorrect in the way you have put it.

Q. Well, we'll come back to the dates later on.

MR. O'DONNELL: If I could just assist Mr. Healy. I understand the position is an application was made to make voluntary disclosure on the 3rd December, and the submission was made pursuant to that voluntary disclosure in April/May of 1997.

MR. HEALY: I think that's correct.

CHAIRMAN: Thanks, Mr. O'Donnell.

Q. MR. HEALY: So there was a two-step process, is that right, whereby an application was made to make a voluntary disclosure, and that was done in December that was after there had been certain media revelations concerning your affairs and then there was an actual voluntary disclosure in 1997, is that right?

A. In April or May of that year. That's my understanding I am not

Q. I am only going on what your own counsel said.

A. I am not familiar with the detail I have of it, but that's what my senior counsel has said.

Q. We'll come back to it when we examine the actual documents.

Now, in this account-opening documentation, you directed that there be no correspondence from the bank to you except on request. What was the purpose of putting in that direction?

A. I think it's a normal if I needed information or if I was giving a specific instruction, particularly when I would be making an instruction in relation to the administration of the account, that I would contact them obviously to be at my request.

Q. And what that would mean is that you would have to request the bank to send you letters confirming balances, or to send money to you, or whatever, is that right?

A. Obviously, yes, for whatever information would be requested. Whatever information would be required .

Q. You see, I suggest to you that any average person or any average businessman looking at that would see that instruction, and the fact that you didn't give your home address, as an indication of a desire to keep this account highly secret.

A. Absolutely not. I totally refute and reject that suggestion.

Q. Did you ever have any accounts in Ireland with BBT as your address and an instruction on the account saying "No correspondence except on request"?

A. I am not sure about an account, but I certainly my company is registered at that address. My car is

registered at that address. And as you know already, my phone is registered at that address. And my understanding is that it's common practice in business that you have that offices such as this are used for such purposes.

Q. And did any of those accounts that you have mentioned for your phone, your car, or your business say "No correspondence except on request"?

A. You know, I haven't that level of detail.

Q. Isn't it likely that's not the case?

A. I haven't that level of detail.

Q. Why can't you get into the real world now, Mr. Lowry.

Isn't it likely that that is not the case? I haven't seen the documents. I think I would be reasonably certain that they do not contain any such direction.

A. I haven't seen the documents.

Q. Would you agree with me that's more likely to be the case than not?

A. Mr. Healy, you are making a mountain out of nothing, in the sense that I had no ulterior motive whatsoever for putting down "No correspondence, only on request", on the basis that who wants information pertaining to them going anywhere other than where you would actually direct it, and at that stage, it was in my mind to ask Denis O'Connor to administer that particular fund and the disbursement of that for the purpose for which it was available to me, and that was the refurbishment of



the house. I didn't get around to doing that. I didn't get around to go into the detail of it with Mr. O'Connor because it didn't arise, as the house had been sold. The refurbishment didn't take place. The money wasn't used. And the account the money was returned with the interest, and the account was closed within a matter of three and a half months or less.

Q. Why did you describe your occupation as a company director?

A. You have raised this with me previously, Mr. Healy, and the answer is that while when I had I was a minister for approximately a year and eleven months, and technically, at this particular time when this document was signed, I had resigned as a director because I was a minister. But in my mind, I always signed I never promoted myself as a minister. For instance, I was a company director for approximately eighteen years. I was a company director for that length of time. I was a minister for less than two years. So as far as I was concerned, in my mind, I was still a public representative, I was still a company director.

Q. I don't think you were a company director at that time.

A. Pardon?

Q. You were not a company director.

A. I am after explaining

Q. You were not a company director at that time.

A. I accept that I was not a company director.

Q. It's just that you said you were still a company director

A. I said in my mind I was a company director; in my mind.

There is a difference. You have the advantage of playback. I don't I can't be as precise as you want me to be. What I am saying to you is, Mr. Healy, that there is nothing there is no great mystery about why I put myself down as a company director. I see myself as a company director for most of my life, and it was on that basis I was signing it.

For instance, I didn't change my bank accounts to "Minister Michael Lowry". I didn't change my signature on my personal cheques to "Minister Michael Lowry". I never promoted myself in that way as a minister. I was still Michael Lowry in my mind, the company director, Michael Lowry in all the other facets of my life.

Q. But as of this moment you were undoubtedly a government minister, isn't that right?

A. Yes.

Q. And as of that moment, you were undoubtedly not, whatever you were in your own mind, you were undoubtedly not a company director, isn't that true, as a matter of fact?

A. Yes, that's correct.

Q. And as of that moment, in fact, as a government minister, you are not entitled to be a company

director, isn't that correct?

A. I had resigned. As part of the process, when you become a minister, you resign your directorships. I accept that.

Q. And that's quite a serious matter isn't it, that you would resign your directorships and you would cease to have outside commitments, isn't that right?

A. I think the main point about this document

Q. But is that right? You would cease to have outside commitments when you become a minister?

A. Yes.

Q. It's not simply a question of resigning the title of company director. It's a question of ceasing to be a company director and ceasing to have outside interests, so that you can devote yourself, as you yourself quite properly pointed out yesterday, to the extremely busy life you had as a minister?

A. That's correct.

Q. And in fact you were living as a minister day and night, night and day, to judge from the evidence you gave yesterday; you hardly had a waking moment that you weren't working nonstop with your several ministries or your several ministerial responsibilities?

A. That is quite accurate.

Q. And notwithstanding all of those incredibly intensive activities on your part as a government minister, you saw fit to describe yourself as a company director?

A. For the reasons, I already pointed out, there is no malintent. Can I point out, Mr. Healy, you are effectively accusing me of serious matters in relation to this document, that this document was some way or other to be hidden. The reality of this document, Mr. Healy, is that this document was going nowhere other than to the bank. This document was a personal contract between David Austin, myself, and the financial institution.

Q. No, no, it was a contract between you and the financial institution?

A. Excuse me, let me finish. Between myself and the financial institution.

Q. Yes.

A. Now, if you read the statements of the bank, you will note from the statement from the bank that there was absolutely nothing hidden about my identity, because that statement refers to me, Michael Lowry, as and I quote: "High-ranking senior Irish government minister". So if I was attempting to hide my identity by putting down "director", would they have that information on their file?

Q. You are absolutely right. On their file they have that information.

A. Yes.

Q. But you understand that the people who put that on their file are not prepared to give evidence to this

Tribunal?

A. Mr. Healy

Q. Do you understand that?

A. Mr. Healy, Mr. Healy, please, surely you are not holding me responsible for a financial institution or for any other witness not acceding to the Tribunal's request for availability. That is not my that is not of my doing.

Q. What I must say to you is this, Mr. Lowry: You are seeking to rely on dealings you had with the bank. I am simply pointing out to you that bank will not make that many themselves available, will not make the official involved available to give evidence to this Tribunal.

A. That's a matter between you, the Tribunal, and the bank. But let me make it quite clear to you that the bank were fully aware of my identity; there was never any attempt whatsoever to not let the bank know who I was. The bank knew exactly who they were dealing with. So the fact that I signed myself as a company director meant nothing.

Q. Why didn't you sign yourself as a public representative?

A. I would sign myself as a public representative or as sometimes it varies. I would sign myself sometimes as a public representative, sometimes as Michael Lowry TD. "Public representative" covers the fact that I am

a councillor and a TD.

Q. Did I understand you to say yesterday that this was David Austin's decision to put this money into an offshore bank account?

A. Pardon?

Q. Did I understand you to say yesterday that that was David Austin's decision to put this money into an offshore bank account?

A. Yes, it was.

Q. Now, I think as you pointed out, David Austin was non-resident. I take it by that you mean he was not resident in Ireland for tax reasons?

A. Yes.

Q. So therefore, there were no tax problems for him in putting this money offshore?

A. I have no idea what implications

Q. That would be a fact. If you are non-resident in Ireland for tax reasons, there is no reason why you shouldn't put money into an offshore account. No reason, either, why you shouldn't put money into an Irish account, for that matter?

A. If you say that's the position, I accept it.

Q. And we know that David Austin had at least one, if not more than one, bank account in Ireland at that time. He was operating bank accounts in Ireland.

A. I can't speak for David Austin and his accounts. What I am informing the Tribunal, what I am telling you in

evidence is the factual position, which is that David Austin suggested that it would be done this way, and I acceded willingly to his request.

Q. You see, putting money offshore, as I am sure you know only too well, Mr. Lowry, makes it covert, makes it hard to find.

A. I don't accept that.

Q. I see. Putting money offshore, I suggest to you, is a way of hiding money.

A. I don't accept that. If you wish to put it into if you wish to use a mechanism to hide it, obviously it would be. In this particular case, it was open, it was transparent, and my name was on it.

Q. Would you have preferred it to have been in an Irish bank account?

A. It made no difference to me.

Q. I see.

A. I was doing nothing illegal.

Q. Do you remember giving evidence to the McCracken Tribunal concerning money that was put into an offshore bank account for your benefit, again in the Isle of Man?

A. Which what are you referring to specifically?

Q. Badgeworth.

A. As you will recall my evidence in Badgeworth, Badgeworth was in actual fact opened for me by an accountancy company on the instructions of Mr. Ben

Dunne.

Q. Mm-hmm.

A. And that matter was dealt with extensively at the McCracken Tribunal.

Q. Well, at page 92 of Day 9 of the McCracken Tribunal I'll put it on the overhead projector so that we can all look at it. I don't have a copy at the moment.

But I'll just put it on the overhead projector.

A. Could I

Q. I am just going to put it on the projector so we can all look at it.

A. My sight isn't great. If I could get it in front of me.

Q. What I'll do, then, is I'll read it out. And I'll pass off from it, and we'll get a copy in due course so you can be thinking about it.

A. Okay.

Q. On Day 9, page 92, question 363, you were asked:

"Mr. Lowry, didn't it suit you perfectly well to have these monies paid into the foreign bank accounts where they could never be traced or detected? Isn't that the position? Isn't that the truth of all this, that it suited you perfectly well?"

And the response you gave was:

"No. As I said clearly already, the manner of payment and the mechanism for payment was a matter for the person who was paying or the company that was paying



money to me. I was uncomfortable with it, and my evidence to this effect has been substantiated already and has been corroborated already by the evidence. I was uncomfortable with it, and I made countless efforts to bring that to bear, and the only individual within that company at that particular time who could do that was Mr. Ben Dunne himself. He was the only person who could give an instruction to that effect, and I tried to get him to do it. I tried on numerous occasions to have the necessary meetings with him and I found myself in that predicament, and that predicament and that unsuccessful attempt to get a matter addressed has led to the nightmare that I have lived over the past six to eight months."

Now, what I'll do is I'll get copies

A. From what you have said, I understand it. What's the question, Mr. Healy?

Q. Well, I think on that occasion you say that you were being asked about putting money offshore as a means of making money untraceable or hard to detect, and it was suggested to you that that suited you, and you said that you were uncomfortable with it.

A. Correct.

Q. That you were uncomfortable with having money put into an offshore account?

A. I presume, Mr. Healy, you are asking me why I was comfortable with acceding to David Austin's request and

that I wasn't comfortable with this?

Q. Yes.

A. Let me say to you that I would draw a very, very big distinction between the two payments. The first payments related to an instruction from Ben Dunne to an accountancy company to open an account in my favour. That was money that was earned. I was uncomfortable with it for that reason. I would have preferred to have access to it. In this instance, the David Austin money was not a payment. It was a loan facility that was available to me which was quite legitimate, on commercial terms. There was nothing whatsoever to hide about it.

Q. There was nothing to hide about it?

A. Absolutely not.

Q. You were quite happy to tell anyone about?

A. I was quite happy that I had a loan agreement in place, that it was based on a commercial arrangement whereby there was a specific that the loan was lent to me for specific purposes and that when that purpose ceased, the loan was no longer required and was repaid in full with interest.

Q. So you didn't have any difficulty with this account being in an offshore account. You might have put it yourself there, even, if Mr. Austin hadn't put it there?

A. No, I am not saying that. What I am saying is that Mr.

Austin, for his own particular reasons, and I am sure to suit his own particular circumstances, I am not aware of the detail of his circumstances, but it was at his request. I acceded to his request because there was nothing wrong or illegal with doing that.

Q. But after the account was put into your name or after the money was put into your account, what business of Mr. Austin's was it after that? Couldn't you have put the account wherever you wanted?

A. I considered that I considered well, obviously Mr. Austin wanted to remit his money through whatever channel he chose, and I was grateful to get the loan. I was grateful for the fact that he had volunteered to give me that assistance, and I was going to do it in the manner in which he wanted me to do it.

Q. But then after the money was put into the account now it's your account, it's your money is in it you could have just said "I'll just transfer it all back to Ireland"? It would be much easier, wouldn't it?

A. I don't see the purpose of that is we would draw down because it was required for the refurbishment, and my accountant, at the address that is given on the form, would have been asked to administer that particular fund and to draw down as it was required for disbursement to those people who were to be paid for the work that they had done on the house.

Q. So while you mightn't have set up an account like this

in the first instance, you didn't see any problem with it; you saw nothing covert about it, nothing hidden about it. It was a completely up-front account as far as you were concerned?

A. I want to say most definitely, in the sense that could I repeat: Mr. Austin was the person involved with me. He knew about it. It was on his instructions that it was done this way, and the bank themselves were fully aware of the circumstances involved, and they were fully aware of who Michael Lowry was. There was nothing covert or hidden about my name or anything else.

Q. Can I ask you this question: What conceivable reason could Mr. Austin have for putting this money, which was to fund refurbishment to your house in Dublin, into an account in the Isle of Man?

A. I have no idea. I am not privy to that information, but I am sure he had good reason.

Q. Mr. Lowry, don't you know there is no possible credible reason other than to keep the money hidden?

A. I don't accept that.

Q. Well, could you think

A. I don't accept that at all.

Q. I'll tell you, I don't know how long more you are going to spend in the witness-box, but, you can keep trying to think of an answer.

A. I don't accept that.

Q. I'm going to suggest to you, I am going to give you an opportunity to think of any reason why anybody would put money into an offshore account when it could just as easily be put into an account in Ireland.

A. I am not going to speak for David Austin. What I am saying to you is David Austin decided on the mechanisms and the proceedings for the drawdown of the funds. It was his decision; he was aware of his own particular financial circumstances. He was a non-resident. All I can assume is it suited him to do that way.

Q. I am not making any criticism of Mr. Austin. The account is your account, Mr. Lowry, not Mr. Austin's. You are not a child. You were not forced to open this account. You were not forced to operate it in the Isle of Man. You are an adult.

A. Mr. Healy, I never used the word "forced" to do anything. I have clearly said to you that the request was that I was that the loan was given to me on a voluntary basis. David Austin made a decision as to where the account would be opened. And as you can see from all the payment work and the statements you have already, he made all of the arrangements. I signed whatever documentation was required. It was at Mr. Austin's request that it was done this way, and I respected his wish.

Q. I think what you said was you willingly went along with it?

A. Yes.

Q. Willingly?

A. Yes, willingly.

Q. You had no problem with it?

A. None whatsoever, Mr. Healy, because it was a straightforward loan transaction. I had nothing to worry about or nothing to bother with it. I knew exactly and precisely what it was for, and I knew I would honour the terms of the agreement I had with him.

And as you know now, from the evidence before you, from the facts before you, Mr. Healy, this money was not used for the purpose for which it was targeted, and having ceased to have a particular function, it was returned within three months with interest.

Q. You see, it's my job, Mr. Lowry, to suggest to you that any ordinary person looking at this would find it impossible to believe that there was any credible reason for doing what you did or for doing what Mr. Austin did, but for doing what you did in willingly opening this account other than to hide the money.

A. I do not accept that. I totally reject that presumption or assertion.

Q. Are you sure it wasn't your idea, not Mr. Austin's idea, to open this account?

A. Mr. Healy, I have already explained to you on several occasions that it was Mr. Austin's decision to do it this way, and that evidence that I have given is

substantiated and corroborated by the statement that you have received and the documentation that you have received from the Irish Nationwide Building Society.

Q. Mr. Austin doesn't appear to have had any connection with the Isle of Man up to this time, whereas you did.

A. I am not I can't say that Mr. Austin didn't have.

All from the correspondence that I see, he obviously had a very good working relationship with one of the bank officials in that bank.

Q. Well, as far as the Tribunal is aware, his offshore banking arrangements were with the Bank of Ireland in Jersey, whereas your previous experience of offshore banking was with the Isle of Man and with the Channel Islands, but with the Isle of Man, isn't that right?

A. Yes.

Q. And your dealings in relation to your Dublin house were with Irish Nationwide in Dublin, isn't that right?

A. That's correct.

Q. And you choose the same bank in the Isle of Man to lodge the balance of this money, which was to be used, according to your evidence, for the very same house you were purchasing through the INBS in Dublin?

A. Mr. David Austin, as I had informed you yesterday in my evidence, was fully aware of all of the details of my financial and personal circumstances, would have been aware that I had the mortgage from the Irish Nationwide in Dublin, and I presume it was for that reason that he

suggested that he would open the account at that particular bank.

Q. Who was the individual that you thought was well used to or well known to Mr. Austin?

A. Some official in the bank his name appears on some of the documentation, if

Q. Is that Mr. Tully?

A. Tully, I think.

Q. Mr. Tully is one of the names?

A. That's the name that I see in the documentation.

Q. Mm-hmm.

Now, if I can just go back to the account-opening documentation again.

A. What section?

Q. The same schedule 2, document number 9, on the first page again, please.

Before I come to that, or maybe while you are finding it, can you tell me, how long did you think the refurbishment of Carysfort would take?

A. At that stage I would have had I wasn't sure, but I am sure it was at least probably I don't know, I am not a construction person, but I am sure it would have taken several months.

Q. Three to six months, something like that, I suppose?

A. Mm-hmm.

Q. In any case, if you open the account-opening documentation again.



A. What number is that, Mr. Healy?

Q. Number 9. Do you see account number 01, looks to me, 305 it could be 505; it's not absolutely clear to me.

A. Yes.

Q. Underneath that, then you have the next line on the left-hand side, "Account type required". There is one-year, two-year, three-year, four-year, five-year, and then there is "seven-year at 5.5 percent" in handwriting, do you see that?

A. Yes.

Q. That was presumably written onto the account not by you, but by some official of the bank, would that be right?

A. I would assume so, yes.

Q. Would that not suggest that this money was being placed in the account over a longish term?

A. I have no idea why that is written in. I wasn't privy to it. I have no idea. The only thing that I can say to you is obviously it wasn't set in stone, because I was able to close the account within three months.

Q. Well, do you remember what rate of interest you got after the three months?

A. Pardon?

Q. Can you remember what rate of interest you got after the three months? You didn't get 5.5 percent?

A. I haven't gone into that kind of detail.

Q. A seven-year term at 5.5 percent would suggest, however, an intention, or could suggest an intention to leave the money there for a much longer period of time?

A. That wasn't the intention.

Q. Do you remember that you said to me yesterday that around the time that you made your decision to buy a property in Dublin, you discussed with your accountants whether this would be a good idea or not? I think I was anxious to know whether you had discussed the whole matter with your accountants, but I think what you told me is you discussed with them the availability of the dual abode allowance.

A. Yes, I simply asked them to look up the information and the detail of the dual abode allowance and how it worked and to give me a summary of that.

Q. To verify it, in other words, I suppose?

A. To which?

Q. To verify what value there was in the dual abode allowance?

A. Mainly to see was it applicable to me.

Q. Yes. And the accountants that you went to to seek that information were I think you said Oliver Freaney, is that right?

A. When you say discussed it or to seek information, all I simply did was ask them to get me the circular in relation to it and to forward it to me. There was no discussion or no detail on it. I simply got the

circular, asked, did it apply to me? That was it.

Q. I just asked you, the accountants that you went to to seek that information was Oliver Freaney?

A. Oliver Freaney's I was with at that particular time.

Q. Now, you were also, am I not right, discussing this matter, as you said earlier, with your own personal tax adviser or personal accountancy adviser, Mr. Denis

O'Connor?

A. No.

Q. Did I not understand you to say that Mr. O'Connor witnessed the agreement you made with Cedar Building?

A. Yes, but that had nothing to do with the dual abode allowance.

Q. I see. Had he any involvement at all in advising you about getting another house, or getting a house in Dublin?

A. He assisted me on one occasion in identifying a house that was for sale, and he made arrangements through a friend of his for me to view the house.

Q. So he was involved in this process of trying to get you a house in Dublin in the same way, perhaps, that Michael Holly was involved or Mr. Austin was involved or auctioneers were involved; he was on the lookout for you, is that right?

A. I wouldn't say "the lookout" he knew I was interested in buying a house, yes.

Q. You had a discussion with David Austin sometime after

you bought the house in which you say the arrangements to fund the refurbishment from the Isle of Man were put in place or were discussed, is that right?

A. I had initially discussions with Mick Holly, the builder, in with David Austin present. We went through the condition of the house, what was required to restore the house. We had a general discussion on what was needed to bring it up to an acceptable standard, yes. And subsequent to that, subsequent to that, we received an indication of what kind of monies were involved. And further to that, I sat down with David Austin, and as I said to you yesterday, we had detailed discussions in relation to my own personal financial situation and other circumstances, and arising from those discussions, David Austin felt that the best way to approach it was by way of a loan, and he volunteered to give me a loan, and I accepted that loan. And as I said to you, and as is well recorded, that loan wasn't used for the purpose for which it was targeted, and it was repaid within three months with the interest.

Q. And you had no intention, in putting the money offshore, to hide it in any way?

A. Absolutely not.

Q. But you never discussed that with Mr. O'Connor?

A. No.

Q. Who was your tax adviser at that stage and due to take

over all your affairs?

A. Mr. O'Connor at that stage I am not quite sure; I'll check the dates, but I don't think Mr. O'Connor was my tax adviser at that stage.

Q. Well, when did he become your tax adviser? Was he advising you at all at that stage in relation

A. Mr. O'Connor in effect, Mr. Healy, has never been my tax adviser, never been my tax adviser.

Q. Was his firm advising you at that point?

A. No.

Q. Right. You felt they would be advising you, and you felt Mr. O'Connor would be administering this as your accountant; leave the words "tax adviser" out of it.

Is that right?

A. I was asking Mr. O'Connor, as a friend of mine and as an accountant, if he would assist me, at a time when I was exceptionally busy, to administer any funds not these particular funds; at that particular time I didn't even know it was this loan any funds that would be put towards the refurbishment of the particular house. At that stage

Q. The funds you had in mind at that stage was the Channel Islands funds?

A. It probably was.

Q. I think that's what you told me yesterday.

A. It probably was. Whatever the time span was. At one stage I had intended to use the Channel Islands

account. I explained the reason why that was changed yesterday to you, after discussion with David Austin, and we had intended to proceed on that basis. In the interim, in the interim, the house was sold, and the refurbishment didn't take place, and the loan was repaid. So the requirement the requirement to go back to Denis O'Connor and to give him the detail of it or ask him to perform that particular function simply didn't arise.

Q. The decision that you made not to go ahead with the refurbishment, was that a decision that you made prior to Christmas of 1996, can you remember, or was it a decision you made in the new year? I know you repaid the money in the new year, and you signed a contract to sell the property back to Michael Holly in the new year, but can you remember when you actually made the decision not to go ahead?

A. The decision, obviously something like that, it was first of all, if I could put it in perspective, because it is important to know why I might not have been so clear in what I had intended to do, in that I had just very recently resigned as a minister, and needless to say, that was a very traumatic experience. There was a lot of attendant problems and difficulties arising from that. Effectively, you would really have to go through that experience to fully understand that you will take time to consider what you want to do.

And so I obviously thought about what I was going to do in relation to the house, amongst many other things.

And I decided, in relation to the house, I completed a sale of the house I think it was in around the middle of January.

Q. That's right. I think we'll come to the actual dates later on, but I think you may have entered into a contract sometime around the 10th January?

A. In around then.

Q. We'll come to the dates. There is no doubt about that?

A. It became clear in my mind in January that yes, the best thing for me to do was to sell the house.

Q. Do you remember when all the controversy concerning your affairs erupted in the media, in the Dail, in the newspapers, in the latter part of 1996?

A. Yes, I do, quite well.

Q. You were presumably well aware that having funds in an offshore account was going to lead to speculation or allegations that you were trying to hide or bury money, isn't that right?

A. Could you repeat that question?

Q. When all the controversy concerning your affairs erupted in the Dail, in the newspapers, in the broadcast media, were you not well aware that having funds in an offshore account was going to lead to speculation or even allegations that you were trying to hide or bury money?

A. No. I dealt at that particular time with the principal allegations that were levelled at me, which were subsequently investigated by the McCracken Tribunal, and I dealt with them on that basis. I dealt with them fully at that particular forum.

Q. I think the question I asked you is, were you aware, or were you conscious of the fact that having funds in an offshore account, if it became known, could lead to speculation that you were trying to hide or to bury money?

A. It was never my intention to hide or to bury money either before McCracken, after McCracken. Never at any time was it my intention to hide or to bury money.

Q. I am well aware that that's your evidence, that that was never your intention. You were never intending to hide money from anybody by putting it into or by allowing it to be in an offshore account. But were you in any way sensitive to the fact that others people in the Dail, people in the media, in the newspapers or the broadcast media could speculate that that was your intention in putting money offshore, that it was your intention to hide it or bury it?

A. I was not sensitive to it at that stage. Obviously I'd be sensitive to it now, because of the widespread coverage that it received at a later stage.

Q. So at that stage, it never occurred to you in December of 1996, in November of 1996, when the controversy I



think erupted, in January or February, that having money in an offshore account could lead to any sort of speculation like that? That never occurred to you?

A. No, that wasn't on my mind.

Q. And David Austin or anyone else never came to you and said that it was perhaps a little unwise to have money in an offshore account while allegations like this and speculation like this could be flying in the press?

A. No. There was nothing improper about it. There was nothing illegal about it. It was the money was available for a perfectly legitimate reason. And it was simply a commercial loan under clearly understood terms.

Q. Now, when you started dealing with this Tribunal, Mr. Lowry, the Tribunal sought your cooperation, and I think as you said yesterday, while the Tribunal may have made some orders, in fact most of the information it got from you, it got voluntarily. Would that be right?

A. Pardon?

Q. Most of the information that the Tribunal got from you, it obtained voluntarily?

A. You got a substantial amount of information yourself, through your own powers of discovery; and in any way that my advisers, my accountants or legal people could assist you, I am sure you will accept that you got the utmost cooperation.

Q. That's right. And what I am saying is that the Tribunal, in seeking to get information concerning your affairs, would have used waivers and authorities that were provided by you, or by your advisers on your instructions, to enable the Tribunal to get access to information.

A. That is correct.

Q. And the Tribunal was seeking to get access to bank accounts, access to accountants, access to documentation in various different places. And in order to get access to that documentation, it had to get waivers of confidentiality or direct authorities from you, all of which were provided, isn't that right?

A. That's correct, provided by the Tribunal.

Q. Provided by you to the Tribunal?

A. Provided by I have checked this all waivers were worded by the Tribunal and issued through my legal team to me, which I willingly signed.

Q. Yes, and all of that activity was conducted, I'll put it, in a spirit of cooperation and as part of the private investigatory work of the Tribunal, isn't that right?

A. That's correct.

Q. There were meetings I don't want to go into the details of the meetings at which your advisers provided the Tribunal with a vast amount of information, and armed with that information, the

Tribunal either sought documents elsewhere or sought instructions from you to provide or to direct other people or authorise other people to provide documentation. That's all documented by now in the correspondence between the Tribunal and you?

A. That would be correct. With my total cooperation and with my approval, you had unfettered access to any institution that held an account for me or had any association with me financially, either in Ireland or outside of Ireland.

Q. And the purpose of all that cooperation was to give the Tribunal access to your accounts, especially your bank accounts, and access to documentation concerning your financial affairs, isn't that right?

A. That's correct.

Q. Now, in the course of an Opening Statement on the 22nd June of 1999, when the Tribunal was referring, perhaps for the first time in any detail, to its involvement with you and your lawyers, the Tribunal referred to the various items that it intended to deal with in the course of the sittings which were due to be held around that time. And I'll give you a copy of the I am going to put one on the overhead projector as well.

In the course of that Opening Statement, I think Mr. Coughlan said at item E, "Lastly, Mr. Lowry received certain assistance from the late Mr. Michael Holly in connection with a purchase by him of premises at 43

Carysfort Avenue, Blackrock, in the County of Dublin.

The circumstances of this relationship with Mr. Holly will be referred to in a moment."

Now, at that time the Tribunal or by that time the Tribunal had had access to a large number of bank accounts and building society accounts concerning your financial affairs, access which was provided by you and with the assistance and cooperation of your lawyers and accountants. And obviously, in the course of that investigation, it became clear that you had bought a house in Carysfort Avenue and that you had done this by way of a loan raised from the Irish Nationwide Building Society. All of those are facts, isn't that right?

A. That's right.

Q. And it also became clear that Mr. Holly had a role in that, and while initially it seemed as if Mr. Holly had purchased the house, you have explained precisely the circumstances in which Mr. Holly was involved. And so while Mr. Holly gave you assistance, it was not more than any person who was in the right place at the right time might have done for somebody else with whom he was acquainted.

And in the course of the evidence on that day, at page 23, some of your accounts were being mentioned, and I think it was Mr. O'Connor who was giving evidence concerning various accounts in various banks and building societies concerning your affairs. And I

think, at this particular portion of his evidence to which I want to refer, he was simply going through the bank accounts and identifying them and referring them to whatever substantive outside activity they corresponded. And at page 23, line 18, he was asked:

"I see. Irish Nationwide Building Society account opened on the, opened in September of 1996. Do you know what branch that account was opened in?"

And Mr. O'Connor said, "I don't, actually. That's a mortgage account, so it could have been handled from Head Office.

"Question: I see. I think in fact that may have been handled from Irish Nationwide Building Society's Head Office.

"Answer: I think

"Question: Am I right that account was opened in connection with the purchase of Carysfort?

"Answer: It's the mortgage account, yes, that's right."

So far as the Tribunal was concerned at that stage, and as far as Mr. O'Connor was concerned at that stage, the only account that was opened in connection with the purchase of Carysfort was the mortgage account, isn't that right?

A. As I previously explained to you, I did not consider the account that you referred to, in the Irish Nationwide in the Isle of Man, I did not consider that

as relevant because or material at that particular time simply because it was a short-term loan. It was a loan. It wasn't a payment. It wasn't a gift. And it was repaid in full with the interest.

Now, what is important to note, Mr. Healy, contrary to reports, I did discover this account, and I did give you a waiver to give you full access. And if I could, on the same statement that you have referred to here, at one section in it, the counsel for the Tribunal, in that Opening Statement, also stated: "The Tribunal has sought and has been given full access to all information regarding my accounts."

Q. Both onshore and offshore?

A. Yes.

Q. Mm-hmm.

A. Both inside the country and outside the country. And I willingly gave that access. I did not declare I did not declare that account at the time, on the basis that it wasn't material or relevant because it was so short, and it had been dealt with and finalised and concluded, and it wasn't functional. Denis O'Connor didn't pick up that account at that particular time because he was handing over all the documentation that he previously had with McCracken, and his principal job was to identify the lodgements in and out the lodgements in and the withdrawals from the various other accounts. That's what he was concentrating on. When this matter

became relevant, when I felt it became relevant, I voluntarily disclosed it to you on the 24th April. It was my accountant, on my instructions, that brought this account to your attention because of the way matters had evolved.

Q. Mm-hmm. Just to clarify one matter, Mr. O'Connor's evidence was based on what he believed to be the truth of the situation at that time, that there was only one account involved in the purchase of the Carysfort. Now, I just want to be clear about that. That is not correct, isn't that right?

A. What is not correct?

Q. That there was only one account involved in the purchase

A. That was Mr. O'Connor's understanding on the basis of the task that he was asked to do.

Q. I am not criticising Mr. O'Connor. Mr. O'Connor has told this Tribunal he was never aware of this account

A. That was the understanding on the basis of the task he was asked to do. This never came up because the account was so short-term, it wasn't functional, there was no benefit derived from it. The account was never used. It was repaid in full, and for that reason it did not become a serious issue.

Q. The account in the Irish Nationwide was short-term as well, wasn't it, the one in Dublin. Was it?

A. Effectively what you are saying to me, Mr. Healy, is that you are saying that I did not give you access to all of my accounts. I am saying, first of all, that I discovered this account to you. I regret the fact that I didn't discover it earlier. But I did discover it, and I gave you the full information and backup attached to it. The reason I didn't give it to you earlier was that I had made a decision that I didn't think it was material because I didn't use it or benefit from it. It wasn't a gift and it wasn't a payment to me. I can't say any more than that on it.

Q. I just want to get the facts. I am not trying to put anything to you.

When Mr. O'Connor gave that evidence in 1999, that was not correct. He didn't know it wasn't correct, but it wasn't correct. That's the first point, isn't that right?

A. Mr. O'Connor, as I said, was basing his information on all the documentation that had been he was transferring from the McCracken Tribunal to this Tribunal.

Q. When Mr. O'Connor said that it's right that there was only that this account was opened in connection with Carysfort, the fact of the matter is that it was one of two accounts opened in connection with Carysfort. Wouldn't that be the correct situation?

A. The account that was opened in the Irish Nationwide in



the Isle of Man certainly had a specific purpose of being a loan facility which was available for the refurbishment of Carysfort, yes.

Q. And were you present while Mr. O'Connor was giving that evidence?

A. I am not sure.

Q. I think that you were present during all that time in June of 1999.

A. I am not sure. If I was, if I was, I was.

Q. And surely if one of the accounts if one of the short-term accounts opened in connection with the purchase of Carysfort was relevant, the short-term account in Dublin, surely the short-term account in the same institution, if you like, in the Isle of Man was also relevant?

A. No. There is a big distinction between the two accounts. Because the account in Dublin was an account which was active. It was an account which was used for the purpose for which it was opened, to receive a mortgage and to repay a mortgage, and repayments were made out of that on a monthly basis.

The other account was never used. I never derived any benefit from it, and it was returned with the interest thereon.

Q. But it was opened in connection with Carysfort, according to your evidence?

A. Yes, I would accept that it was opened for the specific

purpose of being available for the refurbishment of Carysfort. And, Mr. Healy, as I say, I also mentioned yesterday and I don't want to go back over everything that I have said, no more, I am sure, than yourself but my actions in relation to this were one of cooperation. Any waiver that I was asked to sign, surely I wouldn't sign a worldwide waiver. Surely I wouldn't sign a waiver to financial institutions.

That's not compatible with somebody who is trying to conceal something. I was not.

I came to the conclusion

Q. Did you think the Tribunal was going to contact every bank in the world?

A. Well, you did contact the Irish Nationwide.

Q. We did, in Dublin.

A. Sorry, sorry, Mr. Healy, you contacted the Irish Nationwide on the 7th November, 1997.

Q. Yes.

A. Under your powers of discovery.

Q. Which Irish Nationwide, now?

A. Excuse me

Q. Which Irish Nationwide?

A. The Irish Nationwide Building Society, Nationwide House in Dublin, and you requested the Irish Nationwide at that particular time and I am sure you have the documents; I don't have the documentation, but I remember reading through the file since this became an

issue. And in the course of that communication with them, you demanded details of all accounts and transactions in the name of Michael Lowry or connected persons at any branch within or without the State covering the period the 1st January 1979 to the 31st December, 1996.

Q. And do you think that that would have entitled the Irish Nationwide to give us, or to give this Tribunal the documents relating to your offshore account?

A. I would have expected so, yes.

Q. Well I see. So far as you were concerned, the Irish Nationwide account in the Isle of Man was just as relevant as the Irish Nationwide account in Dublin?

A. As far as I was concerned as far as I was concerned, I gave access, full access and full permission to this Tribunal to seek out and not just for myself, not just for myself, Mr. Healy. Let me, if you for a moment, could: I gave you waivers on behalf of my mother, but in her case all you'd be looking at is her pension book. I gave it to you on behalf of my brothers, my sister, my one sister. I gave it to you on behalf of my immediate family, and I gave you waivers which were requested which were requested on behalf of connected persons. I was fulsome in relation to the cooperation I gave you, in relation to the cooperation I gave you with waivers. I didn't at any stage do anything to impede or to curtail the work of

the Tribunal in connection with my funds.

If I made a mistake if I wrongly felt that that particular account, because it was not functional and closed and because it was a loan and because it was repaid, if I made a mistake in that, I regret that very much. But I did discover it to you. It wasn't that I I was the one, and my advisers were the people who brought this to the attention of the Tribunal. If I should have brought it earlier, I regret if I should have brought it earlier, I will accept that criticism. I'll accept that criticism if I should have brought it earlier, but I did bring it to the Tribunal.

Q. Do you remember providing the Tribunal with a waiver on the 13th May of 1999?

A. I signed numerous waivers.

Q. Yeah. "Authorising banks, building societies, outside the Republic of Ireland to furnish the Tribunal of Inquiry appointed by" and the order is referred to "with details of all accounts, sums of money, funds deposited, securities or assets of whatsoever nature held in the name of our client, Michael Lowry, with the above address or any of the following addresses," and the addresses were Glenreigh, Holycross, County Tipperary; apartment number 9, Baroma, 298-300 Lower Kimmage Road, Dublin 6; 64 Finsbury House, Ballsbridge, Dublin 4.

Now, the first thing I'd say about that is it doesn't

mention you operated an account with an address BBT and specific instruction, "No correspondence to be issued except on request". That's the first thing. There is no BBT address here, isn't that right?

A. First of all, could I say to you, what you are saying to me, Mr. Healy, is because of the limitation that you may have placed on addresses on that it was you that drew up the waiver, I am sure; I don't recall drawing up any waiver. But the reality is, Mr. Healy, that my name and that of others involved in this Tribunal and others are commonly known not in Ireland, but a wide area. So Michael Lowry, of any address, the name Michael Lowry, are you seriously saying to me that because of an address, that my name wouldn't pop up? Of course it would.

Q. I want to go back to what you said a moment ago when you indicated that the Tribunal gave a waiver to, or got a waiver from you to seek from the Irish Nationwide Building Society in Dublin.

A. I didn't say that. If I said I didn't say that. You took me up wrong. What I said was that this Tribunal, my understanding is because obviously this is an important issue to me, I have discussed it with my legal advisers. And

Q. When did you discuss it with your legal advisers?

A. I discussed it with my legal advisers last week.

Q. I see.

A. And

Q. Is that the first time you discussed it with them?

A. Yes. Yes, late last week, because I wanted to be clear in my own mind of precisely what happened.

And as I indicated to you yesterday, as I indicated to you yesterday, under the powers that the Tribunal had of discovery, it wrote in a general term to every institution, that is my understanding, in Ireland and afar in relation to any account held by me or the other participants to this Tribunal. And one of those such letters, it is my understanding, went to the Irish Nationwide where I held the account that you refer to.

Q. I just want to come back to that point. You believe that that waiver should have produced the Irish Nationwide (Isle of Man) documents?

A. Well, I certainly didn't at any stage do anything to discourage the Tribunal from accessing. The point I am making to you, Mr. Healy, is that I gave you initially, you did, under your own powers of discovery, you did a widespread trawl, if I could call it that. You accumulated a substantial amount of financial information in relation to my affairs. Under that particular trawl, unknown to me, you had in actual fact communicated with the Irish Nationwide Building Society and many other institutions, and you got a huge volume of information.

I was subsequently asked, after the High Court

judgement and the challenge by others to the powers of the Tribunal, I was asked whether or not I had an objection to you retaining and having access to the documentation that you had already received. And I had no objection. I didn't mind. As far as I was concerned, everything was there, and I didn't have a problem with that.

At a later stage, then I was asked to sign specific waivers, and at a later stage I was asked to sign waivers asked my family to give you waivers to access all of the accounts. And at a further stage, I was asked to sign a waiver which was worded in the broadest possible terms and which applied to every institution in this country and outside it, any institution in any jurisdiction under my name. I willingly did that.

Q. I accept all of that. You provided the Tribunal with all those waivers?

A. Surely, Mr. Healy, you will accept that that manner of cooperation is not consistent with what you are claiming, that I deliberately or tried to conceal that particular account. I am saying I did not.

Q. I just want to ask you this question

A. I regret the fact that between all of the to-ing and fro-ing between passing over documentation, what have you, that it wasn't brought to the attention of the Tribunal.

And the final point I have to say on it is that I did, when I felt it was relevant, when other matters came into the public domain, when I felt it was relevant, I immediately brought it to the attention of the Tribunal and gave you the fullest cooperation in terms of the backup documentation for it. I regret the fact that I possibly should have done it earlier.

Q. I take from what you have told me over the last two or three minutes, Mr. Lowry, that you believe that the waiver that went to the Irish Nationwide Building Society in 1998, I suppose it was, that it's your belief that that waiver should have produced the documentation from the Irish Nationwide (Isle of Man). I understand that's what you are saying now, is that right?

A. It is my what I am

Q. Is that what you are saying?

A. No, no. What I am saying to you is that I gave you unfettered access to every financial institution in Ireland and outside it.

Q. What use was that if it wouldn't produce a document

A. Including the Irish Nationwide. And it is my view, Mr. Healy, that it's simply not logical to think that somebody in any of those institutions, if they got a communication from this Tribunal with the name "Michael Lowry" on it or some other important person who was involved in the Tribunal, that they wouldn't respond in



relation to all the financial details.

Q. They haven't responded, Mr. Lowry. They have not responded.

A. Well, it certainly wasn't at my request they didn't respond.

Q. I suggest to you that you put your money into an offshore account

A. Pardon?

Q. because you knew they wouldn't respond.

A. Sorry, Mr. Healy?

Q. I suggest to you that a reasonable interpretation to put on your actions in putting your money into an offshore account is that you knew offshore accounts wouldn't be produced on foot of any such waiver.

A. Mr. Healy, that is totally unfair.

Q. I see.

A. That suggestion is simply without foundation and does not does not conform with the actions that I have taken with this Tribunal in relation to accessing and the documentation that I gave you to enable you to access all of my accounts.

Q. Does it conform with the actions of the officials of the Irish Nationwide in the Isle of Man who will not come here to give evidence?

A. I cannot speak for the Irish Nationwide, Mr. Healy. That is a matter for you, the Irish Nationwide, and the Tribunal.

Q. To go back to the point I was making earlier, then, it seems to me that what you are saying is that you are satisfied that the waiver that you gave the Tribunal in 1998 to enable the Tribunal to get documents from the Irish Nationwide, or any other bank in this jurisdiction or elsewhere, was enough to enable the Tribunal to get the documents that they subsequently got from the Irish Nationwide in the Isle of Man. Is that right?

A. What I am saying

Q. No, is that what you are saying, so that I can understand?

A. What I am saying is that I gave anything that was required or expected of me or demanded of me to the Tribunal to enable them to access any account that I had anywhere, and I believe under that, it should have come up. When it became relevant to me, when it became relevant to me and I realised that the Tribunal had not looked at that account, I advised my advisers to bring it to you on the 24th April, and I gave you everything in relation to it. I did it in a voluntary way. I regret the fact that I didn't do it earlier.

Q. Did you think before April of this year that the Tribunal, in fact, had your Irish Nationwide (Isle of Man) money? Is that what you are saying?

A. I never I didn't it never crossed my mind, Mr. Healy, to be quite honest with you, it didn't cross my

mind until it became relevant. And the reason it became relevant was when you asked me to cooperate, when the Tribunal, or when I offered to cooperate with what I was what we considered at the time to be something outside the remit of the terms of the Tribunal, which was the property transactions which were after 1996, at that stage, as Mr. O'Connor has also said to you in his evidence, in his statement, we sat down at that stage and we said, "Well, if this is relevant, is there anything else?" We discussed it and gave an hour going through and reviewing everything, and at that stage I realised that there was some relevance in relation to this particular loan transaction, and I asked it to be submitted.

Q. At page 96, on Day 22 I'll get you a copy of the relevant page you were being asked about your actions in relation to Carysfort. And you said, at line 19, you were asked:

"Question: Now, turning to the question of the query which was raised about the purchase of Carysfort, isn't it correct, and I think you have informed the Tribunal in your statement that the letter of the 9th June, 1999, from Mr. Davis correctly sets out the details concerning your purchase of the sale of Carysfort Avenue, Blackrock, County Dublin, save that" and this is obviously a quotation from your statement "I believe the reference to Mr. Lowry in connection with

the funding of the deposit between July 1996 and December 1996 should be a reference to Mr. Holly. I understand that my solicitor has furnished the Tribunal with the entire file of Messrs. Donal Gahan & Company solicitors who acted both for Mr. Holly and myself in connection with the transaction."

And you respond to further queries raised by Mr. Davis as follows: "I discussed my desire to obtain a property in Dublin with a number of individuals to the best of my recollection, discussed the matter with Denis O'Connor, my accountant. My recollection is that Mr. O'Connor contacted a representative of David Daly Management Limited, Mr. Niall Lawless, and Mr. Lawless arranged for Mr. O'Connor and myself to inspect a property in Goatstown which was not however suitable. I was also in contact with Ken McDonald, viewed an apartment in the development in the Mount Street area. I viewed a number of apartments in the company of Mr. Bill Durkin of Durkin Bros. Limited a number of houses with Mark Fitzgerald of Sherry Fitzgerald. One of the people I spoke to was Mr. Michael Holly. I had no business dealings whatsoever with Mr. Michael Holly, now deceased, other than in relation to the house at Carysfort Avenue."

Now, the business dealings that the Tribunal was talking about at that stage concerned the purchase of Carysfort Avenue.

A. Yes.

Q. But you did have other business dealings with Mr. Holly in connection with Carysfort Avenue, didn't you?

A. No, any dealings that I had with Mr. Holly I had no other arrangements. The only dealings I had with Mr. Holly was in relation to the house at Carysfort. That was the only I never had any other business dealings with Mr. Holly.

Q. You knew the Tribunal was talking about the dealings you had with Mr. Holly concerning the purchase of Carysfort?

A. Yes.

Q. And you knew that that answer omitted any reference to the dealings you had with Mr. Holly concerning the refurbishment of Carysfort?

A. We were at that particular stage, Mr. Healy, I was referring to, and it outlines accurately and correctly, my dealings with Mr. Holly in relation to the purchase of Carysfort.

Q. You didn't mention the fact that Mr. Holly was doing the refurbishment of Carysfort.

A. Everybody knew that what happened was everybody knew that Mr. Holly, at that stage, was doing the refurbishment work on Carysfort. It wasn't an issue. It wasn't material to it.

Q. You didn't tell the Tribunal that he was doing it.

A. What I was asked at that particular stage I had

expended no money whatsoever on the house. Mr. Holly was doing it up himself at that particular stage.

Q. What you said was, "I had no dealings whatsoever" - "no dealings whatsoever with Mr. Michael Holly, now deceased, other than in relation to the house at 43 Carysfort Avenue."

A. That is absolutely correct. I had never you asked me I had never could I say it again, I never had any dealings with Mr. Holly other than with Carysfort. I had never any property transactions with him of any kind. It was Carysfort and Carysfort only.

Q. Although you never told the Tribunal that Mr. Holly was refurbishing Carysfort and that that was being paid for out of an account you had in the Isle of Man?

A. At that stage it wasn't material. It wasn't an issue.

Q. Who told you it wasn't material?

A. Nobody asked me about it. It wasn't an issue. It wasn't dealt with; there was no necessity to deal with it. At that stage I didn't even know what I was going you know, it was an ongoing, an ongoing situation in relation to Mr. Holly. I didn't know my own mind on it.

CHAIRMAN: It's probably appropriate, Mr. Healy, to adjourn

Q. MR. HEALY: I was just going to put one last thing to Mr. Lowry about this and pass on.

You see, Mr. Lowry, the impression I think one could

easily get is you didn't tell the Tribunal about the refurbishment of Carysfort and the funding of it because that would have involved two things: It would have involved disclosing that you had an offshore account in the Isle of Man, and it would have involved disclosing that you had a business dealing with David Austin.

A. I would totally reject that, and to the contrary, I would say to you, Mr. Healy, number one, the question, I had no difficulty whatsoever with the offshore account. It was totally legal. It was for a legitimate purpose, and the monies in that were for a specific use. That usage ceased, and the money was returned with interest.

On the second question what was the second question?

Q. That well, I mean, you have answered the first question, that

CHAIRMAN: That a link with Mr. David Austin emerged, and you informed the Tribunal two years ago of the additional banking relationship you had with the Isle of Man bank.

A. Yes, and the link that I had with Mr. Austin in relation to this house was totally proper. It was conducted in a legitimate manner, and I honoured in full the agreement that I had with David.

Q. MR. HEALY: Yes, but if you had told the Tribunal about the refurbishment, it would have found out about David

Austin there and then.

A. There was no necessity I mean, it wasn't an issue.

I didn't make any issue out of the refurbishment. I had purchased the house. It was an ongoing situation.

And it finally developed to the point where I had an agreement with David Austin, and in relation to the account, I have to say over and over again, I never actually used the money. I didn't benefit from it in any way. And it was repaid with interest.

CHAIRMAN: I think I have that point all right, Mr. Lowry, but I hope you do appreciate that the Tribunal must look crucially on the circumstances of the disclosure or nondisclosure of this particular matter, and accordingly, it will be necessary that you consider some further aspects of this after lunch.

We'll adjourn now until five past two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:05 P.M.:

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

Q. MR. HEALY: Mr. Lowry, I just want to clarify one thing

I asked you before lunch. It's in relation to your bank documentation. The Tribunal has had a look at some of your bank documentation, but I'd ask you to have a look at it and in due course to come back to the Tribunal if you can in fact identify any of your bank statements, addressed to your accountants or to anybody else, which contain a direction that there is to be no



correspondence on request. Will you do that?

A. Will I do that?

Q. Yes.

A. I will, yes.

Q. Now, as I said, the Tribunal has not been able to find any in a short search which contain anything like that, but one thing I have noticed in your one or two bank statements that you produced to the Tribunal was that some of them concerned bank accounts which were open for very, very short periods. And I'll just give you two.

(Documents handed to witness)

The first one is an AIB bank account at 7/12 Dame Street, Dublin 23. Michael Lowry, 9 Baroma Apartments, Lower Kimmage Road, Dublin 6. The statement is dated 12th November, 1997. It's page 1 of the statement.

It's a deposit account which was opened for a mere 8 days, an 8 days Fixed Sterling Maturer Account from the 15th March to the 23rd March. Do you see that? Do you see that account?

A. Yes, I am looking at it here.

Q. I want to show you another account that was also opened for a very short period of time. Also an AIB account, though that's not clear from the documentation. It's account in M. Lowry, the date of the statement is 29th January, '97, page 1 of 1, and it's opened from the 19th May to the 25th May. Do you see that?

A. Yes.

Q. And then the funds were transferred to another account?

A. Yes.

Q. Those are just two accounts which were opened for very short periods. In fact, for more or less minute periods compared to the account I was asking you about this morning, the account in the Irish Nationwide.

Now, during all the time that you were involved with the Tribunal, you never asked any of your advisers about that Irish Nationwide (Isle of Man) account until, I think you said, March or April of this year, is that right?

A. Correct.

Q. And that was the first time you asked your accountants whether this account you asked your advisers whether this account might be relevant to the Tribunal?

A. Correct.

Q. And I think at that time you had received correspondence from the Tribunal concerning inquiries the Tribunal was pursuing with Investec Bank, isn't that right?

A. No. No, my understanding is that my understanding of that, Mr. Healy, is that my accountant was informed of a problem with Investec, and arising from that, we went to the Tribunal to inform the Tribunal that we would assist in any way that we could to investigate that matter.

Q. Well, did you write to the Tribunal to that effect?

A. Mr. O'Connor rang the Tribunal.

Q. Mr. O'Connor came to the Tribunal on foot of correspondence that had been sent by the Tribunal.

A. Not on Investec.

Q. The Tribunal I am told the Tribunal received certain correspondence from Investec, and Mr. O'Connor rang the Tribunal to tell the Tribunal that they would be hearing from Investec; but I think by that stage, the Investec matter had become was due to erupt, let me put it that way. Was that right?

A. What happened was my understanding is that Mr. Aidan Phelan made contact with me to say that an issue had arisen with Investec Bank and that it was going to be it hadn't been at this stage, but that it was going to be referred by the Central Bank to the Tribunal. And at that particular stage, I informed Denis O'Connor of this fact, and Denis O'Connor made contact with the secretary to the Tribunal and said that in the light of what had arisen, that we would be available for any meeting that would be required to discuss the issue. It was the offer of assistance, and the approach in relation to this came from us to the Tribunal when we heard about the matter.

Q. It came from you after you had been informed by Aidan Phelan that the Tribunal would be hearing about it from Investec, isn't that right?

A. Aidan Phelan yes, yes.

Q. You had made no approach to the Tribunal prior to Aidan Phelan telling you that this issue was going to arise?

A. About what matter?

Q. About the fact that you had dealings with Woodchester Bank, that you had accounts or loan accounts with Woodchester Bank through a company called Catclause which was in your own name and your daughter's name, any of those matters. You never brought that to the attention of the Tribunal?

A. There was absolutely no need to bring it to the attention of the Tribunal. It was totally outside the remit and the Terms of Reference of the Tribunal.

Q. Had you told your accountant about it?

A. Yes.

Q. When?

A. About which?

Q. Catclause, and about Investec and all of the dealings you had with Mr. Christopher Vaughan and Mr. Aidan Phelan?

A. There was no necessity about that.

Q. You hadn't told your accountant?

A. Mr. O'Connor knew I was involved in property transactions in the UK, the detail of which he would not have been aware.

Q. Of course, none of these matters were brought to the Tribunal before the Tribunal wrote to you about the

Telenor matter and the fact that the Tribunal was examining the \$50,000 contribution and ultimately Mr. Austin's role in it and so on, isn't that right?

A. The Tribunal put specific questions to me in regard to the Telenor donation and Mr. David Austin's involvement, and I responded to those.

Q. Up to the time that Mr. O'Connor came to the Tribunal, or perhaps shortly before it, Mr. O'Connor knew nothing at all, just to be absolutely clear at all, knew nothing at all about your account in the Isle of Man?

A. That's correct.

Q. He didn't know of the existence of it. He didn't know is that right?

A. That's correct.

Q. He didn't know Mr. Austin was involved in it?

A. That's correct.

Q. He didn't know you had a loan, as you call it, from Mr. David Austin?

A. That's correct.

Q. He didn't know that that loan had anything to do with the refurbishment of Carysfort?

A. That's correct, it didn't arise.

Q. The Tribunal, as you know, sent a waiver to Irish Nationwide in Dublin in connection with any accounts you held with that building society. You are aware of that?

A. Yes.

Q. What the Tribunal did was it sent, I think, a request or a query to you asking you whether you had accounts in Irish Nationwide. Isn't that right?

A. I am not familiar with the sequence.

Q. And then the Tribunal needed to get access to that account documentation, and in order to do so obtained a waiver from you to enable the bank to provide the documentation direct to the Tribunal, isn't that right?

A. Whatever the Tribunal sought, I signed.

Q. And you felt that the waiver to Nationwide in Dublin covered Nationwide (Isle of Man) as well, is that right?

A. I can't get into this I don't understand the specifics of it, but my understanding is the waiver that I gave the Tribunal was a worldwide waiver which covered every institution within the country and outside the country, including the Irish Nationwide.

Q. But you felt that if a request was sent to the Irish Nationwide to furnish your documents, that would include documents in the Isle of Man?

A. Yes.

Q. And is that because you really didn't draw any distinction between Nationwide in Dublin and Nationwide in the Isle of Man?

A. Yes, that would be true.

Q. And is that did you ever discuss with Dublin Nationwide your accounts in Isle of Man Nationwide?

A. No, I had no contact with Nationwide in Dublin after I received the mortgage from them.

Q. And did you have any discussion with Nationwide in Dublin about opening an account in the Isle of Man?

A. No.

Q. Did you have any discussion with Nationwide in the Isle of Man about the fact that you had a Nationwide account in Dublin?

A. I had no contact whatsoever with the Isle of Man.

Q. So you had no dealings with Nationwide in Dublin involving the Isle of Man Nationwide, and you had no dealings with Isle of Man Nationwide involving the Dublin Nationwide, is that right?

A. Correct.

Q. But you felt that one should definitely know all about the other?

A. I assume that they are one and the same organisation.

Q. And you're sure that it wasn't as a result of something that was said to you in Dublin that you chose the Nationwide in the Isle of Man as the place to have this money from David Austin transferred into?

A. Definitely not. It was David Austin's decision. David Austin's decision, made in the knowledge that I had a mortgage from Nationwide in Dublin.

Q. Do you remember that a Mr. Albert Dudgeon from Rea Brothers gave evidence to the McCracken Tribunal?

A. I can't recall him.

Q. In fact I can tell you that he did give evidence, and he came to the McCracken Tribunal from Ray Brothers in the Isle of Man to give evidence concerning some of the offshore accounts that were mentioned including, as you know, I think, the Badgeworth account, in his bank in the Isle of Man.

Are you concerned that Irish Nationwide (Isle of Man) do not appear to be able to provide an official to give evidence to this Tribunal about what you describe as a completely upfront, regular and open account?

A. Am I?

Q. Concerned?

A. Not the slightest.

Q. Could I suggest to you that this would be another indication that the account you opened in the Isle of Man and into which David Austin transferred  $\text{£}147,000$  was a covert account?

A. I would totally disagree. That assumption is simply not correct.

Q. And could I suggest that it might reasonably be thought that if this was a completely open account, one that you were willing to disclose to anyone on earth who had a good reason for looking at it, that if this was a totally upfront and regularly legal account operated in a completely open way, that the officials involved would be only too happy to come and give an account here of their dealings with the individuals involved in



the account?

A. This was a totally upfront, regular, legal account.

That's exactly what it was.

Q. Yes. And I think the question I said is that I put to you that it might reasonably be thought that if that was the case, if it was what you describe it was, then there would be no reason why an official of the bank in question wouldn't come here to give evidence about it?

A. That decision of Nationwide has absolutely nothing to do with me. This is their own decision, and my understanding is from what I read of the evidence given by Mr. Fingleton, that they had their own reasons for it, that they had taken legal advice, and it was based on that legal advice that an official, or if I actually, when I think of it, my understanding is that the Chairman had offered to attend the Tribunal.

Q. And has still, but hasn't come here.

A. But Mr. Healy, I don't think that that is you know, I mean, I am not stopping him. I have given you the waiver for the Irish Nationwide.

Q. You have, yes.

A. I have given you the waiver for the Irish Nationwide in the Isle of Man, and I'd be delighted to see them attend the Tribunal if they so wish.

Q. And it would be helpful if they came, wouldn't it?

A. I would encourage them to come. If you feel it is necessary for them to come, I would encourage it.

Q. Wouldn't you agree with me it would be helpful to know what they have to say about this matter?

A. I think you are in receipt of all of documentation that is relevant to this particular transaction. I am not sure whether they can add anything further to it, but if you felt they could, I am sure you can communicate that wish of yours, and you would hope that they would comply with that wish.

Q. That's exactly what they have been saying to the Tribunal as well, Mr. Lowry, and they don't want to come. Do you approve of the fact that that they won't come here?

A. That is a matter for I cannot dictate to the Irish Nationwide as to what they will do, when, or how they do it. I certainly would like to see them here, yes.

Q. But do you are you disappointed that they are not here, let's put it that way?

A. If it can add to the efforts of the Tribunal, I would be disappointed. If it can help the Tribunal, I would be disappointed if they are not prepared to do that.

Q. You see, because that is the impression I think that is created, that if somebody is not prepared to come here to discuss a completely upfront and open account, as you put it, that there must be something irregular, something covert or hidden about the account.

A. There is nothing irregular about

Q. No, isn't that the impression that could be created?

A. Let me answer you by saying that there is nothing irregular, there is nothing covert about the account that is held in the Irish Nationwide (Isle of Man) in my name. It is a perfectly normal, legal, commercial transaction. I would not be involved in such a transaction.

Q. I understand all of that. But could I just ask you the question again. Couldn't the impression be created by the fact that nobody will come here to give evidence that this account is not the kind of account that you have described it as being?

A. If you are applying that impression to me, it is totally wrong. It's a completely false position to take up.

Q. But wouldn't that be an impression that could be created if the official involved wasn't prepared to come and assist the Tribunal with evidence when you and Mr. Austin are only too happy for him to come here?

A. I don't agree. As I said to you, you can take that matter up with the Irish Nationwide. They have my express approval to present to this Tribunal, which they have already done, all of the documentation at their disposal. They also have a waiver from me, which was requested by the Tribunal, allowing them to attend the Tribunal and to give evidence in relation to that transaction on my behalf. It is not my decision that the Irish Nationwide are here. My understanding is,

from the evidence previously given by Mr. Fingleton, that they had legal reasons why they couldn't accede to the request of the Tribunal.

Q. No. Mr. Fingleton told the Tribunal that Mr. Crellin would come, the Chairman, but the official involved won't come.

A. I have no indication of that.

Q. Well, I am telling you now.

A. I don't know either the Chairman or the official.

MR. O'DONNELL: He did say there were legal reasons.

But really, is this not a matter between the Tribunal and the Irish Nationwide? Mr. Lowry, on the 8th May, furnished an instruction to Irish Nationwide to give documents to the Tribunal, which the Tribunal has now received. He says he is happy for them to attend. I am not sure what purpose is served by asking him what impression is created by the position taken by the Irish Nationwide vis-a-vis the Tribunal.

CHAIRMAN: I think we can move on. The positions are reasonably clearly set out.

Q. MR. HEALY: That's your answer. The answer you have just given me is your answer. Your answer to my question is the answer you have just given me.

A. The answer to your question is that the Irish Nationwide have my express consent to provide the Tribunal with whatever information or assistance, including attending the Tribunal if they wish. They

have my consent to do that.

Q. Mr. Christopher Vaughan is your solicitor involved in a number of transactions on your behalf in England, isn't that right?

A. Mr. Christopher Vaughan is my solicitor in respect of one transaction.

Q. What transaction is that?

A. And one other transaction which I have no longer any interest in.

Q. So he is he acted for you in relation to two matters, one of which is still alive?

A. Yes.

Q. So he is your current solicitor in relation to a live matter?

A. He is my current solicitor in respect of my 10 percent holding in a property at Mansfield.

Q. And are you aware that he too will not come to the Tribunal to give evidence?

A. Yes.

Q. Even though you have given him a waiver of any confidentiality to enable him to do so?

A. That is correct.

Q. And again, are you disappointed at that?

A. You will be aware Mr. Healy, that, together with my advisers, we made every effort to encourage Mr. Vaughan to attend the Tribunal. And I don't know whether it's admissible or not, but as late as last week, you

received a letter which was copied to me, outlining his position in detail and outlining the level of cooperation that he has already given to the Tribunal, outlining the fact that he sent you, with my approval, the full copy of all his files, that he attended the Tribunal and had a meeting with you in private session, that he answered every query that you put in writing to him, and that he assisted the Tribunal at his own cost, to a great extent. As part of that letter, my understanding is that he also said in that letter that he had a difficulty as a solicitor in appearing in another jurisdiction to give evidence in that kind of a forum. That is my understanding of his position.

Q. But he won't come, in any case?

A. As you are also aware, Mr. Healy, I gave the Tribunal complete waiver to Mr. Vaughan. Furthermore, I asked Mr. Denis O'Connor to go to Mr. Vaughan's office to meet with him and to encourage him to attend the Tribunal, and unfortunately, his efforts in that regard failed.

Q. I want to go onto the document that I referred to earlier, dated 24th October, of 1996, in which you acknowledge a loan from David Austin. Schedule 2, document 12.

A. Schedule 2?

Q. Yes. The document 12 notation is on the bottom right-hand corner.

A. Yes.

Q. Can you tell me how that document came into existence?

A. That document is a formal agreement between David Austin and myself in respect of the loan agreement, the loan that I had from him.

Q. Can you tell me how it came into existence?

A. The document was prepared by David Austin.

Q. Mm-hmm. How did you get it?

A. David Austin informed me that we we agreed that we would put an agreement in place, obviously, and David Austin advised me that it was ready and I when next I was in the vicinity, to call, review the document, and if I was happy with it to sign it.

Q. And where was that?

A. That was in Dublin.

Q. In his house in Salthill?

A. Yes.

Q. Was he living there at the time?

A. He would have been living part-time there. David didn't live full-time in Salthill. He moved between various properties that he had, but particularly the south of France.

Q. I think was it you put the date is the date in your writing in that document?

A. The signature is my signature, yes, and the date is mine. The date the date is my figures, yes.

Q. Was it you went to David Austin's apartment in

Salthill, by appointment to sign this document you went there?

A. No, that is my recollection of this particular document.

Q. Well, just tell me what you did. You went to his apartment. What did you do?

A. I went to the apartment I went to the apartment and met with David Austin. That's my understanding, yes.

Q. And what happened then?

A. What happened?

Q. Yes.

A. I on the day in question, whatever day I signed the document, I think I met David Austin, yes.

Q. And did he hand it to you?

A. Yes, or the document, yes, I think the document was in place for me.

Q. It's effectively a form of legal acknowledgment, isn't it, that you owed money to David Austin?

A. This yes, this document is indicating that there is a loan agreement between us, and the terms of the loan agreement are outlined in it.

Q. And the agreement was to last for a number of years or whenever you sold the apartment, is that right?

A. Yes, whichever the agreement was to last over yes, over that period of time, and it was to be repaid as soon as the if I sold the house, the loan was to be repaid on the sale of the house.



Q. What it provided was that you were to get  $\frac{1}{2}$ 147,000.

You'd have it for five years or until you sold the house, and at the end of five years, you'd have to pay the money back, plus interest, at the Irish Permanent Building Society rate?

A. Yes.

Q. But you wouldn't have to pay the interest until the end of the five years or until you sold, whichever was the earlier?

A. If I didn't wish to, but it was my intention. In actual fact we had got the figures, and it was my intention to pay it on an annual basis. It worked out something like  $\frac{1}{2}$ 10,000 per annum.

Q. Who did you get the figures from?

A. The Irish Permanent.

Q. Who in the Irish Permanent gave you the

A. I have no idea.

Q. What do you mean by you got the figures from the Irish Permanent, then? What person or what branch did you contact?

A. My secretary contacted the Irish Permanent at my request and just asked them for an indicative figure of what interest would be

Q. And you did a calculation as to what you might have to pay over the years at that rate of interest?

A. I don't recall how much the figure was, precisely, but that's the procedure I applied, yes.

Q. And how long did you think you spent with David Austin when you signed the document?

A. Pardon?

Q. How long do you think you spent with David Austin when you signed the document?

A. I don't actually remember the date that I signed the document. I have no recollection of the document itself.

Q. Did you date the document at the same time that you signed it?

A. I am not sure. Well, I presume I did, yes.

Q. Wouldn't that be a natural thing to do, to date it and sign it at the same time?

A. Yes.

Q. And what happened to it after you dated and signed it?

A. What happened to this particular document?

Q. Yes.

A. I presume that I had retained a copy of the document, I think, and I think David Austin retained a copy of his document.

Q. Well, were there two documents or one document?

A. One document.

Q. Only this document?

A. I would think so.

Q. And who retained the original?

A. I don't recall.

Q. Did you take a copy away with you from that meeting

with David Austin?

A. Yes, I would say I did.

Q. So did that mean that David Austin had a photocopying machine in his house?

A. He did, yes.

Q. So did he photocopy the original after you had signed it?

A. I can't remember. I am not sure, but I know that he does have, or did have a copying machine in his house, yes.

Q. So this was done fairly formally done, then. A document was prepared. You signed the original; he kept the original. He kept the original, and a photocopy was made, and you took it away. Is that right?

A. I would I don't have, as I say, a full recollection of it. This is something like six years ago, but my understanding is or what I can say to you in broad principles is that the document was drawn up by David Austin. I agreed the document, and that transpired to be our agreement in respect of the loan that he had advanced.

Q. Can you remember what time of the day it was that you went to call to him to sign this document?

A. I don't, actually.

Q. It was a fairly significant transaction, wasn't it? A personal loan, made by an individual to another

individual, not a bank.

A. Yes, it was.

Q. And this was an attempt, according to your evidence, to put in place some document which gave some formality to that arrangement?

A. Yes, obviously it was this was a formal agreement between us, yes.

Q. And where did you keep that document after you left Mr. Austin's flat that night?

A. Where did I leave it? I presume I had it in my personal file.

Q. What file would that be, your personal file?

A. Well, either in my office, I presume.

Q. And you never thought to bring a document as formal as this to the attention of your accountants at that time?

A. That's correct.

Q. Or your solicitors?

A. Correct. There was no necessity for to do that.

Q. Mm-hmm.

A. This was an agreement. It was an agreement between friends, and it was as simple as that.

Q. The document that you have given to the Tribunal is in fact an original, isn't that right? It's the original document?

A. I am not sure.

Q. Well, it has it's written in one hand, and could I ask you to look at it?

(Document handed to witness.)

This isn't visible on the overhead projector. But it's written in one hand in black ink and then

A. It is my writing, yes.

Q. Your signature is in blue ink and the date is in blue ink?

A. Yes.

Q. Where did you get that original of the agreement?

A. Obviously on the day, or whenever I met David Austin.

Q. And you retained that document yourself all the time?

A. I retained I don't know whether I retained that document or a copy of the document, but certainly the document in question I certainly had, yes.

Q. Well, it was from you that the Tribunal got that document?

A. Yes.

Q. I think you said yourself, you have said on a number of occasions that you are not very good at attending to paperwork?

A. Mm-hmm. That is correct.

Q. And yet you seem to take good care of this document over all the years between 1996 and 2001?

A. Well, I kept the document obviously in my personal file. There is a lot of documents there are documents that you will keep. There are other documents that you don't. Obviously that is one of them.

Q. But I think the evidence that you were anxious to give to this Tribunal repeatedly this morning was that this was a transaction that was over in a matter of months, in fact even weeks. Why did you keep all the documentation?

A. Well, there was very little documentation in relation to it. I think that there was a total of, was it, two communications.

Q. What kind of a file did you keep the document in? When you say it was a personal file, what else did it contain?

A. Personal family that kind of, those kinds of matters.

Q. Did it contain financial matters?

A. No, not really.

Q. Well, wasn't that the obvious place to put it, in a place that or in a file that referred to financial matters?

A. This was I would consider this to be a personal matter. It was an agreement between two friends. I don't think it would be out of place in a personal file.

Q. I think you have been anxious to describe it as a commercial loan transaction.

A. It was a personal loan from David Austin based on commercial rates.

Q. It was an arrangement between two friends whereby one

friend, according to your evidence, facilitated the other with a  $\frac{1}{2}$ 147,000 loan, but the loan was at what you describe as a totally commercial rate, Irish Permanent Building Society rate, which you in fact intended to discharge as you went along, isn't that right?

A. That was my intention, yes, but it never happened

Q. And the man who was responsible for administering, or going to be responsible for administering the transaction to which the loan related was never informed of any of this?

A. There was no necessity to do that. The occasion didn't arise because the loan only was only out for approximately three and a half months, and at that stage, the house had been sold and the loan had been repaid.

Q. On the 25th October, 1996, this was a completely live loan, wasn't it?

A. Yes.

Q. And on the 26th October, it was a live loan, wasn't it?

A. Yes.

Q. And all the next week it was still a live loan, and you still hadn't brought it to the attention of the one man who was going to be dealing with it on an administrative basis?

A. He wasn't going to be dealing with it at that stage on an administrative basis.

Q. He was, wasn't he?

A. No, not with the loan. He was dealing with the bills, the accreditation that would come in for refurbishment in relation to the house.

Q. Yes. And he was going to be administering the refurbishment costs using an offshore account which had his firm's address on it?

A. But I have already explained to you, Mr. Healy, that what happened was I hadn't brought this the detail of this to the attention of Mr. O'Connor. It was my intention to do so, but before I got around to doing that, the house was sold and the loan was repaid, so there was no necessity to do it thereafter.

Q. Now, you were a very busy man at this time.

A. Yes.

Q. And Mr. Austin was helping you out, Mr. Holly was helping you out, and Mr. O'Connor was helping you out?

A. Mr. O'Connor was helping me out?

Q. Yeah.

A. Yes, on a

Q. And Mr. O'Connor was the person who, with Mr. Austin, was going to be dealing with some aspects of the financial part of this whole transaction?

A. It was the intention that Mr. O'Connor would do that, but as I said, the occasion didn't arise, the necessity and the requirement no longer existed because the loan was repaid.



Q. But that was much later that that difficulty arose, isn't that right?

A. Well, that was what happened was I resigned as minister on the last day, I think it was, in November. And obviously, from there on, my circumstances changed. My outlook changed. My requirements changed, and I made a decision to dispose of the house.

Q. So between the middle of October and the end of November, you never told Mr. O'Connor that there was an account with his address on it that he would be using?

A. It was a very busy time. I didn't I wouldn't have been meeting Mr. O'Connor on a regular basis. In actual fact I wouldn't have been meeting I was so busy at that stage, I would not have been meeting him. It was my intention to bring it to his attention if the work had gone ahead and we proceeded with it.

As it turned out, as I said, I had to resign in November. I made a statement to the Dail on the 19th December, and in actual fact, in that statement of the 19th December, I referred to the house at Carysfort. I referred to the invasion of my privacy in respect of it, and I indicated in that statement that I would probably sell the house.

Q. In that statement, didn't you also refer to the use that one might make of an offshore account?

A. Yes, that's correct.

Q. And didn't you say in that statement

A. Is this the Dail statement?

Q. Yes.

A. Yes.

Q. And didn't you say in that statement that "If I wanted to bury money, wouldn't I put it in an offshore account."?

A. Mr. Healy, Mr. Coughlan spent a long time cross-examining me and criticising me about that particular reference. It was dealt with extensively in the McCracken Tribunal. It was dealt with in the report of McCracken. Subsequent to the McCracken Tribunal issuing its report, I went to the place where I deemed appropriate to clarify that statement. I asked for time from the Ceann Comhairle to make a personal statement in response to Mr. McCracken's written report. I addressed that issue, and as far as I am concerned, I finalised the issue because my colleagues in the Dail accepted the explanation that I gave.

What I did at that particular time, Mr. Healy, was I in that statement I apologised for any inadvertent misleading of the House. I apologised to the Ceann Comhairle and to the members. That statement was made on the 10th September, immediately after Mr. McCracken made his report.

Q. You gave your evidence to the McCracken Tribunal in 1997, isn't that right?

A. Correct.

Q. You made your statement to the Dail in 1996, isn't that right?

A. Correct sorry, the initial statement to the Dail was made on the 19th December, 1996. I then went back to the Dail a second time and made a further personal statement after the publication of Mr. McCracken's report.

Q. I was just going to get the sequence.

You made a statement to the Dail in December of '96.

You gave evidence to the McCracken Tribunal in '97.

The McCracken Report was published in '97. And then

you went back to the Dail and you made a statement to

the Dail correcting your earlier statement?

A. Clarifying my earlier statement, yes.

Q. Now, at the time that you gave your evidence to the McCracken Tribunal, the McCracken Tribunal hadn't been told about this account, isn't that right?

A. The McCracken Tribunal was investigating specifically it was investigating payment to politicians from Dunnes Stores. This payment would not have been the subject of investigation by McCracken or this loan, I should say.

Q. What I am interested in is the statement that you actually made to the Dail and any corrective statement you made. Now you have mentioned these two statements, so I take it you have no difficulty in dealing with

them?

A. Dealing with?

Q. The two statements that you made to the Dail, the personal statement and the corrective statement.

A. It would be my view that those statements have already been dealt with, and they have been dealt with in the proper forum, and the forum is the Houses of the Oireachtas, of which I am a member. We have our own protocol. We have our rules and procedures. I complied with those, and I think I dealt with it satisfactorily at that level.

Q. What the Tribunal is interested in is not making you accountable for any statement you made to the Dail. That's a matter as between you and the Dail. It's you have mentioned the statement you made to the Dail in the course of evidence here.

A. Sorry, I mentioned it in response to your query to me about a statement that I had made previously in my statement of the 19th December 1996 on my resignation.

Q. No, that's not what happened. You were the first person this afternoon to mention your statement to the Dail, Mr. Lowry.

A. Okay.

Q. I never mentioned it, because I have been under strict warning that I am not to mention it from Mr. O'Donnell, who has a view of it.

MR. O'DONNELL: Sorry, it's not my view of it. It's

the view of the Supreme Court. It's the view of the Dail. Mr. Healy is aware of it. It's come up before. Article 15.13 of the Constitution says that a member of the Dail shall not be made answerable in court or anywhere else in relation to what is said at the Dail, and that the appropriate place for him to be made answerable is in the Dail. That's precisely what Mr. Lowry has said. Mr. Healy is perfectly aware that the Supreme Court has said on a number of occasions that a member of the Dail cannot be asked in a Tribunal such as this to explain or expand upon statements made in the Dail.

Now, I think it's Mr. Healy is clearly aware of this and should perhaps have addressed it. Mr. Lowry has said he has made a statement to the Dail. He made his corrective statement to the Dail. That's the body, under the separation of powers, to which he is responsible, and I don't think it can or should be taken further or there should be any attempt to explore this.

And I think that you have already ruled on this before, Sir, in the context of Mr. Lowry's evidence earlier this year.

CHAIRMAN: Well, I am aware of the authorities and obviously of the constitutional provision, Mr. O'Donnell; but yes, it surely remains a reality of things that the initial statement was dealt with and

adverted to in Judge McCracken's report, and Mr. Lowry has acknowledged having made a supplemental statement to the Dail. And whilst of course I understand the argument and the views of the highest court in the land are based on the doctrine of the separation of powers, nonetheless this body is the creation of the Oireachtas.

MR. O'DONNELL: I fully accept that, because it's only recently that that matter has been fully ventilated in the High Court. But one of the things that was decided in Attorney General v Hamilton number 2 was the very argument that the Tribunal there was an instrument of the legislature, and therefore in a sense was part of the institution that Article 15.13 conceived of members of the Oireachtas being amenable to, and that was withdrawn by the Tribunal counsel during the case and adverted to in the judgement, I think, of Mr. Justice O'Flaherty and perhaps Mr. Justice Hederman, as being correctly withdrawn because it is not an instrument of the legislature in that sense.

I don't want to get into an elaborate argument, save to say, Sir, that it hasn't been suggested that a Tribunal is in some different position than a court or any other place under Article 15. The contrary is the case. The decisions in Attorney General v Hamilton deal number 1 and number 2 the observations in Attorney General v Hamilton number 1 which became the subject of the

decision in Attorney General v Hamilton number 2 apply in the direct context of a Tribunal of Inquiry asking questions from members of the Dail in relation to statements they had made in the Dail. And it seems to me that the Constitution is very clear about that, the doctrine of separation of powers.

I think I can fairly say that I can understand the Oireachtas feels strongly that there are certain matters, and internal disciplinary matters are certain matters which the Constitution consigns to the Houses of the Oireachtas themselves, and I think what Mr. Lowry has said is he made his statement to the Dail. He is being criticised for that, and he made a corrective statement to the Dail. That's the procedures that are available within the Dail. And if there is a concern that the Oireachtas have about that, that's a matter that can be addressed there. I don't think he has it really can be taken further here.

Certainly Mr. Lowry has to be asked, and I think the authority says there has to be an express waiver in the clearest possible terms. Because Your Lordship will also recall, in Attorney General v Hamilton, that there was some ambiguity about the statements made by members of the Dail to the Tribunal and whether that constituted a waiver, and the Court said that was clearly not a waiver; there had to be a clear and unambiguous statement.

And if Mr. Healy wants to pursue at some length the questions of the statements to the Dail with Mr. Lowry, he should ask Mr. Lowry, refer to the constitution which binds us all, and invite Mr. Lowry to say whether he waives that or not, or whether he considers that matter appropriate to the Houses of the Oireachtas.

That's the way we should proceed. It seems to me Mr. Lowry has made it clear what view what position he takes on that, and in my submission, that's an appropriate one which the Tribunal is bound by and can only give effect to.

But, if necessary, we can do it that way.

CHAIRMAN: Well, it's the latter aspect that concerns me, Mr. O'Donnell. I don't think you would say I am precluded from looking at the two statements to the Dail, whatever about the legal entitlements of dealing with them here, other than on the basis of an express waiver. But it's effectively more in my anxiety to see that fair process is given to your client that I am anxious that he be given an opportunity of dealing with any aspects arising out of the two statements, should he so wish.

MR. O'DONNELL: I think that's a different matter, Sir, and I fully appreciate your efforts to the efforts you have gone to to ensure that the processes are fair in this Tribunal. There is no criticism at all directed to you in that regard, and I am grateful for



the consideration that has been shown.

I think that's a different matter, though, to say two things. Firstly, if there is to be a question of whether the Tribunal can make observations on the statement to the Dail, that's a matter that should be addressed in submissions. If there is a question whether it is now proposed to ask Mr. Lowry questions in some detail about that statement and it's suggested that that's to give him an opportunity of dealing with it, well, that's a matter upon which he can presumably which I would like to consider with Mr. Lowry.

That's not how this has arisen, as Mr. Healy has said.

I don't want to hold up the business of this Tribunal. I'd prefer for things to move on and without me having to make any intervention. But it does appear to me that when article 15.13 is in such clear terms and interpreted so clearly by the Supreme Court, that has to be addressed.

CHAIRMAN: I am conscious of that, and I am obviously in no sense purporting to drive a coach and four through that, but my concern is, am I to be look on it in an entirely blinkered sense? Judge McCracken did refer to the portion of the initial address to the Dail, and no effort was made to quash that portion of the report. And am I to effectively be blinkered from having access to what was stated on two important occasions?

MR. O'DONNELL: I'd be happy to address that issue, which is whether you are entitled to address it. The first question is, can Mr. Lowry be made to answer questions in relation to it? It seems to me the answer to that is clearly no. So the next question is whether he would wish to volunteer in relation to that, or whether he takes the view that it's to the Dail that he is answerable in that regard.

And that's the position we are at now. We weren't we had no this objection was raised in the McCracken Tribunal to the evidence. We had no notice of the finding of the Tribunal, and I don't think anything be can be divined from an unwillingness or a failure to quash a portion of the Tribunal report or bring proceedings in relation thereto, but where we are now is a position where we are being asked to cross a river, or where questions are being put, and Mr. Healy wishes to pursue an issue which in certain circumstances he might wish to pursue, and we have to address this issue.

Mr. Lowry has to be given the opportunity of taking a position on what is said to be a high constitutional principle. And I'd be happy, perhaps tomorrow if necessary, but happy in the submission phase to address you, Sir, on what, in the event of what he says today, what consequences follow from what the Tribunal can say in its report. I wouldn't wish to be taken as

conceding that necessarily the McCracken Tribunal was right, nor would be I be saying would I want to be taken as saying they are wrong. I think that's a matter that can be addressed in submissions. What we are talking here is clear: It's the question of evidence, and that clearly is addressed by article 15.13 on its terms as so interpreted.

MR. HEALY: I wouldn't disagree with the high constitutional principle, as Mr. O'Donnell puts it. Nor would I agree nor would I disagree that it's up to a member of the Oireachtas to decide whether he will or will not bring a statement, as it were, into the ring in a Tribunal. I was anxious not to get embroiled in this row, in view of the fact that it arose on an earlier occasion. But it was because Mr. Lowry himself mentioned his statement, and can there be any more express consent or permission, if you like, to bringing the statement into account than to refer to it yourself? When Mr. Lowry says, "It was my intention to bring it to his attention" referring to the account and referring to his intention to bring it to Mr. O'Connor's attention: "As it turned out, as I said, I had to resign in November. I made a statement to the Dail on the 19th December, and in actual fact, in that statement of the 19th November, I referred to the house at Carysfort. I referred to the invasion of my privacy in respect of it. And I indicate in that

statement that I would probably sell the house."

Now, it was when Mr. Lowry made those remarks that I

assumed, as I believe I think one can only

reasonably assume, that he is consenting to the

statement being brought into the evidence in this

Tribunal. Otherwise, is it to be open to somebody to

refer to parts of the statements that he wants to refer

to but to avoid the Tribunal referring to other parts

of it that the Tribunal might wish to refer to? That

would mean that it would result in the absurd situation

that a member of the Oireachtas could refer to every

single line of a statement that he made in the Dail,

but then refuse, because he did not give in so many

words his express consent to the reference to the other

line, that a Tribunal could be precluded from dealing

with it. It would allow the most selective use, and if

I may say so, an abuse of the very privilege that

this that the Dail intended to confer on its members

by adopting or by following, if you like, this high

constitutional principle. It would be turning the

principle on its head, if a member of the Dail could

use it in this way and then could turn around and say,

"Well, I don't consent to the Tribunal asking me any

questions about it, but I do believe I am entitled to

refer to every line of it except the line the Tribunal

wants to refer to."

That's the problem, as I see it, and I do understand

the difficulty from your point of view. I certainly do not want the Tribunal to be delayed by having to debate it, but as I see it, Mr. Lowry has brought the matter in himself. He has said, "I made a statement", and he refers to the parts of the statement he wants to refer to. Can he have any more, or is there any more express way in which he could have brought that matter into the evidence of the Tribunal? That's as I see it. I can't put the matter any further than that. I think it would be absurd if I were to ask Mr. Lowry now whether he had any objection to my referring to the statement, and if he were to say no, having himself referred to it in relation to two specific matters. That's the difficulty as I see it.

CHAIRMAN: Well, I think it's clear that the authorities indicate that there must be a waiver in the most explicit of terms to justify an order being made by any Tribunal that statements made in either House can be formally examined upon. I fully take the force of what Mr. Healy says in noting that indeed, Mr. Lowry has referred on a number of occasions today, and on previous occasions here and indeed in the McCracken Tribunal, to the content of utterances made to the Dail, and it does appear to provide to raise a somewhat difficult situation for me as the ultimate individual assessing the facts.

I am not disposed to make a ruling here and now. I

don't think I am justified in saying, without considering the matter in more detail and hearing, if needs be, further from Mr. O'Donnell, that there has been what can be held to be an effective waiver. And I am of the view that if the matter has to be argued or debated further, it should probably be done a little bit more reflectively overnight.

And I wonder, Mr. Healy, might it be possible to proceed on, and if needs be, we can revert tomorrow to this particular

MR. HEALY: Unless Mr. Lowry wants to

CHAIRMAN: I think he is entitled to talk to his legal advisers. I don't think I will press him while he is actually in the box to decide his stance on that.

MR. O'DONNELL: Sir, would you just consider, in ease of the Tribunal, it might be beneficial if I had a minute or two to consult with Mr. Lowry. I just don't know what the position is, and I can take instructions.

CHAIRMAN: There is nothing to be lost in that. Certainly.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

MR. O'DONNELL: Sir, I am grateful to you for the time.

I think it has been useful, because Mr. Lowry has been able to consider the matter and take advice on it. And he has considered it, and he is quite happy to deal with any questions Mr. Healy has to raise and

explicitly waives his privilege under article 15.13.

And he in fact would like to make it clear he was happy to deal with any questions that arose. It's a matter that had to be addressed, obviously, formally, but he is happy to deal with any question Mr. Healy might have.

CHAIRMAN: I appreciate that, Mr. O'Donnell and Mr. Lowry. And in fact, I apprehend, without knowing your state of mind, Mr. Healy, I don't think it's proposed to, in any wholesale way, to go into either statement.

Q. MR. HEALY: Certainly not.

I am just quoting from one part of your statement, and really this is the only part of the statement of I think it is December, the statement that was made in December of 1996 prior to any Tribunal commencing its deliberations in relation to any of these matters.

And in your statement and I am not sure I have a copy of it, but this is I am quoting from a section of the transcript of the McCracken Tribunal. And you'll probably recognise it, but I am going to get a copy of it for you if I can.

I am only going to be looking at a small part of the statement, so I don't think it will be necessary to get you a hard text copy. But if you want, I will get it for you.

A. That's fine.

Q. You were being asked a question here: "Could I ask you

some questions, and perhaps you can give me some answers. You went on to say" that's a reference to the statement "I did not make any secret of the fact that Dunnes Stores paid me for professional services by way of assistance towards my house."

And this is a continuation of the quotation: "If someone were trying to hide income, would he or she not be more likely to put it in an offshore account, Mr. Lowry? Why did you say that unless you were trying to clearly give the impression to the Dail that you certainly had no monies in an offshore account when in fact you had?"

Do you remember the passage in the statement to which reference is being made? We may not have the actual words here, but we can get them if necessary.

I think the words used in the statement were to the effect that if you wanted to hide money, you'd put it or wouldn't it be more likely that you'd put it in an offshore account. And in the course of the evidence in the McCracken Tribunal, evidence was given that income that you had obtained from Dunnes Stores was put into an offshore account in the Isle of Man. And I presume that you subsequently corrected that in your statement in September of 1997. That's really of only peripheral concern to me at the moment, the issues that were being addressed, i.e., the Dunnes payments.

All I want to ask you about is your statement that if



one wanted to hide income, would he or she not be more likely to put it in an offshore account? And could I suggest to you that that by that statement, you understood that offshore accounts were places in which you could hide money. That's my question to you.

A. Mr. Healy, I remember the statement well, because I had been I was severely criticised for it. It has been analysed and criticised for six years now, and I am very conscious of that statement.

I went back into the Dail to clarify that statement.

It was worded badly by me at the time, and it did not bring forward in proper language what I had intended to say. And what I had intended to say then, and which I have since clarified, and what I meant by that was that if I was trying to hide the money in respect of my house that I received from Ben Dunne and Dunnes Stores, I would not have put it into my house. I would not have put it into bricks and mortar for everyone to see.

That was the context in which I said it ,and that clarification was accepted by the Oireachtas as being the true meaning of what I meant.

Q. I fully understand that. That was what you were endeavouring to convey, that if you were a person who wanted to hide what you were earning from Dunnes Stores, you'd hardly have built a fine house, which I gather you have, for everyone to see and to ask questions: Where did you get the money to build that

house?

A. That was the intention.

Q. Yes, I quite understand that. And as I said, that's only of peripheral interest to me. What I am interested in is the form of words that you actually used, and the form of words you used that if somebody did want to hide money, they wouldn't do what you were doing, you are absolutely right. What they'd do is they'd put it into an offshore account.

And I think, when you were asked about that in the McCracken Tribunal when its accounts in the Isle of Man came to light, you said, "Well, look, it was somebody else put it into the offshore account. I had no control over that. It was Ben Dunne put it into the offshore account." Isn't that right?

A. No, I don't think I didn't say that. What I said was an agent for Ben Dunne, on his instructions, put money into an account which I had earned through my business with Ben Dunne and Dunnes Stores and through the arrangement that I had with him at that particular time.

Q. Would you agree with me that that's the statement that if somebody wanted to hide money, they'd put it in an offshore account, is a correct statement?

A. No.

Q. I see. It's not correct that if somebody wanted to hide money in an offshore account if somebody wanted

to hide money, they'd put it in an offshore account?

A. Not correct.

Q. That's completely incorrect?

A. It is not correct.

Q. And why did you make that statement, then?

A. I have already explained to you that it was the statement was worded in a way that did not reflect what I wished to say on the night. That statement has been analysed and criticised on numerous occasions since, and I have explained my position in relation to it.

Q. At the time that you made that statement, you had in fact just opened an offshore account, isn't that right?

A. Yes.

Q. And in the evidence you gave to the McCracken Tribunal, you were aware that offshore accounts played a major role in the analysis that was being conducted in the Tribunal into your affairs and Mr. Dunne's affairs, isn't that right?

A. The analysis of the McCracken Tribunal was solely concerned with payments from Dunnes Stores to me or others named, to me or others in the political circles.

Q. Are you saying, Mr. Lowry, that it's your opinion as an experienced businessman and as an experienced politician who has been in the Dail during the past in particular during the past ten years that offshore accounts are not used to hide money?

A. It is my view that, yes, an offshore account could be

used for that purpose, but not necessarily, and as you know yourself, Mr. Healy, thousands upon thousands of offshore accounts are perfectly legal, legitimate, as is the one that you are referring to for me.

Q. I am not suggesting for a moment that your account was not legitimate.

A. I am glad to hear that.

Q. I am suggesting that it was a hidden account, a covert account.

A. Absolutely not. I have already absolutely not.

Q. I won't delay you looking for a passage in the report.

I'll try and find it and give it to you before tomorrow. We'll come back to where we were before we got diverted into your Dail statement.

We were dealing with the document that you produced containing the acknowledgment of a debt. Now, that money that was put into to the Irish Nationwide account in the Isle of Man, for what you describe as Mr. David Austin's own reasons, came from an account of Mr. David Austin in the Channel Islands; were you aware of that?

A. No.

Q. Are you aware of it now?

A. In evidence given to the Tribunal, yes.

Q. And it came out of his account in the Channel Islands but was not transferred directly to the account in the Isle of Man. Do you understand that?

A. Could you repeat that, please?

Q. Yes. I am sure you are aware that money can be transferred from one individual to another in a number of different ways. I could give you a cheque, I could give you cash, I could put money into your bank account, I could do a direct debit to your account. I could transfer money from one account I had in one particular jurisdiction to an account you had in another jurisdiction. This money was not transferred in that way. It was not directly transferred from an account of Mr. Austin's in the Channel Islands to your account in the Isle of Man. Do you understand me?

A. What way was it transferred?

Q. What happened in fact was that Mr. Austin procured the issue of a draft by Bank of Ireland in Jersey, a draft made payable to himself for £147,000. I'll put the draft on the overhead projector if necessary. It's also in your book of documents, but you will find it easier, I think, to see it. It's schedule 2, document number 11, but you can see it just as easily on the overhead projector or on the monitor in front of you. You can see that it's a draft issued by the Bank of Ireland made payable to David Austin. Do you see that?

A. Yes.

Q. And it would appear that that draft was then transmitted to the Isle of Man for the attention of Mr. Karl Tully, with an instruction that it be deposited in the account that we mentioned earlier, 01505 in your

name. And the note says: "Sorry for the scrawl, but in a hurry. Will talk to you Tuesday to check it has arrived." Do you see that?

A. Yes.

Q. So this money was not directly transferred, even though Mr. Austin seems to have been in a hurry and under some pressure. It was withdrawn out of one bank in the form of a draft and then posted to another bank.

Now, I suggest to you that one of the reasons for doing that is to avoid leaving footprints in one bank which might lead to the detection of the source or the detection, rather, of the destination of the money.

A. I would not reflect on David Austin's character in that manner. As far as I am concerned, he had obviously ways and means of making the transfer. It was his decision to choose this particular way, and I am sure you will accept that it is a perfectly legitimate way of doing it.

Q. It's a very cumbersome way of doing it, isn't it?

A. It's a quite legitimate way of doing it.

Q. I didn't ask you that question. Is it a cumbersome way of doing it?

A. I wouldn't think so.

Q. I see. Can I suggest to you that it's a lot more cumbersome than to simply direct that a straight transfer be made from one account to another?

A. He could have had his perfectly good reasons to do it

that way. That was his decision. He was perfectly entitled to make whatever decision he wanted in relation to it. I think it's unfair to ascribe that type of motive to his action.

Q. You may very well be right there, Mr. Lowry, but I am trying to deal with this matter in 2001, but neither Mr. Austin nor you nor Mr. Holly brought any of these matters to the attention of the Tribunal from the time it was set up in 1997 until until in fact April of 2001. So the Tribunal is not and has not been in a position to take these matters up with Mr. Austin. You understand that?

A. I understand that.

Q. And this is not by reason of any fault on the part of the Tribunal, but perhaps due to the fact that certain individuals did not want this material to come to the attention of the Tribunal.

A. I do not accept that.

Q. Now, you describe this transaction and this account in the Isle of Man as a completely open and upfront account and a transaction which you would have been happy to disclose to anyone, and not only was it set up in the way we have described earlier, but the money that went into it went into it in a way that was somewhat cumbersome and, I suggest, so as to leave no tracks behind?

A. I completely reject that type of insinuation. The

money was transferred in the manner in which he wished to transfer it. There are numerous ways in which to transfer money. That's just one of them.

MR. O'DONNELL: I don't want to interrupt Mr. Healy at all. I don't want to have is that an entirely fair way to put the documentation to Mr. Lowry in circumstances where this is documentation released at Mr. Lowry's behest? And it's a letter signed by David Austin himself which requests the Irish Nationwide to deposit  $\frac{1}{2}$ 147,000 into an account with the name "M. Lowry". I don't see how it can be suggested to Mr.

Lowry that that is a way of disguising the transfer of money from Mr. Austin to Mr. Lowry, and perhaps that should be put to Mr. Lowry when a suggestion that this is done in some covert way is also being put to him.

CHAIRMAN: I think matters can be fairly attended to in your own examination, Mr. O'Donnell. I am not going to prejudge anything on foot of it. I think it's not unreasonable that the general procedural course of dealings surrounding the payments be put before Mr. Lowry for any observations he may care to make.

MR. O'DONNELL: Certainly, Sir.

Q. MR. HEALY: Just in case you may have misunderstood it, Mr. Lowry, it isn't the way in which the account came into your the money came into your account that I am focusing on completely, but the way in which it left Mr. Austin's account. Do you understand me?



A. Yes.

Q. It left Mr. Austin's account without leaving any traces as to where it was going, or any obvious traces as to where it was going?

A. Mr. Austin's name was on the bank draft, I understand from what you are telling me now. He opened the account himself. He contacted Mr. Karl Tully. So I don't see where I can't see the point that you are making. All I can say to you is that my knowledge of this transaction, I certainly would not accept that there was anything improper or untoward about the manner in which the monies were transferred. I could not accept that.

Q. I am not sure that you fully understand maybe it's my fault the point I am making.

Mr. Austin did take money out of his account. But he did not obtain from his own account a draft made payable to Michael Lowry. Do you understand that?

A. Yes.

Q. He obtained a draft made payable to himself.

A. Mm-hmm. It's possible that at that stage that he had intended I don't know what he had intended; maybe he intended to open it in his own name. I don't know, but all I can say to you is that the money arrived at my account, opened in my name, and it was clearly obvious to the bank that received the money where it was coming from. It was coming from Mr. David Austin.

Q. But it was not clear to the bank from which it was coming that it was going to Michael Lowry. You understand that?

A. I don't understand I understand what you are saying, but I don't understand the point you are making about it.

Q. But do you accept that?

A. If you say that's what I am saying to you is that I don't there is no circumstance in which David Austin transferred that fund in any improper, or, to use your own language, covert way. It was a totally upfront and legitimate transaction.

Q. Now, to go back to the acknowledgment. Can you let me know or can you tell me who decided that the lending rate of the Irish Permanent Building Society would be used?

A. Sorry, could you repeat that?

Q. Can you let me know who decided between yourself and Mr. Austin that the lending rate of the Irish Permanent Building Society would be used?

A. I don't recall which of us.

Q. Did you have an input into writing the document?

A. The document was prepared by David in advance.

Q. So when you got the document, it was a fait accompli?

A. If I wished to change it, I am sure I could have.

Q. So you had no input into the actual wording of it or the terms that were contained in it?

A. Yes, it was discussed on the phone, obviously.

Q. I see. So you discussed on the phone with him the term of five years or six year five years, isn't it? You must have discussed that, presumably?

A. Yes, in general terms, yes.

Q. And you discussed a rate, but you can't remember whether it was you or Mr. Austin decided to strike a rate by reference to the Irish Permanent Building Society?

A. I can't recall.

Q. Do you know whether anybody else had an input into the document?

A. Not that I am aware of.

Q. The document is formed in quite is couched in quite formal terms, isn't it?

A. It is obviously a document that has been drawn up for the purpose for which it served.

Q. Do you know whether Mr. Austin would have got any legal or financial advice in relation to the wording of the document?

A. I wouldn't have any knowledge of that.

Q. You got your secretary to check with the Irish Permanent Building Society rates. Was that before you signed the document, or after you signed it?

A. A long time afterwards.

Q. What do you mean by "a long time"?

A. I would say, you know, a matter of I don't know how

long I had the document, but when I say "a long time", you are talking about days or weeks, I wanted to know what kind of money I would be looking at.

Q. So you had no difficulty in drawing this matter to the attention of your secretary and getting her to ring the Irish Permanent to look into the matter?

A. None whatsoever.

Q. But yet you didn't bring it to the attention of your accountant at all?

A. Because it wasn't relevant.

Q. I see. Was anyone present, anyone else present, apart from David Austin, when you signed this document?

A. Not to my recollection.

Q. When you left his house and you took the document with you, you put it into your own personal file. Do you know what David Austin did with his copy of the document?

A. No.

Q. David Austin at this time was, I presume, ill; maybe not at the point of extremis, but he was still ill in 1996?

A. David Austin?

Q. Yes.

A. No, David Austin was, at that particular time what year are we talking about?

Q. The end of '96, December of '96 October of '96.

A. No, David Austin was in very good form. He may have

been, you know, in the sense that he was obviously attending for medical attention, but David Austin was in remarkably good form, and as I have said previously, bore his illness with tremendous courage. He had a fantastic will to live, and he was convinced that he would fight the illness that he had, and as such he never allowed himself to think about the illness.

David Austin, as far as he was concerned, was going to live forever and beat the illness.

Q. I understand that. But nevertheless, he had been diagnosed with a serious illness, and as you say, was bearing it with fortitude but was nevertheless under a cloud of the illness which he was, as you say, fighting.

A. Yes, David Austin was at that particular stage would have known that he was ill, but he was convinced that he could overcome that illness.

Q. Now, from inquiries the Tribunal has made, it would appear that David Austin's wife knew nothing about this transaction.

A. That would be a matter between David and Mo. I certainly never had any discussion with her in regard to it.

Q. And none of his executors were aware of the transaction ever having occurred. Do you understand what I am saying?

A. I wouldn't be surprised at that, because it would have

had no impact on the executives' duties, because the matter had been concluded, finalised, returned, and repaid with interest.

Q. But there were no papers in David Austin's papers which gave any or showed any sign at all of the existence of this transaction?

A. I am quite sure that the reason for that would have been that David Austin obviously was conscious of the fact that it was completely finalised and that the fund had been repaid.

Q. But between October of 1996 and February of 1997, if anything had happened to David Austin, his wife wouldn't have been aware, for instance, or his solicitor or his accountant wouldn't have been aware that the Estate would have been owed £147,000.

A. I don't think you could take that for certain. Who is to say that up to the time that the loan was repaid, that he hadn't his paperwork in place?

Q. Well, his wife certainly didn't know about it. His accountant didn't know about it. His solicitor didn't know about it.

A. Because you are talking about a very short time span. You are talking about a couple of months, and you will also know from you will see from your records that David Austin in actual fact, the date of David Austin's death was the 1st November 1998. We are talking here about 1996.

Q. This document that you have signed is an extremely carefully worded document, as well worded as any lawyer might word it, isn't that right?

A. David Austin was a very intelligent man. David Austin worked in the corporate sector of the and was on the main board of the Jefferson Smurfit Group, and David Austin would certainly be familiar with drawing up, complicated documents.

Q. And he seemed to have been a careful man and worded this very carefully, if he had worded it himself?

A. I have no doubt that he worded it himself.

Q. And wouldn't you think that somebody as careful as that, capable of producing a document as carefully crafted as this document, would have filed this document with his accountant or with his solicitor or told his wife about it, in view of the fact that as of October of 1996, it was going to last for five years?

A. Obviously what happened was the matter didn't arise because the loan was repaid in such rapid time that the time span between the availability of the loan and the repayment of the loan was so short.

Q. But if you were an ill man, no matter how well you were hoping to battle against your illness, and if you were entering into a transaction which was going to leave you short of  $\frac{1}{2}$ 150,000 nearly for five years, and you were going to leave a widow, don't you think you would have informed your widow or at least put the papers

with your accountant or your solicitor fairly soon after you did it, within a month, within a few weeks?

A. I think that the first thing to remember is that this was a loan between friends. David Austin certainly trusted me, and if that eventuality did arise, obviously I would have honoured the commitment that I had to him. But I must emphasise, I must emphasise, I knew David Austin very well. I knew his character. I knew his personality. And the last thing in David Austin's mind in 1996, or indeed weeks before he died, the last thing on his mind was that he was going to succumb to that illness. He never considered himself as an individual who was going to die from the illness that he had. And all of his friends, no matter when we met or what have you, he was the life of the party right up to near his death. That was David's personality and character.

Q. According to one of David's executors, Mr. Michael O'Leary, who gave evidence that he knew him for some considerable time and would have regarded him as one of his closest friends, he gave evidence that it was clear to David Austin in October of 1996 that he was not long for this world.

A. In October 1996?

Q. Yeah.

A. Well, I can tell you that I attended numerous functions with David Austin after that particular time, and David



Austin was the life and soul of many a party after 1996, I can tell you. David Austin was certainly not in that frame of mind. That was not his mentality.

David Austin fought his illness, and effectively up to until a couple of weeks before his death, David Austin still felt that he would beat that illness.

Q. One of the other documents that you have produced in relation to this is a letter to you from David Austin from London. This is document number 19 on schedule 2.

A. Sorry, Mr. Healy, which number?

Q. Schedule 2, document number 19.

A. Yes.

Q. Correct me if I am wrong as I read it.

"Dear Michael.

"Many thanks for the repayment of my loan to you for the house in Blackrock of  $\frac{1}{2}$ 147,000 plus interest as promised. I was sorry that you could not keep the house, but I fully understand the privacy was gone. Hopefully you did not lose out overall in buying or selling. I have been away from London in Spain for most of February and back for a medical checkup as part of treatment. Hopefully okay.

"Again, thank you for prompt return of funds.

"Kind personal regards.

"David Austin."

Now, that document came to you in the form of a very informal note from David Austin, is that right?

A. That's correct.

Q. It's not on printed notepaper or anything like that?

A. That's correct.

Q. We know that he had printed notepaper for 109 Flood Street, Chelsea, London, isn't that right?

A. Pardon?

Q. We know that he had printed notepaper for Chelsea in London?

A. Yes.

Q. Did you write to David Austin at the time you were repaying this loan?

A. No. I was in telephone contact with him.

Q. So there was no written communications at all between you in connection with either the obtaining of or the receipt of the loan?

A. The communication between us would have been verbal communication.

Q. Were you surprised at the unusual form of the, letter, a piece of paper folded in two? A piece of A4 paper?

A. I would see nothing wrong with it. It's paper, and it takes ink, the same as other paper, and it gives the message that David Austin wanted to give to me, which was an acknowledgment of the repayment of the loan.

Q. It's a somewhat formal acknowledgment between friends?

A. I presume that's as you say already, the document outlining the terms of the loan was formal, and I presume he continued that formality in the way he

expressed his thanks for the prompt repayment of it.

That's the way he did business.

Q. Mr. Michael O'Leary, I think, and the other executors, have indicated that that they could find, as I say, no papers at all relating to this matter amongst Mr.

Austin's effects. You say that he had a photocopier in his house in Dublin?

A. Yes.

Q. It seems reasonable to assume that he must have had one in London as well?

A. I can't say I don't see that for definite.

Q. Why did you keep this letter?

A. Why did I keep the letter?

Q. Yes.

A. Why does anybody keep a letter? I kept it, obviously, as confirmation that I had repaid the loan.

Q. Why would you need confirmation that you had repaid the loan when you could have pointed to the bank account?

A. Well, it was confirmation from the direct, source, which was David Austin.

Q. Wasn't David Austin a close friend of yours, and wasn't this a purely personal transaction, as you say, between two close friends?

A. Absolutely.

Q. Who trusted you to repay this, even if he died?

A. Yes.

Q. Why would there be such a formal acknowledgment as this

between two close friends when the money had actually gone back?

A. I think it's perfectly understandable. That was David's way of doing things. It was possible he wasn't able to get me whenever he wanted, and he put down a note.

Q. Well, you wouldn't have been as busy in February of '97, would you?

A. I wouldn't have been as busy

Q. Yes.

A. I'd tell you, very busy. You had just started, or in or around that time, and I was dealing with McCracken as well, or previous to that, and I had four other inquiries as well. So I had been very busy all the time, right up to now.

Q. Isn't that in fact the time the money was paid back, on the day the McCracken or roughly around the time the McCracken Tribunal was set up?

A. Yes.

Q. Did the setting up of the Tribunal, of the McCracken Tribunal, have anything to do with the fact that the money was shifted out of an offshore location immediately?

A. Absolutely not.

Q. I think you were the person who actually arranged for the transfer of the money back to David Austin's account in the Channel Islands, is that right?

A. That is correct.

Q. You obtained a customer withdrawal request from the Irish Nationwide?

A. Correct.

Q. It's document 17 on schedule number 2. It's on the overhead projector as well. It's headed "Account name: Michael Lowry. Brophy Thornton, The Gables, Foxrock, County Dublin." Whose writing is that?

A. I don't know. It's not my writing. It's my signature.

The transfer of the funds was, I think you will find from the evidence that the bank had given, was organised. I rang David Austin and if I could, I'll give you the sequence of events which would help the Tribunal to understand how we arrived at this point.

Q. The bank haven't given any evidence about this, but

A. Pardon?

Q. The bank haven't given any evidence about this, but I'd be interested in your evidence.

A. My understanding is that the bank that David Austin contacted the bank and that that was forwarded to me.

I signed it, returned the money, and closed the account.

Now, just to help you understand it, Mr. Healy, if you could give me a second.

Q. Yes.

A. What happened was, as you know from the records that I have given you to date and from the discovery that I

have already given to the Tribunal, on the 17th January, 1997, we completed the sale of the house to Cedar Buildings. I think this is important to get the sequence of the dates, and it answers your question also about the coincidence of McCracken.

Then on the 27th January, 1997, Gahan, who were my solicitors, forwarded a cheque to the Irish Nationwide Building Society to repay the loan which was in my name, and they got, at that stage, confirmation of the redemption of the mortgage in my name.

Q. Were you aware all that was going on at the time?

A. No, no.

Then, on the 4th February because obviously it would be within the documents that we have given you on the 4th February, 1997, Mr. Gahan, my solicitor, sent by post a cheque page to Michael Lowry which was for the surplus of the fund after the sale. So effectively what happened was the price of the house was 222, whatever it was, thousand pounds. There was a balance left after paying the Irish Permanent of 22 or after paying Irish Nationwide of  $\frac{1}{2}$ 22,845.

So on the 5th February, that cheque, which Mr. Gahan had posted from Dublin, arrived in my office in Thurles. I gave an instruction to my secretary to lodge that particular cheque, and she lodged it on the following day, the 6th February, and the important date that you have referred to previously and look upon with

a small bit of suspicion in the sense that it coincided with McCracken.

What prompted me to finalise the matter was not the establishment of McCracken. In fact, the McCracken resolution didn't go through until the following day.

I signed the transfer of the funds on the 5th February, 1997, and what triggered that transfer was the receipt by me in my office of the cheque from my solicitor, Gahan, which was the surplus on the fund. And I said there is only one matter left to be concluded and finalised on this particular issue, and that was the refund of the money in accordance with the terms to David.

And I rang David and said, "Look, I have this house is sold. I have been paid for it. The matter is finalised. I'd like to, in accordance with our agreement, return the money." So he made arrangements with the Nationwide Building Society to send on the documentation that you have just referred to.

So that that is the sequence of events, and the documents and the proof of that is with the Tribunal.

Q. When did you decide that you weren't going to go ahead with the refurbishment?

A. When did I decide not to go ahead with the refurbishment? I would say as you know, from the time that the from the time that the house started, I was extremely busy. I hadn't seen the house in the

interim. And I would say that I decided to sell the house in or around the middle of January. I referred to it in my Dail statement in December, mid-December, I referred to my Dail statement on the 19th, that because of the publicity and because of the change in my status as a minister, that I would probably sell the house.

So in or around that time, I was considering it.

Q. So wouldn't I be right in thinking that it was the middle of December you decided you were going to sell the house, and wasn't it around that time that you made the arrangement with Mr. Holly that you'd probably sell it back to him?

A. No, not at that particular time, because if you recall, and if you look at your documentation, you will see that Mr. Holly was looking for me. It would be very hard to get me at that stage, because obviously I was under huge pressure. And I think, because I wasn't responding to Mr. Holly at that particular time, he sent me a reminder he sent me an invoice for some part work that had been done work, incidentally, that I had never seen. So with an invoice there, obviously that focused my attention and my mind shortly after that.

Q. Well, can we just take it slowly now?

A. Yes.

Q. You got an invoice from Mr. Holly?

A. I think early December, was it?



Q. Now the invoice came to you. It didn't go to Butler Brophy Thornton?

A. No, my recollection of looking at the documentation, I think it came to me.

Q. So

A. But as I have previously stated to you, Mick Holly was not aware of the arrangements that I had in place.

Q. It all seems to be very complex, all right. But in any case, you got a bill from Mr. Holly. You were going to handle that bill in the ordinary way but for the troubles that befell you?

A. No. If events hadn't taken the turn they had and you will appreciate that I was reacting to events rather than leading events. What happened was that my resignation happened, and after that, obviously, it was an extremely difficult time and difficult to organise yourself and to act normal in those situations.

The bill arrived. Mr. Holly was looking for me. He didn't find me. Eventually he found me, and it was at that stage that I would have said to him, "Look, I am no longer a minister. I don't think I'll go ahead with this particular venture", and what have you. So I never did see the repairs, and I never did pay for any repairs that had been conducted. I don't even know the extent of the repairs at that particular time.

Q. So you told him you weren't going to go ahead with it, so before Christmas you weren't going to go ahead with

the refurbishment?

A. I would say probably we had discussed it, and my recollection of it is that he had said, "Look, leave it with me and we'll see."

So it would be sometime after Christmas, I would think, that we decided that we were going to sell, that we were going to make a deal.

Q. I understood you to say yesterday that it was before Christmas. Maybe it's not a big issue, that you decided not to go ahead

A. I am already after saying to you that the first indication that I gave publicly in relation to this was on the 19th December, in the Dail statement that you have referred to, when I said that because of the invasion of privacy, because my circumstances had changed and what have you, that I would probably sell the house.

And you have to put this in the context, Mr. Healy, that I had had some serious difficulties with my home in Holycross because of all the publicity that that had got. I had experienced a level of invasion in my privacy and that of my family that I don't believe anybody has ever seen since, and I hope that nobody is ever subjected to it again. But it was against that background that I was obviously concerned that the purpose for which I bought Carysfort could no longer be appropriately served. And then I wasn't a minister. I

wasn't going to get the dual abode allowance, and it is against that background also that I made a decision with Mick Holly.

Q. Wasn't that the time to give the money back to David Austin?

A. I obviously sold the house first. We completed the sale. The sequence of events is there

Q. Would you not agree with me, the time to give the money back to Mr. Austin was the time you decided you weren't going to refurbish it?

A. The time to give the money back to Mr. Austin was the time we agreed, at the end of five years or on the sale of the house.

Q. Come now, Mr. Lowry. We are talking about an arrangement between two friends. You just decided that you weren't going to go ahead with the refurbishment.

This is the whole purpose of the £147,000. Wasn't that the obvious thing to do? Ring up Mr. Austin, say, "Thanks very much; I don't need the "money"?"

A. As you will see from the sequence of events, it was done very soon after that.

Q. Why didn't you do it immediately, seeing as you were two friends

A. Mr. Healy, please. Mr. Healy, you have never been in the position that I was in, where I had to suffer the humiliation of public I had to resign as a minister.

Mr. Healy, things like this, you need time to recover

from something like that. I had to get my thoughts together. There was a lot of things I had to do to put myself back in a position where I could recover, and I did it I sold the house, and that triggered the repayment of the loan. And it had absolutely nothing whatsoever to do and I think I spelled out clearly in the documentation that I have given to the Tribunal, it had absolutely nothing to do with the establishment of McCracken. And unfortunately, everything that I have done for the last six years could be tied in with one or other inquiry, because of you know, you could make a story for everything I did.

Q. But isn't one of the problems, Mr. Lowry, that this account has remained hidden for six years?

A. Pardon?

Q. Isn't the problem for the Tribunal, in trying to understand what you were doing and what your intentions were, that this account has remained hidden from everybody: Tribunals, accountants, solicitors, barristers, for six years? Isn't that the problem?

A. It is not there was no motivation. There was nothing deliberate in relation to that. It was a simple case that the transaction happened so fast, and it was terminated because of the circumstances that came out of the blue to me, and because of the change in my circumstances, and because of the change in my requirements, I didn't go ahead with it, and therefore

the purpose for which I had the loan and the purpose for which I was doing the refurbishment ceased. I sold the house, repaid the loan in full, and as far as I was concerned, that was the end of the matter.

Q. You didn't go into the Irish Nationwide in Dublin and tell them to pay back Mr. Austin?

A. Pardon?

Q. You didn't go into the Irish Nationwide in Dublin and tell them to pay back Mr. Austin?

A. No, because the money was the money was never used. The money was in that account, and I just transferred it back from the account which it was in. It was never used by me.

Q. I think you told me earlier today that you really saw the two Irish Nationwides as one, Irish Nationwide (Isle of Man) and Irish Nationwide Dublin as all the one, you told me. But is that true or not?

A. I have already said to you, I have already said to you that I rang David Austin, and it was David Austin

Q. I didn't ask you that question.

A. Well, I'll just give you the reason why I didn't go into the Irish Nationwide in Dublin. I rang David Austin, and David Austin arranged for the transfer of the funds. As you will see from the documentation and from the notes on the documentation, it was arranged at the request of David Austin.

Q. The transfer back to David Austin?

A. The transfer back to David Austin in the Irish Nationwide in the Nationwide in the Isle of Man. It was David Austin who communicated with the bank, and the bank communicated with me.

Q. I see. I am just wondering, because you were so busy at the time Tribunals starting, under enormous pressure if you thought Nationwide (Isle of Man) was the same as Nationwide Dublin, wouldn't you have just popped in there and run up and said "Look, I have money in the Isle of Man I want to transfer to somebody else"?

A. Because the initial transaction was conducted by David through the Isle of Man branch. He had his contact there as the name you gave me today was Mr. Tully. I assume that was the contact, and he arranged the return of it, I presume, through the same contact. And why would I mean, that's where the money was. It was never used, and it was a simple case of simply transferring it.

Q. So it was Mr. Austin arranged to return the money, did the whole thing himself?

A. No, he didn't. Mr. Austin arranged for the bank in the Isle of Man

Q. To send you the documents?

A. To send me the documentation. I received the documentation. I signed the documentation, and I personally returned it directly to the bank.

Q. And then he sent you a letter thanking you for doing it?

A. He thanked me for returning it. You have the letter.

Q. A sort of formal receipt?

A. Pardon?

Q. A sort of receipt for the return of the money?

A. I wouldn't call it a receipt. I would call it a letter effectively saying that he had received his funds back.

Q. Even though he was the person who had put in train all the actions to get the money back?

A. Yes. I would say that it was completing the transaction. Nothing more, nothing less.

CHAIRMAN: All right, Mr. Healy. Ten past.

Eleven o'clock in the morning. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
THURSDAY, 1ST NOVEMBER, 2001 AT 11 AM.