

THE HEARING RESUMED ON THE 18TH OF FEBRUARY, 1999, AS

FOLLOWS:

CHAIRMAN: Good morning. Mr. Coughlan?

CHAIRMAN: Mr. Scanlon if you would be good enough to come back please?

CHARLES SCANLON RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE EXAMINED BY MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Thanks.

Q. Thank you Mr. Scanlon. I think yesterday when the Tribunal ceased public sittings we had been discussing the question of confidentiality and the mechanics of bringing the account into head office; isn't that correct? Mr. Haughey's accounts into head office?

A. Yes.

Q. And I think at that time when the deal was done there was on the books of the bank, in respect of the customer Mr. Haughey, an outstanding indebtedness of 1.143 million or thereabouts; isn't that correct?

A. I operate against the figure of 1.79 because 1.14 whatever it is, included interest which had not been charged to the account and it had accrued.

Q. It was interest that had accrued to the account up to the 17th, up to the 7th of December of 1979 I think. That is the figure I think, you can take it?

A. Well with respect, the figure I am operating against

mentally is this is 1.079 because that was the balance on the account as I understood it after the last interest had been added to the account, but if I am wrong I am wrong.

Q. Yes.

A. But I can talk against which ever figure you deem appropriate.

Q. Yes indeed, because I just want to draw the distinction between how the bank would deal with it in it's own accounts and the position of a customer really, that is really in that broad context?

A. Fine.

Q. Not on individual figures at all.

A. Yes.

Q. That however the bank was dealing with it, it had put it - the interest was in the suspense account and therefore wasn't being taken into the profits of the bank; isn't that correct?

A. The interest from 1976.

Q. '76?

A. Yes.

Q. Yes, but of course as far as any customer is concerned they still owe that money to the bank?

A. The customer statement indicated that they did.

Q. Yes; and the position is that no matter how the bank actually dealt with the matter in it's accounts subsequently, not taking things, not taking interest into profit, there was nonetheless a benefit accruing to a

customer who didn't have to pay that amount of interest;

isn't that correct?

A. Obviously any relief was giving benefit to a customer.

Q. Yes. Yes, and if one operates on the figure of 1.143 as opposed to the figure that you have in your mind?

A. Um hum.

Q. About accrued but not applicable interest, the interest therefore was somewhere in the region of 390 odd thousand; isn't that correct, on a figure of 1.143, I think you can take it that that is correct Mr. Scanlon?

A. I accept it.

Q. Now, I think you became Group Chief Executive yourself in 1984; isn't that correct?

A. That's right.

Q. Was that straight from the position of Central Advances Controller or.

A. No, I had been through other positions in the meantime and I was Central Advance Controller until 1980-ish.

Q. Yes?

A. I then became General Manager of Group Development and I then became head of international and I then became Group Chief Executive designated for a period in early 1984 and I became Group Chief Executive on the 1st of October 84.

Q. Right. And it was in 1987 that the assistant Chief Executive, Mr. McAuliffe, gave you some files; is that right; a number of files?

A. That is correct.

Q. And you put them in the safe in your office?

A. That is correct.

Q. And were these the files relating to these accounts?

A. They included a file relating to this account.

Q. Yes?

A. To the best of my knowledge it was contained in one envelope.

Q. Right. And can I take it that whilst you weren't involved in the actual operation of the accounts over the period, they were operating in the seventies, and you didn't have an involvement in the negotiation of a settlement, did you ever come to a general knowledge of what had occurred?

A. I think in the environment I was in, I was bound to be aware of it.

Q. Yes. Yes, and was it something which senior executives of the bank would have some familiarity with, perhaps not the total detail?

A. I believe that.

Q. Yes; and could we take it that it is something that the Board, the main board would have had some knowledge of?

A. Would have?

Q. Would have had some knowledge of?

A. I believe so.

Q. Now, Mr. Kennedy, very fairly yesterday in his evidence when I asked him about the commercial aspect of this settlement, pointed out that there were a number of characteristics on the individual account. It was an

account which was proving difficult in the first instance;

isn't that correct? There can be little doubt about that I think?

A. Unusually difficult.

Q. Unusually difficult?

A. Yes.

Q. And this man was a prominent public figure; isn't that correct?

A. Yes.

Q. And in fact had been all through the 1970's a prominent public figure; isn't that correct?

A. Yes, perhaps I could help you.

Q. Yes indeed.

A. If I say that in a marketing language which was becoming fashionable in the early seventies, he would have had an acronym of KBI associated with his name which was key business influencer.

Q. Key?

A. Business influencer.

Q. Yes?

A. And that I think any bank manager would have been delighted to have a KBI, or "key business influencer", in the totality of the name on his books.

Q. Yes?

A. So I would say he was regarded as a valuable or a valued client.

Q. Yes?

A. In the early 1970's. He was obviously very prominent.

Obviously very influential. And had all the appearances, as I understand it of being affluent.

Q. Yes?

A. And I think his lines of credit from the bank in that period weren't very significantly high.

Q. Weren't very significantly?

A. They weren't significantly high in that early seventies period.

Q. Yes. Yes, so, as key business influencer would, the understanding of the bank, this is the - I am addressing these questions now to the bank's position and the bank's view of things?

A. Yes. Yes.

Q. Would that account, for the fact that whilst cheque books were asked for and there were various exhortations to bring the account under control, or even to move to another bank, nonetheless nobody seems to have been prepared to take the decision, for example, to refer a cheque to drawer?

A. Yes. I was not aware until I read these documents and I have confined myself to reading the documents which have been open, I was not aware that there was a Board decision constraining the executive from returning cheques.

Q. Yes, was that the main Board or the Regional Board?

A. I am not

Q. It is a board?

A. It is a board. Unless I can identify the document I can't

interpret it.

Q. Yes. I will see if .

A. It was obviously, I would obviously - I would view a case from, such as this from an executive viewpoint and it was additional information to me which helps me understand.

Q. Yes?

A. Some of the history of this.

Q. Yes, that is probably what I am trying to see if we can tease out Mr. Scanlon, because .

A. Well, I can venture you some more information which could be helpful.

Q. Yes indeed, if you could?

A. Because we are now talking about the period around the early 1970's. And if one recognises that three banks came together in 1966; the Munster and Leinster; for which I worked; the Provincial Bank and the Royal Bank formally merged in 1966, but they didn't start to integrate their operations until 1970,'71.

Now, arising out of that decision to integrate their operations, there was quite an amount of clamour in various local communities about the centralisation of decision making in Dublin. And as a result of that we formed what was known as the Cork Local Board and we also formed Dublin Local Board. And subsequently the Belfast Local Board.

And the function of those boards derived from that circumstances of local communities being concerned that

their propositions wouldn't be adequately represented at the decision making level.

Q. Yes?

A. So, the main board existed and then the Dublin Local Board and the Cork Local Board at that early 1970 period, subsequent to that the Belfast Local Board; and while the local boards had an advanced function at that time and subsequently of course the Director did not, the non-executive directors do not have that function but at that time and I think this is important to me in way in understanding.

Q. Yes?

A. The Board was broadly based with many commercial people, some more or other people who had achieved eminence in the academic world or the civil service perhaps, and by-and-large I would say that the role of that board was very much designed to allay any concerns about an inability to recognise particular client circumstances.

Q. Yes?

A. And then in that subdivision to local boards it was the hope and intention that they would be able to assist the executive in terms of, for example, business introductions because, if I might speak on it from a Cork point of view.

Q. Yes?

A. A lot of people had moved from Cork to Dublin and they would not have been familiar in a social sense with the various significant clients in Dublin and this was a



concern, quite understandably.

Q. Yes?

A. And as a result of that the Dublin Local Board and the Cork Local Board would have been assisting the executive in terms of the business relationships.

Q. Yes?

A. So, they had a function there.

Q. They had a function in relation to advances?

A. Also.

Q. Also?

A. But at a limited level.

Q. At a limited level?

A. So that, as I said, is the origin of these, of that board structure.

Q. I understand. Yes, and looking at the documents, it would appear that this was something which was way beyond the ability of the Branch Manager?

A. I suppose as a former bank manager, I can say that this dream account or dream relationship turned into what I suppose I would describe as a banker's nightmare. In the sense that the account was, as we learned from the documentation, very very difficult to control.

Q. Yes?

A. And yet it was getting rigorous attention.

Q. Yes?

A. I would believe that the amount of senior executive time that is reflected in this documentation was a great

diversion.

Q. Yes; there was a considerable diversion of?

A. I would imagine so.

Q. Of executive time to it?

A. I would imagine so.

Q. And obviously it was outside the discretion of the bank manager when it went to the Area Advances Committee?

A. Yes.

Q. By 1976 and the sanction for œ350,000?

A. Um hum.

Q. Was allowed. But, one can see in the documentation that at executive level, and I am now talking about beginning with the Branch Manager, the Area Advances Controller?

A. Yes.

Q. And the people he was reporting to?

A. The area General Manager.

Q. The area General Manager. That all the time there was an attempt being made on the documentation anyway, by these people to try and get this account under control; isn't that right?

A. I would say there was rigorous attention being given to it, with a view to managing it, insofar as was possible.

Q. Yes; and we know that after 1976 January, 1977 when the limit of œ350,000 was sanctioned, that there was no further; Sorry there was an approval by the local board when that was breached up to somewhere in excess of œ400,000, I think sometime after that isn't that what the

documentation seems to indicate?

A. Yes.

Q. And then there doesn't, on the documentation that we have seen, and that is all the documentation, there doesn't seem to have been any further approval or sanction, and the drawings then continued up to 1979 and they represented a figure of somewhere in the region of  $\approx 400,000$  in terms of drawings?

A. I doubt if that is correct. I think there was significant interest additions.

Q. Yes. Sorry, perhaps I should just put a document up and it is in fact, it may include some of the 1976 and the breach of the sanction 1977. It is page 74?

A. Under tab?

Q. Under Tab 8. Under Tab 8. We just see the - you see the dates are on the left-hand column and then drawings for half year? You see in the next column? Now, they begin in March of '76, September '76, March '77 and then you can see the drawings the whole way down?

Now it shows that from March of '76 to September '79 the drawings were  $\approx 436,128$  and by the 7th of December there were some other drawings and that is on page 119 I think of the same tab which shows that the drawings had in fact increased to  $\approx 485,219$ . Now that may have been, you saw some documentation which after the settlement even allowed for the payment I think of perhaps some wages or drawings on Abbeville?

A. I recall the sum of œ6,000 but I am sure that is only an aside and adjustment.

Q. Perhaps I am overstating it by saying from '77 on, but certainly from April or March of 1976 now there was a subsequent sanction as we know in January of '77, but the drawings were considerable even after that sanction and even after the subsequent approval by the local Board; isn't that correct?

A. Yes. But as one studies, as one studies the file, there were various proposals of clearance of the entire et cetera et cetera.

Q. I appreciate that?

A. And I think that it would be fair to say that the client, once he made a proposition to the bank in terms of clearance, seemed to consider that he could now continue to write some cheques.

Q. Yes?

A. It appears to me like that.

Q. Yes; but what I am trying to ascertain is that there has been no there has been no sanction by the advances control?

A. That's right.

Q. And there seems to have been no, as far as we can see anyway, further approval by the local board or the main board recorded?

A. I think that one is recognising, as I indicated yesterday, that this was being treated as a repayment arrangement as

discontinuing from sanctioned accommodation and I didn't quite clarify what I was saying to you yesterday in that regard.

Q. Perhaps you would?

A. But if I just need to find a particular page to refer to.

Q. Of course?

A. If we look at the number 47 under Tab 8, dated the 23rd of August of 1979 the things that are salient to me in that in respect of drawings don't seem to be in accord with the other figures, in the sense of £168,237. They may be, but I just think there is a bit of a gap, within the gross debt of £913,000 which appears under the specification in the accounts at the top of the sheet. There is also a figure credit £281,000 in respect of interest. And that says to me that the account hadn't grown unduly from this balance of £600,000 which I understand was there in 1976.

I may be wrong in my recollection of that figure and I would also point out that in 1976 the country had quite a prolonged bank strike, which I think clients had the opportunity of writing cheques which ultimately fell for decision, and on the basis that none of this client's cheques were to be returned unpaid I think that they had to be paid.

Q. Yes?

A. But, that is by the way, but I also draw your attention to

the rate of interest being charged at this time, which was a loan account rate, which on the matrix of Central Bank rates, which banks were permitted to charge at that stage, this was the top rate, and additional to that there is this 6% surcharge which was a reflection on the fact that this was an extremely difficult account.

Q. Yes?

A. To manage.

Q. Yes?

A. And I think it is also relevant to reflect on the fact that this was, in general, a time of very high interest rates, so I put a lot of the increase in the account down to interest additions.

Q. Yes, but you seem .

A. But not all I can assure you, not all, no.

Q. Because there can be little doubt on the first document we have had up this morning, the drawings were quite substantial, weren't they?

A. Yes.

Q. But?

A. But as I say .

Q. I suppose just as an aside, I suppose?

A. The circumstances of them seem to be around various promises to clear the entire.

Q. Absolutely. Absolutely Mr. Scanlon. Just as an aside and from the point of view of the public, I suppose I should ask you the question; I suppose after the bank strike there

would have been many cheques presented which would not have been met by the bank at that time; is that right?

A. I don't think at that particular time that that was quite as significant as after the 1970 strike which extended for six months, and I certainly was involved in one particular case where we returned in excess of 3,000 cheques; but it was a very extreme situation, but that was also a six month strike.

Q. Yes, it was a six month strike.

A. And that was a commercial operation I was referring to as distinct from an individual operation. Setting the climate of the 1970's; you have to recognise that property values had generally fallen significantly; and I would draw your attention on this sheet I have been talking about, number 47 to the value of the lands of Abbeville which were then being quoted as valued as 1.3 million pounds. And if I could then refer you to Tab 10.

Q. Yes?

A. Which there was a number page 0000 - four zeros - 37 and the lands at that stage in 1975 were valued at  $\text{£}800,000$  with a notation that they could be valued at 1.5 million in normal times.

Q. Yes?

A. Furthermore agriculture had been going through difficult times in the seventies. There were many representations being made to the bank at that time in regard to agricultural borrowings in the broad classification of

things. A farmer with 248 acres and stud farms might come under that general classification of a farmer in the sense, that his business couldn't prosper and it is just another element that I reflect on as I read through the documentation.

Q. Absolutely and I am delighted that you do that Mr. Scanlon. But - and I take your point about the valuation in the document as of August 79 and the valuation in the documents that you have referred to which seems to be dated March of '75; is that correct?

A. Correct, well '75.

Q. '75, yes. It wasn't - leaving aside zoning and planning and matters of that nature?

A. Yes.

Q. It was a very large tract of land adjacent to the city; isn't that correct?

A. The client appeared to be asset rich, if I might so describe it.

Q. Yes. Well, in the context of the acronym was it for KBI?

A. Yes.

Q. Was that the consideration you would imagine so, cheques were not returned and the cheques books weren't taken away, associated with the proposals that were being made to clear the entire debt?

A. I would imagine so.

Q. And I know, Mr. Scanlon, you were just reflecting on the



documentation and you didn't have a direct involvement in this and you are doing so, of course, with the benefit of having been the Chief Executive of the bank subsequently, and with an understanding and knowledge of banking; but in August of 1974 I think it is document number four zeros again, as you say, 90.

A. Under Tab?

Q. Under Tab?

A. 10.

Q. 10 I think. Tab 9, I beg your pardon.

A. 9. Four zeros nine zero?

Q. Yes. You see the final, this is from the manager to the Regional Manager and you see that the final sentence in it?

A. Yes.

Q. Where he's suggesting alternatively that we would have no option but to withdraw facilities and ask him to take his account elsewhere?

A. I do indeed.

Q. What would you think that that reflects, is it frustration, is it

A. Well as I said, this account went from the stage of being a manager's dream account, in the sense of the background of the individual and the like, to a bank manager's nightmare.

Q. Yes. Yes.

A. That is written in as an alternative.

Q. I appreciate that?

A. It is not being recommended.

Q. In the context of it being a nightmare, I can understand it being a bank manager's dream initially?

A. Um hum.

Q. A prestigious account to have. A extremely prominent public figure, a man who may be well-known in business circles and that is all understandable. When it turned into a nightmare the bank didn't move on it; isn't that correct?

A. What I have said earlier is that I recognise that the ultimate sanction which the operational people in the bank will use would be to withdraw facilities.

Q. Yes?

A. To return cheques.

Q. Yes?

A. If I were doing it I would also make sure that the cheque books weren't handed out, but in this particular instance I gather that the client did not call for the cheque books himself, they were got through Haughey Boland.

Q. Yes. Acting as his agent I presume?

A. Acting as his agent, and presumably if a bank manager refused to give them to the customer's agent, as in this instance, it would be somewhat of a slur on that client's character, I would think so.

Q. Yes.

A. As distinct from refusing the client himself.

Q. I see. I see.

A. I mean he might well have been regarded as a valued client

of Haughey Boland.

Q. Yes. But could I just ask you about that Mr. Scanlon, because isn't the reality it wouldn't be a slur on somebody's character. It would be a reflection of the reality of the situation wouldn't it? Like, if the bank - if the bank, at this stage this had become a nightmare by the mid seventies?

A. It was shaping in that direction.

Q. It was shaping up. It had become a nightmare by the mid seventies anyway. If the bank, if there wasn't another reason for it why should the bank be concerned about returning cheques, refusing to hand a cheque book to somebody's agent; are you seriously advancing a suggestion that this would be a slur on his character?

A. I think it would.

Q. And not just a mere reflection of the reality of the situation?

A. It was also a reflection of the reality of the situation, but that doesn't stop it being a slur on his character.

Q. You are using slur?

A. Or potentially could be described, if I might.

Q. You are using .

A. Differently.

Q. Are you using the expression "slur on his character" in a broad sense, as opposed to a very strict sense that might give rise to proceedings against the bank?

A. Precisely.

Q. Yes; because there could be no suggestion if that course of action been taken and if appropriate time scales had been applied to doing it?

A. Well, I think I read in this correspondence that the view of the Group Law Agent was if you wanted to close an account you needed to give him three months notice; so therefore it would be difficult to refuse to hand out a cheque book to the agent who normally collected them when they were in dealing with the bank on his own account.

MR. SHERIDAN: In advising a client in defamation cases would Mr. Coughlan be quite so cavalier about such an application about the balance (inaudible).

CHAIRMAN: I think we better get on with the evidence Mr. Sheridan, if you don't mind.

Q. MR. COUGHLAN: I will pass from that anyway Mr. Scanlon, because you are not a lawyer?

A. Thank you.

Q. But apart from that broad consideration, or even the more refined consideration which seems to be exercising Mr. Sheridan's mind, was it not the fact that this man was a prominent political figure?

A. Of course he was.

Q. Yes; and like Mr. Kennedy said on the question of the settlement, and not taking him on in respect of satisfying the indebtedness, that you could alienate a large number of customers; would the same considerations have applied as

the account got out of control during the seventies, or

would that be a consideration?

A. I am sorry Mr. Coughlan, I lost the trend of what you were

putting to me. Are we referring to general circumstances?

Would there be another client? Is that what it was a

parallel situation or just this one?

Q. No Mr. Scanlon. I didn't ask you that question. I didn't

ask you that question. I asked you this question; I said,

leave apart altogether the fact that it might be considered

a slur on his character, you have told us that it was a

significant consideration that this man was a prominent

politician. Is that correct?

A. I have confirmed that to you, yes.

Q. Yes; and Mr. Kennedy has told us that that would have been

a consideration in not attempting to enforce the bank's

security in relation to the indebtedness ultimately?

A. I think that we are now putting undue emphasis on the word

"politician".

Q. Are we Mr. Scanlon?

A. I think we are.

Q. Are we?

A. I think we are.

Q. I see?

A. If we say that this was, as I describe a "valued client" in

the origins of this situation, I have no difficulty about

that. I am not competent to make a judgement on how

relevant the fact that he was a politician as distinct from

a very prominent person in the community, affected the situation.

Q. I see. Because Mr. Kennedy seemed to be of the view and it was his understanding, that there would be a danger of alienating supporters of this particular politician and it might cause a flight of account holders from the bank?

A. I heard him say that yesterday.

Q. If that be the case, would the same considerations not have exercised the mind of the bank when they allowed this account to spiral out of control?

A. I cannot say. I wasn't involved in the management of the account, Mr. Kennedy was.

Q. Mr. Scanlon, you became Chief Executive of this bank. Are you seriously suggesting that you cannot offer a view about this?

A. I am seriously suggesting that I have a lot of lifetime experience and I went through periods of enormous change in this country in the 1970s, 1980s and 1990s; and if there is one lesson I have learned from all of that, it is not to judge things out of their time, and that is a basic tenet of mine and I advocate it every time I get a chance, I get into disputes about the past, and genuinely I cannot give you an opinion on that matter because I didn't live through the experiences, the direct experiences of the account and the management of it.

Q. Very good Mr. Scanlon. So we can take it you are not in a position to offer a view?

A. Thank you.

Q. Is that what you are telling the Tribunal?

A. Oh, yes, yes.

Q. Now Mr. Scanlon, I think you have told the Tribunal that you would have had an awareness in general terms around the time the settlement was affected?

A. Yes.

Q. You had no personal involvement in the negotiation of that settlement; is that correct?

A. That is factually correct.

Q. Did you have any involvement within the bank in arriving at the figures for the settlement?

A. Not that I am aware of, most certainly not.

Q. I am just asking you?

A. Most certainly not.

Q. Who did?

A. The channel in regard to this account was clearly from the Branch Manager to the Area Advance Controller to the area General Manager and ultimately to the Banking Director who was Mr. Patrick O'Keefe.

Q. Yes; and what about the Board?

A. The board is there.

Q. Mr. Scanlon I know the Board is there. What about the Board's involvement in arriving at the figure?

A. I have difficulty in some understanding around this, because clearly it didn't fall within the ambit of the Board. The main Board, in terms of the size of the account

at the sanction level or whatever it was, 350,000 et cetera

et cetera.

Q. Yes?

A. If it was discussed at the Board, it was obviously

discussed in the context of other factors related to the

account as distinct from the account balance, because from

the time the decision was made in 1976 to suspend interest,

the actual net balance on the account was running,

ultimately mind you, at something like œ690,000 when one

deducted the suspense interest from the actual balance.

Q. Yes?

A. And in an executive sense it would have been seen at that

net figure as distinct from the gross figure, which is I

think where you are seeing it.

Q. Mr. Scanlon, this customer owed the bank over a million

pounds; isn't that correct?

A. That's what his statement would have said to him.

Q. Isn't that correct, otherwise?

A. He had a gross debt of 1.143 is the figure you wrote to me.

Q. Yes?

A. And -.

Q. And Mr. Scanlon that is the figure Mr. Kennedy took to Mr.

Traynor at the meeting on the 17th of December, 1979?

A. Yes.

Q. So we can take it that the bank were not giving misleading

information to the customer or to the customer's advisor?

A. I have said that was a figure on the client's statement.



Q. I asked you the question "can we take it that the bank was not giving misleading information to the customer or to the customer's advisor"?

A. The bank was not giving misleading information to the customer or to the customer's advisors.

Q. Yes. So from the customer's point of view and from the point of view of a member of the public looking at this situation, there was in effect, a forbearance close to €400,000 on this customer's account; isn't that correct?

A. I accept that.

Q. Yes. We know that Mr. Kennedy when he went to Mr. Traynor told Mr. Traynor that the most that the account could be discounted would be €200,000, otherwise the auditors would ask questions; isn't that correct?

A. I saw that statement.

Q. And in your experience would a discount of around €200,000 be the appropriate level of discount in settling an account of this level of indebtedness?

A. Settlements are not something that are amenable to formula.

Q. Very good.

A. As such, so I cannot quantify whether 20 percent or 40 percent or on occasions 60 percent is the right figure.

But could I say that I would see the offer which Mr.

Kennedy was making to Mr. Traynor as one of negotiation.

Q. I see?

A. Because the ultimate back stop that was there was the total amount of suspense interest.

Q. Yes. That was the total back drop it felt that it had to play with?

A. Correct. Not that's as I would see it.

Q. As you would see it?

A. And I think that would be an appropriate interpretation.

Q. Yes. That's from the bank's point of view. But from a customer's point of view and from an ordinary general member of the public, a substantial discount of €200,000 was being offered as being acceptable to rid the bank of a troublesome account; isn't that correct?

A. That's is so.

Q. A huge level, a huge level of secrecy surrounded this settlement; isn't that correct?

A. I think that recognising that we are now dealing with a very prominent party, albeit a politician, a very prominent party; that the same kind of reserved approach would be adopted about some other very significant point, but I would significant client but I would guess more so in this particular instance.

Q. Because up to the period of the settlement or?

A. Yes.

Q. Or the time surrounding the settlement. The state of the account was well-known down in the branch at Dame Street; isn't that correct?

A. And in the area office.

Q. And in the area office?

A. To a degree. May I say that I would tend to believe that

the state of the account would have been primarily known to the Branch Manager, and I would expect we would have exercised discretion in terms of who that information is available to, but nonetheless the ledgers would have had an estimate of showing that.

Q. Yes. So the extra confidentiality surrounded the settlement, not the state of the account?

A. I believe that's right.

Q. Now, why would that be so? Why would that be so? Might I suggest, or could it be suggested that the level of discount or forbearance in this case far outweighed any such forbearance the bank had ever engaged in before?

A. You could suggest that, and you would be quite wrong.

Q. With a private customer?

A. Yes.

Q. I see. And you are saying that the bank would have foreborne, in respect of that level, in the normal course of commercial dealings, where they had a security?

A. I am saying that in this particular case the scale of pain borne by the bank was not exceptional.

Q. No. No, that's -, no Mr. Scanlon, that's not what you were asked. The bank had security?

A. Yes.

Q. The bank was now going to write off, as far as this customer was concerned, nigh on €400,000 of this indebtedness, notwithstanding that the bank had security?

A. I have difficulty about the term "writing off" for the

simple reason that as we spoke of it in the bank, a writing off consisted on dealing with it as a bad debt. In this instance we are, we are talking about something which was classified as a non earning debt. Because the interest which was being charged to the account was being suspended. I know it is a nicety.

Q. Yes, it is a nicety

A. And I know it is difficult to grasp.

Q. It is not at all difficult to grasp Mr. Scanlon, it is a nicety?

A. Oh good.

Q. It is a nicety, it is not at all difficult to grasp. As far as the bank were concerned internally they were not taking in into profit, but the customer was always responsible for this sum; isn't that it, in a nutshell?

A. And in 1976 a decision, it would appear would have been made that we have some concern about whether or not we will be able to collect our interest.

Q. Yes. I don't know why that should have been so, considering the security the bank was holding, but we will come back to that perhaps with some other witness from the bank, but it is a nicety isn't it Mr. Scanlon, that is exactly what it is?

A. I think if one were familiar with the way that this would be accounted for, it is a little more than a nicety.

Q. You used the word nicety yourself Mr. Scanlon?

A. I did yes.

Q. Because the bank was secured, allowing for some modification in the valuations, but the bank was essentially secured for the full amount of this debt. It had the title deeds?

A. I am not disputing that in any shape or form.

Q. And in those circumstances the bank effectively, from the customer's point of view, wrote off nigh on €400,000?

A. I think in many negotiations that I have been involved in one factor that always had to be borne in mind was the facility to which one might realise security in terms of it's value.

Q. Mr. Scanlon. Mr. Scanlon, isn't that a complete and utter red herring? You had the title deeds of these properties. You had them, physically, nobody else had them?

A. No dispute.

Q. What are you saying was the difficulty in realising this?

A. I am saying that there was clearly a decision made that a settlement was justified in the terms which the bank appears to have given in response to the question about commercial justification and if I may .

Q. Yes?

A. Recall the response, it says AIB believed a compromise was commercially justified. Its not my term.

Q. Yes?

A. But AIB believed the compromise was commercially justified having regard to the protracted and difficult history of the account and the fact that it was extricating itself

from them and was to have no further dealings with the affairs of Mr. Haughey.

Q. And it was prepared, in those circumstances, to forebear in respect of €400,000 approximately, interest which of course it wasn't taking into profits, but which was, in itself, secured. Is that not in the normal course of commercial dealings, doesn't that seem .

A. The facts seem to say that, the facts on paper do say that.

Q. That's right; and from the ordinary view of the public, doesn't that seem like an extraordinary commercial decision to make?

A. All I can say is that it was the decision made at the time insofar as I am concerned by people for whose technical competence as executives I had high regard, who I knew and would acknowledge to be people of probity, competence and as far as I am concerned high integrity. Similarly with regard to the other influence within the bank at that time, which would be the Board of Directors, they obviously supported that view.

Q. Yes?

A. Now the only conclusion I can come to is that those people made the correct decision in the climate of the times and in the knowledge that was available to them.

Q. Because they were dealing with a politician who, on the bank's own documentation, had pointed out to them that he could be a dangerous adversary; would you accept that?

A. Well, that is the conclusion you are drawing.

Q. No. I am not drawing any conclusions, because the Tribunal is - I am not in that capacity here, I am asking you, looking at the documentation and your experience as the most senior banker at one stage in this bank, would that be your understanding of what motivated this enormous discount?

A. I can't draw any other conclusion.

Q. Thank you. Sorry - if I might just turn then very briefly to two other areas. When you became Chief Executive in 1984 were you aware that the bank had published a statement in the Evening Press in February of 1973?

A. No, I was not.

Q. You don't know anything about that particular item?

A. I was Group Chief Executive. That matter, as I understand it, was handled within the domestic banking division.

Q. It was within the banking division, yes it was. Can I take it that you had no hand, act or part in relation to the publication of that statement?

A. Most certainly.

Q. Yes. Because it seems to fly in the face of the confidentiality vow of bankers, doesn't it? One doesn't comment one way or another in case a negative response would, in itself, indicate a breach of confidentiality?

A. I think that those of us, if I might refer to the conversation we were having yesterday afternoon, about confidentiality.

Q. Yes?

A. Some of us have incurred disappointments over the years around this issue of banker's confidentiality, and I would believe in reading that internal document, that an opportunity was being taken to reinforce the obligation of people in the bank to recognise that matters that they came across in the course of business should be treated as totally confidential.

Q. And of course that is the proper position for a bank to take and for people responsible in a bank to point out to everybody under them. But this particular statement in fact seems to fly in the face, or maybe I am wrong, but where one is in fact denying something in respect of a customer?

A. Certainly. May I have a reference?

Q. Yes indeed. I think it is the Tab 8, sorry Tab 8, last document?

A. Tab 8.

Q. That appears to be the draft of the statement?

A. Yes.

Q. And in the first paragraph it very clearly sets out every one's understanding, or those who have the obligation of confidentiality thrust upon them by virtue of their calling or occupation.

"Allied Irish Banks has a strict policy and indeed a duty to maintain confidentiality in regard to customers dealings with the Group and each member of our staff completes a formal declaration in that regard, when it occasionally



happens statements are made by third parties which appear to be authoritative but are not, it can also be the case that a denial by the bank might itself be a breach of its duty of confidentiality and generally the bank feels it best not to comment.

Allied Irish Banks has found itself on that position on a few occasions recently".

That's a very clear enunciation of the concept of confidentiality. One doesn't comment positively and one doesn't comment negatively; isn't that correct? And then in the next paragraph the bank goes on to comment negatively in respect of something; isn't that right?

A. I think we in the bank entertained a concern in the 1980s, indeed we entertained concerns over a long period. When we read statements like "sources close to the bank say", now, I certainly was involved in bringing in an instruction which said any spokesman for this bank is to be named, so that when I pick up the newspaper and see that a spokesman for Allied Irish Banks has said that I will at least know who it was, and we were conscious that confidentiality was not as strong an ethic.

Q. As it should be?

A. In the 1980s and the 1990's as it had been in the 1950's, sixties and seventies.

Q. I can understand that and I can understand when one looks at the newspaper article where it does say "a source" or

"sources close to Allied Irish Banks" and of course the bank would be concerned to see that. But one would have thought that the way one might deal with that within the framework of confidentiality is say, issuing a statement or contacting the newspaper in question and saying that "Allied Irish Banks do not comment positively or negatively in relation to matters, and nobody has been authorised by Allied Irish Banks to say anything". Might that not have dealt with an indication that there was a source close to the bank?

A. I think that that might be a formal approach.

Q. Yes?

A. But I think the leakages may often occur in informal circumstances rather than formal circumstances, and I would hate to say, loose pub talk but.

Q. Yes I know, well we live in the real world?

A. But it might indicate possibilities, and we did have a concern around that.

Q. But isn't the next paragraph extraordinary.

A. Can I understand, was this document dated 1983?

Q. Yes. It was published, this text, it is this text is undated and it is headed public relations office of Allied Irish Banks Limited and that text seems to have been carried in full. If you go to Tab 11 and it is the final document of all. It is a statement by Allied Irish Banks carried in the Evening Press on Tuesday February the 1st of 1983.

A. I am sorry Mr. Coughlan, I didn't get a tab 11.

Q. Okay. I will give it to you. (Document handed to witness).

A. That essentially is the same text as the one I am reading.

Q. It is yes, I appreciate that the type face is small.

A. Yes, so essentially .

Q. It would appear?

A. The statement which was issued to the media was the one which was apparently circulated internally for information.

Normally with internal circulars of the bank they were addressed to specific persons or groups of persons but this one doesn't appear to have been addressed to anybody.

Q. No?

A. It is just for information.

Q. Yes?

A. It looks like a reprint of what went, was issued to the newspaper.

Q. Yes, I see. Its the banks public relations office nonetheless, it is typed as that at the top?

A. But I would understand this, I am sorry if I am unhelpful about this, but I would understand that this particular document which I am reading .

Q. Post dates?

A. That one is the text of what was issued to the media.

Q. I see?

A. By the PR office.

Q. Yes, but can we take it that what appears?

A. That is then reproduced in this Evening Press cutting, that one.

Q. Yes very good. So well can we take it that the statement carried by the newspaper is the one which was issued by the PR office?

A. I would assume so.

Q. Yes. Now and the second paragraph it says "however in the Evening Press in January the 28th in an article by a special correspondent dealing with financial affairs of a well-known figure, it was stated that sources close to Allied Irish Banks insist that he owed them around one million pounds last year"?

A. And that seems to be a statement of fact.

Q. That is a statement of fact from the article?

A. Yes.

Q. That is correct. "This statement is so outlandishly inaccurate that Allied Irish Banks feel bound, as a special matter, to say so, positively and authoritatively". It seems like an extraordinary statement to make, doesn't it?

I wouldn't expect Allied Irish Banks to be confirming the state of a client's affairs or anything of that nature, or

I wouldn't expect them to be commenting negatively as the first paragraph seems to indicate is the approach taken on confidentiality. Wouldn't that be so?

A. I just can't comment on this because I have no awareness to begin with; but having read it, I can well understand that it would appear to be designed to quell speculation.

Q. Yes. Entering into an area which wasn't really the business of Allied Irish banks at all. Allied Irish Banks had a duty of confidentiality. You don't comment one way or the other.

A. I think that

Q. This is now entering into an area might I suggest which looks to be outside pure banking?

A. In my interpretation of this I think it reflects a concern that sources close to Allied Irish Banks might be saying anything in regard to a client, but specifically in this instance we are talking about a significant number and an attribution to sources close to Allied Irish Banks. And I can only speculate because I don't know who wrote it and I don't know the circumstances of that.

Q. Okay. In the first instance, just purely factually is what lawyers might describe as a pregnant negative; isn't it?

A. I am not familiar with lawyers language.

Q. Maybe I should explain it to you. It is accurate to the extent it is technically accurate to the extent that it wasn't in the previous year; isn't that right?

A. Yes, correct.

Q. But it doesn't go on to say, or at all?

A. Well, it didn't say "or at all" anyway.

Q. No.

A. That sounds like a good advance.

Q. Yes; and it is, it doesn't seem to have a role in the concept of confidentiality. It seems to be entering into

another area, would that be right?

A. I can't respond to it because it was, the decision obviously was made within that domestic banking division which had the responsibility at that time for PR in relation to the bank within Ireland.

Q. Well, look; you extricated yourself from the position back in 1980 anyway in broad terms; isn't that right, the bank had?

A. Yes.

Q. Can you say what would have prompted the bank to get involved in the matter again in 1983?

A. I couldn't say.

Q. Okay. Well, can I take it that to issue a statement like this which is a fairly important type of document to issue; isn't it?

A. Yes.

Q. That it wouldn't be something which would have been done as a matter of routine by the public relations department in its normal course of furnishing information?

A. I assume it had executive approval.

Q. Yes. Who do you believe had this statement issued?

A. I can only tell you who was head of the domestic banking division in 1983.

Q. That would be helpful?

A. Mr. McAuliffe.

Q. Mr. McAuliffe?

A. Yes.

Q. Do you know if this matter, at any stage subsequently, came a matter for discussion at the Board?

A. I do not, no. I personally wasn't on the Board until .

Q. Yes, I know that.

A. Until 1984.

Q. Yes, I know that. But can I take it that policy is a matter which the Board enunciates; is that correct?

A. Correct.

Q. And the executives give effect to that policy?

A. Yes.

Q. And policy in relation - there is a policy in relation to confidentiality?

A. Very much so.

Q. And that is effectively as enunciated in the first paragraph of that statement; isn't that right? One doesn't comment one way or the other?

A. I think that's the puzzle bankers, lawyers, everyone would understand that concept of confidentiality.

Q. So the second paragraph is either at variance with that policy or there was a policy change; would that be fair to say?

A. I think that is a very tight distinction.

Q. Is it?

A. I think it is.

Q. Okay. Now, you were Chief Executive in 1990 I think; is that correct?

A. Yes.

Q. And you had this file relating to these accounts in the safe in your office?

A. That is correct.

Q. And it is your recollection that an executive of the bank came to look at the file in your office and you thought it might relate to an insurance document or something; isn't that correct?

A. Yes. As I said in my statement, I had been given the file in 1987 by Mr. McAuliffe when he was retiring.

Q. Yes?

A. I put it into the safe in my office undisturbed, because quite simply as far as I was concerned it was history. I didn't need to read it or know what was in it. I knew the broad outlines of what had been agreed.

Q. Certainly.

A. And it rested there until I was approached in 1990, because as I understand it, there had been some contact with the bank for the solicitor for him, which is quoted somewhere, JS O'Connor, whatever.

Q. Yes?

A. And nobody in the bank knew anything about the Haughey case.

Q. Yes?

A. Of those people who were around at that particular stage.

Q. Who were still there?

A. Yes; and apparently it had been suggested that I might be the person that might be able to throw some light on the



situation.

Q. Yes?

A. And I, to the best of my knowledge, got out the file, gave it to whoever I was dealing with, and genuinely I can't give you a name because I just don't know; and the top document on the file would probably have been the one about the settlement or that, and it was helpful to whoever it was, because they then knew where to start looking about whatever security items were being talked about.

Q. I take it the security items weren't in the safe in your office as far as you know?

A. No, they weren't.

Q. No they weren't?

A. To the best of my knowledge they weren't, unless they were in this particular envelope, they weren't in the envelope as far as I know. I think they were discovered in the general securities department subsequently.

Q. Yes.

A. There would be a register of securities or something of that nature. But the difficulty was, somebodies difficulty in what was the commercial banking area at that time, and I am fairly satisfied that that is where I had this approach. Somebody there, and I understand that they were able to track it back then to the securities department.

Q. And it may, I think we saw in documentation there was a life policy, a small life policy dating from 1954 which may have been maturing around that?

A. The terminal date on it was 1990 so it may well have been in connection with that.

Q. Yes. Now the bank of course were still holding the title deeds in relation to Inishvickillaun and Sligo?

A. Well, that was consistent with the settlement letter.

Q. Which was the €110,000 debt of honour?

A. That's right.

Q. To which no interest was to accrue. And it was both in the suspense account, so it wasn't taken into the profits of the bank and it appeared on the account of the customer; is that correct the €110,000 as far as you can recollect, the €110,000?

A. I would tend to the view that there was no customer statement.

Q. I see?

A. I mean the account had been closed way back in 1980.

Q. So in reality that was written off as of 1980 you would think?

A. I think that there was an obligation in honour to provide €110,000 from any sales of the Abbeville property which occurred subsequently, and I think there is some reference to a minimum of 10 per cent of the proceeds.

Q. Yes. That is in the document of settlement?

A. Certainly that would be my clear understanding. Let me tell you, that before I saw this correspondence which we have been going through over the last few days.

Q. Yes?

A. My understanding was that a settlement had been arrived at. That €110,000 was outstanding, that that was covered in the broad sense by the suspense interest account.

Q. Yes?

A. But that there was a question that as a matter of honour Mr. Haughey would clear the €110,000 outstanding from sales proceeds of the Abbeville lands and limit it, as far as I could see, to 10 per cent of any particular sale. Would that be fair?

Q. Yes, I think that is a correct representation of the understanding?

A. That is my understanding of the position. In fact I have been rather surprised in reading this correspondence to have it brought to my notice that there were other securities held.

Q. Yes?

A. I didn't even know that.

Q. Yes, okay. Well, dealing with the debt of honour; it is not a usual provision made by a bank, is it?

A. I am just thinking through. In my experience I have never seen it written down before.

Q. Bearing in mind the history of this account it seems even more unusual, doesn't it?

A. There is a hope factor I suppose.

Q. But there was a condition attached to it and that was - I know you didn't know it until you read these documents, the condition was that the bank held securities in respect of

it?

A. In reading the subsequent paragraph to that, in that settlement letter, I get the impression that those securities may not have been perfected, if I might use that term, which is technical; otherwise you have, you have at 327. Yes, you will appreciate that the implementation of an arrangement of this nature would in the normal course give rise to certain legal requirements, however, since the fulfillment of the agreement outlined is a matter of honour, I am dispensing with such formalities confident in the knowledge that you will do this, that and the other.

Q. Yes. I don't want to get into huge technical debate with you here?

A. I believe we shouldn't.

Q. But because My Friends here tell me, who are much more knowledgeable about this sort of thing, that you in fact had an equitable deposit of the deeds, but we won't get into that. There was a security as far as you know?

A. Well, some deeds which had been held previously continued to be held by the bank.

Q. Yes?

A. But I couldn't say whether there was, they were legally pledged but that's not the point.

Q. Yes?

A. They were there.

Q. We know that. Sorry, it would appear from the documentation furnished to the Tribunal that there is no

evidence of this €110,000 having been discharged as the Tribunal understands it, is that your understanding as well?

A. I have heard that here.

Q. I see. And from the documentation furnished to the Tribunal there doesn't appear to have been any communication by way of request or ascertaining what the up-to-date position was since the date of the settlement in 1980; would that be your understanding as well?

A. Is that in the sense of communication with the client?

Q. Yes?

A. Yes.

Q. Yes. And Mr. Sheridan has given evidence of releasing the documents the deeds of Inishvickillaun and Sligo to Messrs. John S O'Connors sometime in 1990. In fact we had a letter which they acknowledge receipt of them, you saw that here?

A. I may have, but I accept that.

Q. Yes. Well, can I take it from the answer you gave previously that the first knowledge you had about the securities was when you came to address the matter in the Tribunal?

A. That is correct.

Q. That you did not authorise the release of these title deeds?

A. That is correct.

Q. Thank you very much Mr. Scanlon.

A. Thank you Mr. Coughlan.

CHAIRMAN: Anything arising Mr. Quinn? Mr. Gardiner?

MR. GARDINER: If I may Mr. Chairman?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GARDINER:

Q. Would it be fair to say, Mr. Scanlon, that from the bank's perspective, when negotiations were being conducted in December 1979 and into January 1980, that the bank had, so-to-speak, œ400,000 odd to play with in the next negotiations? The bank had put over œ400,000 into the suspense account, I think that was effectively what you were telling Mr. Coughlan; is that right?

A. That's correct.

Q. So from the bank's perspective, and from Mr. O'Keefe's perspective we have known that and that would have been a factor he would have taken into account when negotiating with Mr. Traynor?

A. That is correct.

Q. Now, from Mr. Traynor's perspective he wouldn't have known that Mr. O'Keefe had that leeway; isn't that right?

A. Well, I would hope that he didn't.

Q. But one would imagine he didn't; isn't that so?

A. One would imagine that.

Q. So, in so far as the bank's motivation at the time was concerned, Mr. Kennedy was concerned that, or stated yesterday that the bank would go to extraordinary lengths

not to have to enforce security in any cases; is that your experience as a banker?

A. I think in broad terms we would be very negative about forced sales.

Q. Yes; and isn't it, or is it your experience, that forced sales generally do not realise the type of money that would be realised in an unforced sale?

A. And they can be accompanied by a lot of odium.

Q. Well a lot of odium; and is it your experience that it also requires many applications to court and supervision by the court in order to fix the price and matters of that type so that the bank will do whatever it can, effectively, not to have to go down that road?

A. I think that is fair comment.

Q. And that was what Mr. Kennedy was saying yesterday; isn't that so?

A. Yes.

Q. Now, you told us this morning that Mr. Haughey would be regarded as a "key business influencer"; is that right?

A. Yes. That was a marketing term that was introduced in the early 1970s and I said he would well qualify in that regard.

Q. Yes. The other people who would have accounts with Allied Irish Banks who would be key business influencers presumably would come from various strands of society; political, commercial, legal; is that so?

A. Absolutely.

Q. From the entertainment world as well, I suppose?

A. They come from, perhaps significantly high networked individuals, as they might be described today.

Q. Yes; and you felt that Mr. Coughlan was putting undue influence on, or undue emphasis, sorry, on the fact that as a key business influencer Mr. Haughey was a politician; is that your view?

A. Yes.

Q. Is it your view that the bank's approach to any key business influencer would be similar to that adopted to Mr. Haughey?

A. We would normally not expect key business influencers or valued customers to conduct their affairs with the bank in the manner Mr. Haughey conducted his.

Q. Yes. Mr. Coughlan suggested that the forbearance in Mr. Haughey's case far exceeded the norm of the bank; is that your experience?

A. I just don't accept that.

Q. Yes. Now, Mr. Chairman, before asking this question I think in line with Mr. McGonigal's position yesterday, if the Tribunal is being asked by the Tribunal's legal team to take into account any comparative conduct of the bank in relation to any other accounts held by them at the bank, by any politician or other as regarded by the bank, key business person; then that will require, in our submission, the opening up of comparative matters of accounts of other people.



Now that's a matter Mr. McGonigal flagged yesterday. I think it is important to flag it again. It is not necessary, I think, to go down that road at the moment, but if Mr. Coughlan, as he did in my respectful submission, press on Mr. Scanlon the argument that Mr. Haughey's position was entirely unique in the bank's history, then it will be necessary to open up any other parties who would have had bank accounts with Allied Irish Banks in which substantial write offs may have been made.

So while it may not be necessary to go down that road at the moment, again it is a matter which we would need to flag at this stage. So, I am not sure whether I should then ask Mr. Scanlon about any other prominent people who may have had write offs in that regard at this stage?

CHAIRMAN: Well there can be no question, Mr. Gardiner, obviously without notice being given to any persons who might potentially fall to be affected of this, so-to-speak, being sprung ex proviso at this particular vantage point, you may take it if I am ultimately satisfied on this particular matter that fairness to your client and discharge of the Terms of Reference necessitates the involvement of other persons in the political sphere, I would see it as my duty to accede to such an application, but not otherwise; and at this juncture I think it may suffice if you were to ask the question, if it is felt necessary by you in a hypothetical context, without getting

into any potential names, if indeed such there were.

MR. GARDINER: I think I have already probably asked it in a hypothetical context, Mr. Chairman, so I won't pursue that.

CHAIRMAN: I still do have Mr. Kennedy's answers from yesterday which I obviously have some weight ascribed to them. But I will leave an opportunity for that aspect to be canvassed in due course if it becomes material.

Q. MR. GARDINER: Very good Mr. Chairman. One other matter Mr. Scanlon. You have told us that you like to place matters in their historical context. Just to place it in its historical context, the time of the press release that you were giving evidence about or speculating about because you had no personal knowledge about it, Mr. Haughey wasn't in public office within the meaning ascribed to that term by this Tribunal; isn't that right? In 1983, he wasn't Taoiseach?

A. I am not so aware, I don't follow politics.

Q. Okay.

CHAIRMAN: Mr. Sheridan?

THE WITNESS WAS EXAMINED BY MR. SHERIDAN AS FOLLOWS:

Q. Mr. Scanlon, in relation to suspense interest, just to clarify in case an impression might be given by Mr. Coughlan that this was a matter that only arose in the

context of Mr. Haughey's account, that is not so?

A. Very significant total aggregate funds would stand to the credit of suspense interest.

Q. But the .

A. In respect of non earning debts; and the figures are reflected in the annual accounts to some extent.

Q. And you did, I think, describe it as a "nicety" the treatment of bad debts, the distinction between the treatment of bad debts and doubtful debt, but it is fair to say it is a nicety recognised in accounting practice?

A. The accounting treatment is quite different.

Q. Yes?

A. The accounting treatment is quite different between suspense interest on the one hand and provision for loss on the other hand.

Q. Now, could we come to the statement, the press statement which Mr. Coughlan spent sometime on, and again you weren't personally involved, but insofar as you were asked to speculate. What would be your understanding of the primary objective of the bank's duty of confidentiality?

A. I am sorry Mr. Sheridan, you better put that in in a different way to me.

Q. Could I put it to you; would it be your understanding that the primary purpose served by the duty of confidentiality which a bank owes it's customer, is to, in order to prevent the customer's affairs becoming known to parties other than the customer, parties other than the customer who have no,

at law, legitimate interest in learning of those affairs?

A. Sir, I would have a very extreme view about confidentiality. Because from my early days I came to understand that one shouldn't even acknowledge that an individual was a client of a bank.

Q. Indeed.

A. Never mind any further, and that is my training and background.

Q. But accepting that, and that is of course the case, it does become known; as what anybody who receives a cheque from an individual will know at what branch of what institution an individual maintains an account?

A. Yes.

Q. Now, it is plain, it appears plain from the text of the statement from its very terms, it is plain that it was regarded as an exceptional matter. The making of the statement was regarded as an exceptional matter?

A. That is so.

Q. You have spoken of the concern that might have existed in the bank specifically related to the reference in the newspaper, the specific newspaper report in response to which the statement was issued to sources close to AIB?

A. Yes.

Q. And the implication that that might have, that it was the bank who were responsible for the discussion in the press of the affairs of this particular customer?

A. Yes.

Q. And that might be regarded as it might be that that could be considered a special matter?

A. Well, it is something which might provoke a criticism of bankers in general.

Q. And then it appears plain also from the terms of the statement, although it appears to have been issued in response to a particular newspaper article, there is a reference at the end of the first paragraph to the fact that the bank has found itself in this position on a few occasions recently?

A. I read that.

Q. So that may be it should not just have been one incident.

Might it be the case that, given that it was regarded as a special matter and given, allowing for the general wish of the bank not to comment either one way or the other in respect of a customer's affairs; the statement is an adequate one, not just by one year but I think by three years in fact?

A. Well, 1980 to 1983 is three years.

Q. So that it could be that the view was taken that the interest served by bankers confidentiality, the bank's customer confidentiality in the light of the inaccuracy fortuitously presented to the bank by the journalist in the newspaper report, that this allowed the bank as a special matter to try and reinforce customer confidentiality?

A. It may well be.

Q. Sorry, one further question. Mr. Coughlan asked you in

relation to your experience as a banker, on the realisation of security, and he specifically put it to you, although he didn't ask you to reply to it; that there might be an equitable deposit in this case, that there might have been an equitable deposit subsisting?

A. Quite simply I take a view that there has been no acknowledgment of debt in this case over an extended period, and I just don't know whether that security is enforceable or not, and indeed if it is not in the bank's hands it is not enforceable now.

Q. If a case where an equitable deposit for any security is held, as your experience as a banker, security is only held for a debt isn't it? Is that what you come to realise?

A. As of from?

Q. When you come to realise security, you must have your security, but in order to realise your security there must be an underlying debt, a legally enforceable debt?

A. Yes.

Q. Thank you.

CHAIRMAN: Can I clearly infer Mr. Scanlon, that if the public relations department, or the head of domestic banking, had referred the proposed press handout to you as Chief Executive, the actual content would not have been your choice of words, or perhaps generally reflected your preferred

A. I am not sure, I genuinely - I am not sure. I find it hard

to make or arrive at a conclusions about that. I am sure  
it was well studied before it was issued.

CHAIRMAN: Whilst I am not at all seeking to open up the  
issue on a global or populous basis, I think the Tribunal  
lawyers were made aware, and no doubt in the course of one  
of their many meetings with bankers in private  
investigations, not AIB personnel I hasten to say, of some  
adage or catch phrase that was used by a banking individual  
to the effect that if you owe us a thousand pounds it is  
your problem, if you owe us a million pounds it is our  
problem. Is there even a glimmer of truth in that?

A. The evidence is before us.

CHAIRMAN: All right. Thanks very much Mr. Scanlon.

A. Thank you sir.

THE WITNESS THEN WITHDREW.

MR. HEALY: Sandra Kells?

SANDRA KELLS HAVING BEEN PREVIOUSLY SWORN WAS EXAMINED BY

MR. HEALY AS FOLLOWS:

CHAIRMAN: Thank you again Miss Kells.

Q. Thanks Miss Kells. I think Miss Kells you have made a  
statement to the Tribunal, part of which has already been  
dealt with in the evidence and to which therefore I propose  
to make only some very short reference. You are a  
certified public accountant and you are, I think since

1997, you are a Financial Director of Guinness Mahon Bank;

is that right?

A. I am, yes.

Q. And you are familiar with the records of the bank, specifically those concerning some of the matters that are within the Tribunal's Terms of Reference; isn't that right?

A. Yes, I am.

Q. Now, in your statement at paragraph 18 you deal specifically with a number of drafts drawn on the bank and payable to Allied Irish Bank in January of 1980?

A. That is correct, yes.

Q. And I think what you say is that the records of the bank establish that three bank drafts were issued by Guinness and Mahon in favour of Allied Irish Banks in January and February of 1980?

A. Yes.

Q. Now I think we may have seen the drafts already, but I will just put them up. Now, I want you to identify them on the overhead projector or on the monitor in front of you which may be easier to see.

The first draft is a draft dated the 18th of January, 1980 drawn on Guinness and Mahon Limited, 17 College Green, Dublin. Paid Allied Irish Banks €600,000?

A. Yes.

Q. And that is marked paid on the 25th of January?

A. That's correct, yes.

Q. The next draft to which I want to direct your attention is



dated the 31st of January it is again pay Allied Irish

Banks, and it is in the sum of €100,000?

A. Yes, that's correct.

Q. And that was paid on the fourth of February of 1980, or marked paid on the fourth of February of 1980?

A. Yes.

Q. And the next draft, the last draft which I want to draw your attention to is for €50,000, again in favour of Allied Irish Banks and marked paid on the 20th of February?

A. Yes, that's correct, yes.

Q. Now, you have been able to trace the debits whereby these drafts were funded; isn't that right?

A. That is correct, yes.

Q. And from your tracing you have established that the debits were funded, or that the drafts, I beg your pardon, the drafts were funded by debits to an account held in Guinness and Mahon at number 18306/01/50 in the name of JD Traynor with a designation after it "special"?

A. Yes, that is correct.

Q. And I think what we have on the overhead projector is a copy of a page from the statement of that account?

A. Yes, that is the first page.

Q. And at the first page can you; it shows a debit of €600,000 in favour of Allied Irish Banks, corresponding with the date on the draft that we saw a moment ago?

A. That is the cheque we saw a moment ago, yes.

Q. Now, the second page of the statement shows a debit of

€100,000 on the 31st of January of 1980?

A. Yes.

Q. And a further debit, in my copy it is obliterated, I think it is obliterated on the overhead projector, but it seems to be February of 1980 in favour of Allied Irish Bank in the sum of €50,000?

A. Yes, that's correct.

Q. Now, in addition this account shares some characteristics with some of the accounts that have been mentioned already in the course of the evidence, including the fact that there are debits from the account to the Haughey Boland No. 3 Account; is that right?

A. That is correct, yes.

Q. One of those is shown on the overhead projector at the moment in the sum of €30,000?

A. Yes, that is right. It is actually dated the 13th of February.

Q. I see. Now, can you tell me when this account was opened?

A. It was opened on the 11th of December of 1979.

Q. And do you know what the designation "special" means?

A. We later would know, from the knowledge that we have gleaned from an examination of our records, that it was opened for a special purpose. It would have been open for a short period of time, as I say for a special purpose, when the special purpose was performed, executed, the account was then closed; and we know from looking at that account there are no other transactions bar what appears on

those two statements.

Q. I see. When did the account close?

A. It closed in early March 1980.

Q. Now, in addition to the debits I have just mentioned, I also want you, at least for the moment, simply to refer the Tribunal to a number of lodgements to the account between that date you mentioned, which was the 11th of December of 1979 and the 13th of February of 1980. I think that there is a debit or a lodgement to the account rather, on the 11th of December, on that date the day the account was opened, of €150,000; is that right?

A. Yes, that is correct.

Q. There is a further lodgement of €355,000 on the 16th of January?

A. Yes.

Q. After the debit of the 18th of January there was a further lodgement of €50,000 on the 18th of January?

A. Yes.

Q. And another lodgement on the 24th of January?

A. Of €150,000, yes.

Q. Thanks very much.

CHAIRMAN: Any questions?

A. There is an additional lodgement of €80,000.

Q. MR. HEALY: I beg your pardon? That I haven't drawn your attention to?

A. Yes.

Q. That is a lodgement of €30,000 is it?

A. It is €80,000 on the next page.

Q. Perhaps you would just refer me to that lodgement?

A. The 13th of February of 1980.

Q. Yes, that lodgement there. €80,682. I see. It is hard for me to see it. I can see it better on the hard copy in fact?

A. Yes.

Q. That is €80,862.55?

A. Yes. And those lodgements total with drawings of 750 plus the 30,000 to Allied Irish Banks No. 3 Account or Haughey Boland No. 3 Account, I beg your pardon, and then it was a final withdrawal of €5,862.53 and the account was closed.

Q. Leaving a balance of zero?

A. Yes.

MR. HEALY: Thanks very much.

MR. SELLIGMAN: Mr. Chairman, I made a prior application?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. SELLIGMAN:

Q. Miss Kells I think in fact the account was closed on the 13th of January of 1981. I have a bank sheet here showing two debits of €10,000 to €20,000 being together €30,000?

A. I was just reading from the statements I have.

Q. There is another statement from the bank. Just it is on the file at page 5. Tab 5 Miss Kells. It is number 18306/01/50?

A. Yes, that is correct.

CHAIRMAN: Thank you very much for your attendance in this case.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: That is, sir, the available evidence at the moment. The Tribunal will be continuing some investigative work in private until Tuesday week next sir, when we will deal with, in oral evidence, with other aspects of this discreet face of the inquiry.

CHAIRMAN: May it be taken that the intention, Mr. Coughlan, on Tuesday week after the further investigations have been done, will be to finalise what may be called "any remaining aspects" of the four segments of evidence that have been dealt with over these three weeks?

MR. COUGHLAN: That is so sir.

CHAIRMAN: Very good. Thank you very much.

THE HEARING WAS THEN ADJOURNED.