

THE HEARING RESUMED AS FOLLOWS ON THE 21ST MAY, 1999, AT

10:30 AM:

CHAIRMAN: Good morning.

MR. HEALY: Yes, sir. Mr. Gresty, Mr. David Gresty.

DAVID GRESTDY, HAVING BEEN PREVIOUSLY SWORN, RETURNED TO THE WITNESS-BOX AND WAS RE-EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Thank you. You are already sworn.

Q. MR. HEALY: Mr. Gresty, you may recall that one of the matters left outstanding from yesterday was the question of the treatment of the €100,000 payment by Mr. Murphy to your company, which he gave to you in the form of a cheque and which you then gave back to him. Do you remember that?

A. I do indeed.

Q. When you gave it back to him you recall that there was some dispute about what the cheque did or did not contain, but it was certainly blank when you gave it back to him as far as you were concerned?

A. As far as I was concerned the payee was certainly blank, yes.

Q. Yes. Now, there is now a statement which you have produced to the Tribunal showing the treatment of the amount?

A. Um hum.

Q. You furnished the Tribunal with three documents?

A. Um hum.

Q. Now, perhaps you could take me through the documents?

A. Yes I can. The credit note which I issued for the
€100,000 was issued by an internal credit only.

Q. Could we just identify that document. Is that the document
which reads "International Insurance and Reinsurance
Brokers DB Agencies", some words on the top which look like
French for invoice?

A. It is for internal use only, internal use only.

Q. I see. You see that?

A. Yes, um hum.

Q. Can we get that up on the screen? Right. Will you
explain to me what that document is?

A. That was a document, internal document to raise a credit to
reduce the amount of the money owing from the ADSI account.

Q. Right. Then the other documents, the other document is
the reconciliation that was agreed between Mike Murphy
Insurance Brokers Limited and DB Agencies which culminated
in a reconciliation total of 257

A. This is Irish pounds €257,318.01, which includes the other
currencies except the dollars. And then there was the
claims credit that we agreed of 59,252.92 GBP which we
converted into Punts which resulted in a credit of
€63,992.12. And then there was the credit note which we
issued to compensate for the 100,000 investment which was
going to Celtic Helicopters.

The last page is just the balance, the balance figure due,
there is no further credits or debits from 1992 to 1998.

In that time Mike Murphy didn't want to keep the money any longer and he paid it and settled the account.

Q. That was done on December of 1998?

A. That's correct, 4th of December of 1998, yes.

Q. So it had remained outstanding between

A. 1992 and '98.

Q. And 1998?

A. By request I would add.

Q. At your request?

A. Yes, I didn't want the money to come in.

Q. Why did you ask for it in 1998?

A. He didn't want to keep it any longer. I wouldn't have asked for it now if it hadn't been for him wanting to close the account.

Q. Did he give you any reason for wanting to close the account?

A. I just think, he said "look, let's get the thing sorted. I don't want this money any more". No, he didn't.

Q. Did he write to you or did he just say to you "I want to close this account" or just send you a cheque for 93,000?

A. No, I was actually in his premises when he told me that he wanted to get rid of the account.

Q. And he gave you no reason for it?

A. No reason at all, no.

Q. Did he mention anything about any inquiries being conducted in the country at that time?

A. No.

Q. Did he make any mention of Celtic Helicopters at that time?

A. No.

Q. The other statement which left 93,325.89 outstanding, that statement is dated the 31st of the 12th, 1997. Just as a matter of interest why is it dated that date?

A. Because that was every year we would have a statement brought forward you see, that was the only one which I put all the information on for the Tribunal.

Q. I see. And this document is simply generated from your own

A. From our records yes, from the computer data.

Q. From the computer records. Do you see the statement we are looking at, the 31st of the 12th, '97?

A. Um hum.

Q. Look at the bottom left-hand corner, and it says; "Payable to AIB International Banking Services, Ashford House, P. O. Box 518, Tara Street, Dublin 2. Account name: DB Agencies"?

A. Um hum.

Q. Is that the account into which money payable to your firm would normally be paid by Mr. Murphy?

A. No, normally it would go, depends normally if it was a thing of this type it would go it was a current account it would go into our normal banking system in the CFM in Monaco.

Q. Why would a statement issued by you to Mike Murphy refer to

amounts due as being payable to that account?

A. Because that is a run off account, this is an international run off account and it is, it doesn't go into it.

Q. In the ordinary way you generate statements from time to time, I presume your computer generates statements from time to time?

A. It does.

Q. The statement would say at the bottom this is payable to that account?

A. No, it wouldn't. To DB Agencies, CFM Monaco.

Q. Why does this statement say "Payable at the AIB in Tara Street, Dublin"?

A. Because this is a run off situation and the run off situation is dealt with by that account.

Q. But what involvement did AIB have in your affairs at all?

The statement says this money is due and it is payable to such-and-such an account, it gives an account number, and an account name?

A. Um hum.

Q. And it would seem to me to suggest that it would be a simple matter to pay it, you simply paid it to AIB down in Tara Street, which would be no distance, to the credit of your account, which would be no trouble at all to the Mike Murphy Group?

A. This account was only recently opened, I think you will find if you look at the account it was opened about two years ago.

Q. I see.

A. And it was just used solely, purposely for run off and collecting.

Q. So you hadn't the account prior to that date?

A. No.

Q. You didn't have it in 1992?

A. No, not then, no, no.

Q. I see. Now, if you look at the payment of œ100,000 in respect of which you issued a credit note?

A. Yes.

Q. The date of that payment is the 5th of the 10th, 1992?

A. That's correct.

Q. Why does it say "credit note"?

A. Because I am crediting the account of Mike Murphy.

Q. But why does it say "credit note"? Credit note in fact indicates to my mind that you did not receive money, which is what yesterday you informed the Tribunal you received, and which is what your counsel, Mr. Gilhooley, was anxious to point out to Mr. Murphy when he was being examined, had been received was money, as your counsel put to Mr. Murphy; he said you got a cheque, gave a cheque to Mr. Gresty, that is correct, that cheque was payable to the order of Mr. Gresty and Mr. Gresty gave it back to you. But what your statement refers to is a credit note which is a different thing?

A. No, I have to remove, I have to remove a œ100,000 from the statement of Mike Murphy, that's a fact. Now, I can only

do it by issuing a credit note in my system.

Q. Why?

A. Because that's the way the system works.

Q. Mr. Gresty, your counsel put to Mr. Murphy, and certainly left me and I am sure other members of the public here, and I am sure the Tribunal, in no doubt yesterday that what was going on in Paris was Mr. Murphy was paying you. He was paying his debts by giving you a hundred thousand pounds, and you were handing it back to him. It was no longer Mr. Murphy's money. As far as you were concerned and as far as your counsel was concerned this money was payable to the order of DB Agencies. Why wouldn't it appear in your accounts as money actually received?

A. I accept that. But for me, this is an internal if you look, it is marked "internal", for us only. I know the money is received from Mike Murphy. For me to reduce the amount of the statement I had to put through a credit note. And I put an internal credit note. It says here "internal credit note", not for Mr. Murphy's use or anybody else's, primary for accounting purposes.

Q. But this money therefore, according to your accounts you never got it if you issued a credit note?

A. No, according to my account Mr. Murphy is credited with paying the €100,000, for me to put that on the statement I had to issue an internal invoice, not an external invoice, purely for accountancy purposes.

Q. Do you remember yesterday when I was asking you about the

dating of the meeting?

A. Um hum.

Q. And you informed me that your accounts would not reflect a reduction in Mr. Murphy's account of €100,000 unless that money was actually cleared into your bank account. Now, I put it to you that I thought that that seemed strange and you said no that's the way you operate.

MR. GILHOOLEY: Sorry, sir, I don't wish to interrupt unnecessarily, but I don't think that's what Mr. Gresty said. I think what he said was it was his practice not to recognise payments until they were cleared. This €100,000 was a different matter, and it seems to me, sir, that My Friend, I am sure unintentionally, is seeking to put words in the mouth of the witness and that he should correct it accordingly.

CHAIRMAN: Well, I will permit Mr. Healy to proceed, Mr. Gilhooley. I will hear any observations you have to make at the conclusion of the evidence, and I will defer any formal finding until I examine the record of today and yesterday.

MR. GILHOOLEY: Very well sir.

Q. MR. HEALY: Well, while we are on this point, if I could just clarify one other matter remember yesterday we went over the three steps that lead to your making the investment?

A. Um hum.

Q. The only matter that was outstanding after the September meeting in Paris was filling in the name of the payee, and you understood that that would be either Celtic Helicopters or Deloitte and Touche, one or the other?

A. Yes, or their bankers, yes.

Q. One of the things that's puzzling me is this; why would Mr. Murphy be discussing the terms of a share issue in October the 21st and, as it were, negotiations how shares would be issued, what money would be paid for them, what sort of share holding would be obtained, what sort of shares would be obtained, with Deloitte and Touche, after the agreement had been made with you? Now, that's a rhetorical question, I accept. I am sure your answer is you don't know what he would be doing?

A. Frankly no, I don't know. The situation was simply I agreed to the investment. As I said yesterday I hoped to get it a little less than 10 percent, that was the idea, that was the whole discussion we had.

Q. Now, in relation to your other investments, again I am not interested in the details of who they were or what they were, except to the extent that they may have involved shares or purchases of property or investments in companies, would they have been of that kind?

A. Yes.

Q. And were they carried through by using money that was due by Mike Murphy Insurance Brokers to your company?

A. I can't frankly answer that because I don't know. Because I haven't got the file to check up and you know, the amount has been returned now so I don't know.

Q. I see. When Mr. Murphy met you in Paris

A. Um hum.

Q. to discuss the reconciliation on the account, had the figure of 257,318 been conclusively agreed between you at that stage?

A. No, it hadn't. You see, the certain adjustments had to be made and obviously his accounts department and my accounts department are both so we were coming to some, if you like some sort of agreement to finalise the figures between the two respective companies.

Q. Yes, what I am trying to get at is this; was it simply a question of two people taking out their respective sets of accounts and reconciling them and saying "there must be a mistake here on yours or mine", or was it a case of horse trading on the final figures due?

A. No, basically the discrepancy arose because of what's known as "over age loading", it is vessels over a certain age attract certain additional premiums and these premiums are available, because you can negotiate with underwriters in a little bit less if there was a safe arrival of the vessel, so principally Mike Murphy's argument was the client is paying too much because the over age charging is too high so we will do some adjustments on the over age charging.

Q. Was that therefore a case of negotiations, the over age

loading, with you?

A. That's why Mr. Lucey was with me, you see from my diary the underwriter Mr. Lucey was actually with us at the time, so we had to try and get a compromise with him as well.

Q. Where did the figure of 257,318

A. That was the final figure.

Q. That was the final figure, that didn't come into existence until after that meeting?

A. It came into the meeting, at the meeting. The final figure for Murphy's agreement was probably in his eyes that figure.

Q. Right. What I am trying to get at is the statements we were given showing the reconciliation?

A. Um hum.

Q. So they come out at 257,318?

A. No, they didn't come out because there were certain items there, you will see ticks and crossing off and all sorts of things.

Q. I don't have them in mine, maybe you have in yours. What I am driving at is what was the figure that emerged from the meeting as opposed to the figure that you went into the meeting with?

A. That's correct, that's the figure we finally agreed on.

Q. Well you see these statements here?

A. Um hum.

Q. What's the net figure due on foot of these statements?

A. Which what's the date in the top left-hand corner?

Q. One of the ones I have is the 15th of August?

A. 15th of August.

Q. They are all dated the 15th of August?

A. That will be the figure before we had the meeting.

Q. Yes, and they should come out at presumably at a higher figure?

A. A higher figure, yes.

Q. So after the meeting what you agreed was that 100,000 would be paid on account?

A. Yes, yes for the investment of Celtic Helicopters, yes.

Q. And do you remember you were in some doubt as to whether that figure was on the cheque at the time of the meeting?

A. No, I was certain, I said this to you yesterday, I was certain there was a hundred thousand pounds on the cheque.

I said to you I didn't know whether it was signed or not, but I did say there was a hundred thousand pounds.

Q. I see. I misunderstood you. You are certain the figure of a 100,000 was on it already?

A. I am quite positive.

Q. Right. Was that produced at the start of the meeting or the beginning? In other words did you say that was the agreement to the effect "I will pay you a 100,000 and we will discuss the reconciliation", or was it the other way around?

A. I think the 100,000 was already settled on the cheque when he showed me the cheque.

Q. A hundred?

A. A 100,000 was already inserted, yes.

Q. Right. And you simply gave it back to him?

A. Simply gave it back.

Q. So it never went through your bank account?

A. Never went through the bank account. If it had gone to the bank account it would have been on the statement as such, that's why I put the internal note through, you see.

Q. Have you any internal record at all of your share holding in Celtic Helicopters, or what you perceived or thought was your share holding?

A. No, I haven't.

Q. You have none at all?

A. None at all. They were kept with Mike Murphy, whatever records I would or should have had, should be with Mike Murphy.

Q. You had no note of your own regarding it, other than the letter that you sent to Mike Murphy on the 5th of October?

A. No, no note other than I had the underwriters with me at the meeting.

Q. And to this day you have never written him a letter about it?

A. No, I deal with Mike Murphy on a regular basis and every now and then I ask him about it, that's it.

Q. If we check, ultimately if it becomes necessary to look at the other transactions would we find correspondence dealing with those?

A. I doubt it.

Q. You doubt it?

A. I doubt it. If I bought shares from Mike, you buy shares and put them in my file and that was it.

Q. Would they have been shares in quoted companies?

A. Certainly at least one.

Q. If they were shares in quoted companies you would have no difficulty in knowing how they were getting on?

A. Sometimes by the Irish Press, unless you buy the Irish Press.

Q. You get Irish newspapers and check the prices?

A. You can, yes, you can.

Q. But you had no way of checking the price here except by asking Mike Murphy?

A. No.

Q. One last matter; when I asked you yesterday about the meaning of the expression "stand on", you said that it could mean that Mike Murphy would share the losses with you, as you went on in your evidence, I am not criticising you, you said you felt it would mean that Mike Murphy would guarantee?

A. The words were actually "stand on", he said "don't worry I will stand on it". So I feel that, you know, that he would guarantee the payment. He also could have said you know, "share the loss with you", but I mean I ultimately felt the security, Mike Murphy's word that he would stand on and would look after my investment. He hasn't let me down in the past.

Q. Thank you very much, Mr. Gresty.

CHAIRMAN: I think Mr. Gilhooley you hadn't quite completed in view of what arose naturally yesterday, so I will allow you to ask perhaps a couple of questions, if you wish to.

MR. GILHOOLEY: In fact, sir, I hadn't undertaken any examination of Mr. Gresty.

MR. HEALY: I think that's right, sir. I asked Mr. Gilhooley to take up the matter of the statement and then it became clear that we would have to wait for the statement.

CHAIRMAN: So, proceed.

MR. GILHOOLEY: In any event, sir, let me assure you I do not intend to be very long.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. GILHOOLEY:

Q. MR. GILHOOLEY: Now, Mr. Gresty, just to clarify a couple of points arising out of the credit note and statements you have presented this morning.

A. Um hum.

Q. Firstly, I think the Tribunal may wish to see the credit note because I just want to refer you to a part of it, down on the bottom half of the credit note on the left-hand side

A. Um hum.

Q. there is a heading that says "Risk", and after that it

has the words "accumulated commissions". Now, could you explain what's the significance of that?

A. As you will be aware running the account, so the account would receive cheques for premium payments and it would receive credits for claims that I have collected. So Mike Murphy's account would, would probably pay me a certain amount on account and therefore there were no identification of commission, so the things were rolling on, as I wasn't taking the commission from the Mike Murphy account at that time it was being rolled on and rolled on, so to release this from my accountant I have to release an internal credit note, take away and describe what the motive was, because in Monaco you have to give a motive to put transactions through.

Q. Well, do I understand you to say that when you say it was accumulated commissions, it was an item for which you had no corresponding liability to underwriters?

A. That is correct.

Q. And it was the property of DB Agencies?

A. That's absolutely correct, yes.

Q. And now, if I can then just refer you to the statement dated the 31st of the 12th, '98?

A. Um hum.

Q. And thank you. Now, if you look at the bottom left-hand corner of that, I see that there is an outline around AIB International Banking Services and it has the appearance of being a label; is that correct?

A. No it is not, it is a computer, it is a computer box.

Q. Is it? All right. But your normal invoices, except on a run off account, your normal invoices, your normal statements I should say would have referred payment created in Monaco?

A. Correct. Absolutely.

Q. Now, in relation to the way in which this transaction was recorded

A. Um hum.

Q. I think that everybody knows that for everybody debit or credit on an accounting system there must be a corresponding debit or credit. Is it correct that your problem in dealing with this matter of the credit note is that you could not treat it as a cash receipt because there would have been no debit to your bank account; is that correct?

A. That's right, that's why I put this internal credit through.

Q. And is it your general practice or what is your general practice regarding the recognition of payments? I think you said yesterday that you do not recognise payments received until they, until you have cleared funds in respect of those payments?

A. Yes. Basically the problem is, because Monaco is a difficult system of collecting money, so sometimes cheques take weeks to clear.

Q. Well, this is in fact the next point I was going to ask you

about. Mr. Gresty, that is obviously based on the chronology of events that has been given, there was some delay in the cashing of these cheques and in receiving, have you received numerous cheques from Ireland in the past?

A. The system has got better now because of Euros, they sell the cheques to the Bank of France and they can credit the account. I tried to persuade people to do transfers, they are much easier for me to identify and get the money quickly, but when I get cheques from Ireland now the system is definitely much better.

Q. How long does it take now?

A. Well, a good week, on a good week, maybe ten days or 14 days.

Q. Right. So a good, a good transaction would take ten days now?

A. If you wanted the money urgently you could opt to sell it to the Bank of France and they would collect the funds and you give your bankers a guarantee, that would probably give me a week turnaround.

Q. Assuming it is a routine transaction and going through your accounts in the normal way?

A. I would allow two weeks.

Q. You allow two weeks. Now, going back to 1992 when obviously we didn't have the Euro; what was the average, could you explain what was the procedure and what was the time taken to clear funds?

A. The procedure would be that we would fill in the lodgement form for our bankers, our bankers are Monegasque Bank CFM. They then would post, they then take the cheque, not credit the account, but take the cheque and post it to Nice to the Bank of France, the Bank of France would then sit on it or do what they wanted and send it to their agents. Eventually it would end up in Mike Murphy's account or somebody else who gave me an Irish cheque. Then I get the same system back.

Q. And in your experience of dealing with payments from Ireland, how long did that tend to take?

A. Five weeks, four weeks or five weeks.

Q. I think just to confirm something which I think you said by way of a formality, but I think I should mention it, Mr. Gresty, that the other invoice for the 16,000 odd pounds, am I correct in saying that you have corresponding statements in relation to that?

A. We are obliged to keep documents for a certain length of time in Monaco, so I would assume that fear of being wrong, but there was, the teller for that debit, that credit, sorry, would be in my banking boxes somewhere in the cellars, yes.

Q. But if the Tribunal needs it it can be got?

A. Yes, they can be found yes, no problem.

Q. I think there were some issued yesterday, Mr. Gresty, about you mentioned at one stage that you had quite a large share of the Irish beef insurance market arising from your

relationship with Mike Murphy. Just for the sake of completing that, because I think it was left possibly somewhat hanging, what percentage of the Irish beef insurance market would your company have now?

A. Of the Irish market, a very small percentage I think, very small percentage. But we would have, I mean certainly we do place for Mike another major beef producer or two or three major beef producers, but the system changed since BSE, the problems of export has been difficult and then the local trade, the EEC trade has grown enormously and the Third World has gone down so-to-speak, so its, it is difficult to assume, but a very small proportion compared with the time we were doing this.

Q. Again to clarify so that the matter is beyond doubt so far as possible. Have you ever met, Mr. Gresty, Mr. Paul Carty or Mr. David Deasy or other partners in Deloitte and Touche?

A. No, never met them.

CHAIRMAN: In conclusion, Mr. Gresty, you have plainly been a successful practitioner in Monaco in insurance over quite a few years, dare I suspect you are a Yorkshire man?

A. No I am from Cheshire.

CHAIRMAN: That shows how unreliable my regional discernment is. Knowing all that you know do, Mr. Gresty, and looking back on all the circumstances of this investment, would it be fair to say that both for its

unproductiveness and its vagueness it somewhat stands out?

A. I think I will remember this for a very long time.

CHAIRMAN: Right. Thank you for attending.

A. Thank you.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Mr. Patrick Gallagher.

PATRICK GALLAGHER, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MR. COUGHLAN:

CHAIRMAN: Thank you, Mr. Gallagher. Please sit down.

Q. MR. COUGHLAN: Mr. Gallagher, I think you have furnished a
draft statement for the assistance of the Tribunal; isn't
that correct?

A. That's correct.

Q. And do you have that with you?

A. I do.

Q. You may refer to it.

A. Thank you.

Q. In the first instance, Mr. Gallagher, what I would intend
doing is leading you through this draft statement and
asking you an a few questions to clarify matters which may
arise?

A. Excellent.

Q. I think you have informed the Tribunal that you were born
in May of 1951; is that correct?

A. That's correct.

Q. That your father started the Gallagher Group when he returned from the UK in the 1950's?

A. That's correct.

Q. Your father developed land for housing throughout the country and was a supporter of Fianna Fail?

A. Also correct.

Q. He was a supporter and a friend of Mr. Charles Haughey; is that correct?

A. Yes.

Q. I think you have informed the Tribunal that you first met Mr. Haughey when you were about four or five; is that correct?

A. Correct.

Q. And you informed the Tribunal that you would have met Mr. Haughey occasionally throughout your childhood; is that correct?

A. That's correct.

Q. And that you would have regarded him as a formidable personality, and you were somewhat in awe of him, as well as holding him in high esteem; is that correct?

A. That's correct.

Q. I think you informed the Tribunal that your father died in 1974 aged 56, and you took over as Managing Director of the Gallagher Group when you were 23 years of age; is that correct?

A. Yes, that's correct.

Q. I think you informed the Tribunal that you met Mr. Haughey shortly after taking over as Managing Director of the Gallagher Group and indicated to him that you intended to continue to offer the support which your father had given over the years; is that correct?

A. I did.

Q. I think that you informed the Tribunal that you met Charles Haughey about three or four times per year; is that correct?

A. That's correct.

Q. That you would usually go shooting to Kinsealy and others would be invited back to the house for lunch afterwards; is that correct?

A. Correct, yes.

Q. I think you informed the Tribunal that you assisted Charles Haughey with donations for his political expenses during the course of various campaigns and would have given him about €30,000 in cash sorry €3,000 I beg your pardon at different intervals; is that correct?

A. That's correct yes.

Q. You estimate you would have given him about €15,000 up to December of 1979?

A. Yes.

Q. Is that correct?

A. Yes, that is an estimate.

Q. That's an estimate. Now, when you say, if I pause there for a moment if we could clarify something. Is that

œ15,000 from 1974 to 1979?

A. That's right, that's how I got the figure of 15,000, because I felt it was somewhere in the order of 3,000 a year for five years.

Q. I see. I see. I think you informed the Tribunal that on the night Mr. Haughey was elected Taoiseach in December of 1979 you were invited along with others to a party at Abbeville; is that correct?

A. That's correct.

Q. I think you have informed the Tribunal that on the following Sunday you got a message that Mr. Haughey wanted to see you at Kinsealy; is that correct?

A. Correct.

Q. Can you remember how that was conveyed or was it

A. I was in my local pub, it was about five o'clock on a Sunday evening, with my brother having a pint, my housekeeper, or my wife rang me to say there was a phone call.

Q. And you were wanted at Abbeville?

A. Yeah.

Q. I think you have informed the Tribunal that your younger brother, Paul, was with you at the time and he accompanied you?

A. Correct.

Q. I think you informed the Tribunal that Paul stayed in the drawing room and you went with Mr. Haughey to his study?

A. Correct.

Q. I think you informed the Tribunal that he, that is Mr. Haughey, told you that now that he was Taoiseach, he would have to tidy up his financial affairs and made it quite clear to you that the matter was urgent; is that correct?

A. Correct.

Q. I think you informed the Tribunal that you asked him directly what the bottom line was and he told you that the sum of approximately €750,000 was required to discharge his debts?

A. Correct.

Q. I think you informed the Tribunal that you felt obliged to support Mr. Haughey due to your long standing friendship with him and because of the fact that he had been elected Taoiseach and in principle you were happy to assist in the reduction of his indebtedness?

A. Correct.

Q. I think you informed the Tribunal that after discussions with your brother Paul, you agreed to advance him the sum of €300,000 but you explained to him that you would have to have something tangible in return; is that correct?

A. That's correct.

Q. If I might just pause there for a moment again and if we might just clarify sorry, is the sun in your eyes?

A. I had surgery on my eyes the other day it is a little bit

CHAIRMAN: Perhaps if you would like to perhaps Mr.

Gallagher sit down beside some of the

A. I think I will be all right if I put my hand up. Thank you sir.

Q. MR. COUGHLAN: All right. At the meeting in the study with Mr. Haughey when you, when he informed you of what the bottom line was, when you had asked him, you agreed in principle to assist him in the reduction of his indebtedness; is that correct?

A. Not until after I had discussed it with my brother.

Q. Not until after you discussed it with your brother. Can you remember how the conversation might have gone between yourself and Mr. Haughey, you now knew he needed some assistance and the level of assistance?

A. Well, the thing about it is this, he told me the amount of money he required.

Q. Yes.

A. And I said to him that he was well in a position to be able to carry a certain amount of that money himself.

Q. Right.

A. And so I went out to my brother and said "it looks like the bottom line is 600,000". I said to him "look, we have supported Mr. Haughey this far and now that he is Taoiseach, I suggest that we continue our support".

Q. Yes?

A. And at that time we were flush with funds, so I suggested to Paul that we would go half of the 600,000, but we would have to get something tangible in, in return.

Q. Yes.

A. So I returned to Mr. Haughey's study and told him this.

He said "right, that's fair enough. We will get a hold of Des Traynor and we will put a package together".

Q. Right.

A. So that's basically what happened.

Q. So when you say that "we were flush", does that mean that the company was flush?

A. The company was flush, yeah.

Q. The company was flush. And Paul was, your brother Paul was involved as a director of the company also?

A. That's correct. That's correct.

Q. But in principle you were agreeable, you and your brother were agreeable to assist in the indebtedness and there was no discussion at that stage about any security or anything tangible at that moment to be put in place when the agreement took place, if I might put it that way loosely?

A. Yes, but I knew where the tangible asset was going to come from. And

Q. Yes.

A. But he was extremely busy at that time, so it wasn't until the early part of the next week that I met Mr. Traynor and got the wheels into motion.

Q. Perhaps we will come on to that. Perhaps I will continue with the statement so?

A. All right.

Q. I think you informed the Tribunal that prior to this

occasion, which was the meeting in the study, the Sunday after he had become Taoiseach, that you had never discussed either his finances or the possibility of the Gallagher Group purchasing part of the lands at Kinsealy; is that correct?

A. That's correct.

Q. The only matters you had perhaps had an involvement in prior to this occasion was making the political contributions you have

A. That's correct.

Q. you have told us about already. I think you have informed the Tribunal that apart from anything else, you had an obligation, you had obligations to the trustees of the Gallagher Group and given the sum being sought was so large, you felt that you would have to have something in return?

A. That's correct.

Q. You were probably keenly aware of the fact that you couldn't just dispose of company or trust money?

A. That's right.

Q. Willy nilly; isn't that right?

A. That's right.

Q. I think you informed the Tribunal that the lands at Kinsealy were an attractive prospect for the Gallagher Group and fitting in well with the long-term strategy of building up a land bank for the future; is that correct?

A. That's correct.

Q. You felt if you could obtain a contract on part of the lands in Kinsealy that perhaps more would be offered to you if it subsequently became available; is that correct?

A. Correct.

Q. I think you have informed the Tribunal that you indicated you wanted to be able to purchase some of the lands at Kinsealy in return for €300,000 and he agreed to this in principle?

A. That's correct.

Q. Was that at that meeting on the Sunday?

A. It was, yes.

Q. I think it was agreed, you have informed the Tribunal, that was agreed between both of you, that's Mr. Haughey and yourself, that the details would be developed between you and Mr. Des Traynor; is that correct?

A. Correct.

Q. I think you have informed the Tribunal that Mr. Traynor had been a co director with your father in the Gallagher Group prior to his joining Guinness & Mahon Bank, and therefore you trusted him?

A. Correct.

Q. I think you informed the Tribunal that you left Kinsealy feeling that you had helped Mr. Haughey out of a predicament, while at the same time securing something of value to the Gallagher Group in return?

A. That's right.

Q. I think you informed the Tribunal that you met with Mr. Des

Traynor on a number of occasions over the following weeks?

A. That's right, yes.

Q. You indicated that you were anxious to secure a portion of land in Kinsealy adjacent to Feltrim?

A. That's correct.

Q. You have informed the Tribunal that Mr. Traynor was liaising with Mr. Haughey about the details of the arrangement; is that correct?

A. I believe so, yes.

Q. And did it, you have informed the Tribunal that it became clear to you, that Mr. Haughey was concerned about the location of your choice of lands because they interfered with a stud farm which his daughter Emer had developed on those lands at that time?

A. Correct.

Q. And you have informed the Tribunal that in an attempt to get over this difficulty you offered to purchase an alternative stud farm which would meet with Mr. Haughey's approval before completing the contract?

A. That's correct.

Q. I think you have informed the Tribunal that you did not see any difficulty in including this condition in the contract, as you knew of a number of stud farms that could be procured and would be less valuable to the Gallagher Group than the lands at Kinsealy?

A. Correct.

Q. I think you have also informed the Tribunal that at that

time the Gallagher family had approximately 1,500 acres of agricultural land in Dublin and the surrounding counties, and there were a number of suitable locations within the land bank to fulfill the obligation under the contract?

A. That's true.

Q. I think you have informed the Tribunal that you trusted Mr. Haughey, and never even considered the possibility of him abusing the discretion granted to him under the condition in order to frustrate the contract?

A. That's right.

Q. I think you have informed the Tribunal the non refundable deposit was high in strict commercial terms, but that you regarded the €300,000 primarily as a donation in order to assist Mr. Haughey and the contract for the purchase of the land was a long-term strategy which you felt would recoup your money in due course?

A. Absolutely, yeah.

Q. I think you have also informed the Tribunal that it was somewhat unusual for the contract not to be formalised between solicitors but it was explained to you that this was a highly sensitive and confidential matter and it was better left between yourself and Mr. Traynor in those circumstances; is that correct?

A. That's correct.

Q. And you left Mr. Traynor to draft the agreement, as you trusted both Mr. Traynor and Mr. Haughey implicitly?

A. Correct.

Q. If I might just pause there. If we might clarify one or two matters there, Mr. Gallagher. Who explained to you that it was a highly sensitive and confidential matter, was it Mr. Haughey?

A. No, Mr. Traynor.

Q. Mr. Traynor?

A. Yeah. I could understand that anyway.

Q. Yes, yes. I think you have informed the Tribunal that you signed the contract, and you were in no particular rush to complete as planning permission did not seem an immediate prospect, although you felt that sooner or later the general area was going to be developed, having regard to the increase in the population of Dublin; is that correct?

A. That's correct.

Q. And I think you informed the Tribunal that it suited you that you had almost six years to decide whether or not you would fulfill your obligations under the contract and complete the transaction; is that correct?

A. That's correct.

Q. I think you informed the Tribunal it allowed you to continue to keep account of the nature and extent of the development in the area and if the name of the purchase price was an attractive option that you could have completed the contract?

A. That's true, yes.

Q. I I think you have informed the Tribunal that on a strict analysis of the provisions some 20 years later, it

has been pointed out to you that the contract was loose and somewhat informal in its contents; is that correct?

A. That's correct yes.

Q. I think you have informed the Tribunal that however, you regard it as a matter, that you regarded it as a matter of honour at the time; isn't that correct?

A. That's correct.

Q. You have informed the Tribunal that you were helping an old family friend out of a serious predicament?

A. Correct.

Q. And it never even occurred to you that either Mr. Haughey or Mr. Traynor would abuse your trust in anyway?

A. Correct.

Q. I think you informed the Tribunal as a matter of course that the architect and planning director of the Gallagher Group would have monitored progress in the lands but no specific steps were taken to complete the contract before the collapse of the group in April of 1982?

A. Correct.

Q. I think you informed the Tribunal that you would like to state that at the time you agreed to assist Mr. Haughey in December of 1979 you explained to him that this would be an once off event and "he neither sought nor did I provide any further financial assistance since the payment of the deposit in the sum of €300,000"?

A. Correct.

Q. Now, if we could just, if you don't mind, clarify, just a

few matters for the assistance of the Tribunal?

A. Certainly.

Q. Mr. Gallagher, this meeting with Mr. Haughey on the Sunday after the party you attended at Kinsealy, would appear to have been on the 13th of December of 1979; would that be correct?

A. That sounds correct, actually I thought it was correct but it was the Sunday night and I believe the, he was elected on the Friday.

Q. Yes and after you had discussed the matter with your brother and agreed the sum of money which you were going to put up, which was half what you considered the bottom line to be?

A. Yes.

Q. How long after that were the final answers put in place?

A. I am not altogether sure, but it would have been, definitely within the following five weeks.

Q. Within the following five weeks you think?

A. Yes.

Q. Did you, yourself, personally, draw a cheque on any account?

A. No, the financial director did.

Q. The financial director?

A. Yes, of Gallagher Group.

Q. Drew a cheque on one of the company accounts?

A. Yes. We are trying to check that out precisely at the moment because it could have come out of Gore and Grimes

who were our solicitors, client account, or it could have come directly out of the Rotunda branch, we are clarifying that for the Tribunal.

Q. That's the information I am trying to ascertain at the moment. Were the Group accounts in the Rotunda branch of the Bank of Ireland?

A. They were.

Q. And were the solicitors at that time to the company Messrs. Gore and Grimes?

A. That's correct, yes.

Q. And as far as you know the only people involved in the actual contract, because of its sensitivity, were yourself, Mr. Traynor and your brother Paul, who witnessed it?

A. That's correct, yes.

Q. The company solicitors were never involved?

A. Never involved.

Q. And the trustees were never involved in it either?

A. No, no.

Q. But in the actual drawing of the finances you are unsure at present as to what the actual situation was?

A. That's right. If I had a little more notice I would have been able to

Q. I appreciate that, Mr. Gallagher, and your assistance is welcomed by the Tribunal. But in any event, the probability would be that it came out of the Rotunda branch you think?

A. I was talking to Mr. Cousins this morning, and he informs

me that he remembers writing a cheque, so if the cheque was written it definitely came out of the Rotunda branch. He maintained the cheque was made out to Guinness & Mahon.

Q. The cheque was made out?

CHAIRMAN: He is your financial controller or

A. That's correct, yes.

Q. MR. COUGHLAN: And was made out to Guinness & Mahon, and it would have been for the sum of œ300,000?

A. That's correct.

Q. One cheque you imagine?

A. One cheque I would imagine, yes.

MR. GLEESON: Can I interrupt. I should have asked for limited representation. I want to indicate, if it is of assistance, Mr. Cousins is here and will be happy to lend assistance, if that would be helpful.

CHAIRMAN: Thanks, Mr. Gleeson, and I accede to your application on the basis that I have acceded to quite a number of applications.

MR. GLEESON: I am obliged to you sir.

Q. MR. COUGHLAN: That is of assistance. Thank you. Perhaps I should deal with the various movements with Mr. Cousins. Would you think that would or are you happy enough to deal with some of them yourself?

A. I would prefer Mr. Cousins because I am very hazy about money movements to my cost.

Q. Right.

CHAIRMAN: Well, I think the sun

Q. MR. COUGHLAN: Sorry, there are one or two other questions

I may wish to ask you, I do apologise.

Now, I take it that you had been involved in other land

deals or the purchase of property on behalf of the

Gallagher Group on occasions prior to this?

A. Certainly, yeah.

Q. And normally, such dealings would take the normal route

through the solicitors for the Group and the solicitors for

the vendor; isn't that right?

A. That's correct.

Q. And can I take it that, as you have indicated yourself,

quite candidly, the level of deposit being paid here was on

the high side; isn't that correct?

A. That's right.

Q. And even the contract price was probably a bit on the high

side, bearing in mind this was zoned agricultural land and

there was no planning permission as well?

A. That's correct, but it wasn't felt even 20 years later

all that land is built on now.

Q. I appreciate that. I suppose would it be fair to say what

was primarily on your mind was that you were making a

donation to Mr. Haughey to help him out of his

difficulties?

A. Yes and basically, if I didn't have an agreement on the land I wouldn't have helped him out.

Q. Yes. Can I take it that it was your experience or it wasn't your usual experience to agree to large non refundable deposits?

A. No, not normally, no.

Q. And of course the reason why I suggest it might have been a non refundable deposit is because of the primary reason that you were rendering assistance to him, to reduce his indebtedness somewhere else?

A. I would have to agree with that, yes.

Q. Now, we know, sorry the evidence from Mr. Laurence Crowley, that I presume you would agree with this, that the records of the company don't show any documentation on the part of the company attempting to complete or to enforce any of the terms of this contract; would that be right?

A. There was no need to do it until the end of 1986.

Q. I see.

A. It wouldn't have been prudent to close that deal and move it any further.

Q. Nor was there any documentation on the company files at least anyway, emanating from Mr. and Mrs. Haughey seeking to have any of the terms enforced or to complete the contract?

A. No, but we had still plenty of time, nearly four years to run on the contract.

Q. And can we take it that there don't appear to have been any

steps taken either to procure a stud farm within 20 miles of the General Post Office, particularly in the North County?

A. That's the point I am making you see, that we had enough land ourselves to be able. I could have taken a section of 60 acres of land off one of the farms and just built a number of stud boxes and put a house on it and that sort of thing, there was plenty of the suitable land available to do that.

Q. But it had to be to the satisfaction of the vendors in this section?

A. It would be, yeah, I know Mr. Haughey's taste and I know what he would demand and expect.

Q. But he had to be satisfied under the contract?

A. That's correct, yes.

Q. Can we take it that Mr. Traynor never drew up any other contract involving the company for the sale or purchase of land?

A. That's correct, yes, you can take it.

Q. Were the only people involved in the agreement on the company side, that is the agreement to pay that sum of money and to get something in return, yourself and your brother Paul?

A. That's correct.

Q. Within the company?

A. Yeah, we were the only ben true benefactors under that particular trust.

Q. Yes. Was the matter brought to the attention of the trustees at that time?

A. No, it wasn't. Because it was in a trading situation, the trustees were at a parent level.

Q. Was it ever brought to the attention of the board of the company?

A. I would imagine, I am only guessing but I would imagine the board was aware of it.

Q. Thank you Mr. Gallagher.

THE WITNESS WAS CROSS EXAMINED BY MR. CONNOLLY AS FOLLOWS:

Q. MR. CONNOLLY: Just one query, if I may, Chairman? Mr. Gallagher, on behalf of the Revenue Commissioners I just want to ask one question of you. Am I right in understanding that this arrangement or transaction, while the motive was to assist Mr. Haughey the nature of the transaction was commercial in your mind?

A. That's correct, yes.

Q. Thank you Mr. Gallagher.

CHAIRMAN: Before I invite Mr. Gleeson to take up any remaining matters with his client, is there anyone else who wishes to deal with anything? Mr. Gleeson?

THE WITNESS WAS EXAMINED BY MR. GLEESON AS FOLLOWS:

Q. MR. GLEESON: Briefly just to clarify one aspect of the matter. I think it was the case that you regarded the Kinsealy lands as somewhat of a prize, would that be right,

to have obtained at that stage?

A. That's right, I was very pleased with the transaction.

Q. What was the attractiveness of that particular location so far as the Gallagher Group was concerned at that stage?

A. Well, it was beside the lands in Swords that was being zoned. There was plenty of salvage value. I always maintained if the worst came to the worst I would have got one house to the acre. Those houses would have sold at one in the order of a hundred thousand each.

Q. If the limited number of competitors also seeking to build up a land bank at that stage had been in an open market situation, do you think there might have been a high level of competition to secure the first section of Kinsealy that was offered?

A. I am not altogether sure you would have to be in a cash position to buy something like that, it would be difficult for somebody who wasn't in a cash rich position to be able to get finance from a bank on a transaction like that.

Q. How dearly do you think Mr. Haughey held those lands to himself and how difficult was it for him to decide to part with them in the return?

A. I believe Mr. Haughey would not have done the deal with me had he any alternative.

Q. What was your perception about the significance of him deciding to offer you the land in return for the donation, so far as the further and ultimate development of Kinsealy might be concerned if those lands ever became available?

A. I really can't say for what, what was on Mr. Haughey's mind. I can only say that he was in a predicament and had to move pretty rapidly at the time.

Q. So far as the Gallagher Group was concerned would the fact that you managed to secure the first section, even if on a long-term basis, be of significance to your chances of securing the rest of the land?

A. Absolutely, yes absolutely.

Q. In your mind did that make commercial sense?

A. It made tremendous commercial sense.

Q. Sense at the time?

A. Yes.

Q. Would you have made a donation of that size if you didn't obtain some sort of a commercial advantage of that nature?

A. No I couldn't, I couldn't.

THE WITNESS WAS RE-EXAMINED BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: Just one or two matters. There was one matter which I perhaps should have asked him and omitted to ask you, and My Friend may come back on this. Prior to this particular transaction, and the various political donations, and you can leave those out of the equation for the moment, had you and Mr. Haughey ever discussed any potential deal involving the Gallagher Group, prior to this meeting on the Sunday after?

A. No, no.

Q. Now the Tribunal, I think you may have been informed has

had evidence and documents produced from Allied Irish Banks indicating the potential, a potential for a deal with the Gallagher Group?

A. Yes.

Q. Do you know how that could have arisen?

A. I have no idea whatsoever. The only thing that could have happened is that Mr. Haughey might have been, without my knowledge, been aware of the financial position that I was in.

Q. That would be the most, as far as you were concerned?

A. That was the most as far as I was concerned, yes.

Q. That the company was flush at that stage, that would be it?

A. That's it, yes, because I was dealing with Mr. Traynor on a, another commercial matter at the time and Mr. Traynor knew the position I was in.

Q. I see. Now, I appreciate that you both through My Friend, Mr. Connolly, and through Mr. Gleeson, spoke about the commercial aspect of this transaction; with the benefit of hindsight and legal advice you may have received now, would you accept that from the company's point of view legal enforceability in relation to this particular transaction would have been extraordinarily difficult?

A. Well that's, it depends on the circumstances. You see the fact about it is this, because of the sensitivity of have

Q. Yes.

A. I don't think that the vendor on the contract could ever

dare allow it go to court.

Q. Because of the sensitivity, did that mean that you felt then that Mr. Haughey was, I use the term benignly, a hostage to you?

A. No, the point is you have to take a commercial view on what position you are standing on.

Q. Yes. Now, I appreciate that, but let's look at it now just from the purely normal transaction, if I might. If it didn't have this degree of sensitivity about it you wouldn't ever dream of entering into a contract like this in normal circumstances?

A. I would, I have done deals without any contract paper, without any agreement at all.

Q. Yes.

A. And but, that's in the horse industry.

Q. Yes.

A. You know? But the, but the thing about is it this; the type of agreement done 20 years ago and the type of agreement done today are two different kettles of fish altogether.

Q. I appreciate that perhaps, but

A. Your word was your bond 20 years ago, you don't know where you stand today.

Q. This was company and trust money, it wasn't your own personal money, it was the company's money and it was trust money, so you were doing the deal, effectively whilst yourself and your brother had reached the decision to do

the deal it was being done on behalf of the company and the trust; isn't that correct?

A. That would be correct.

Q. That would be correct. And from a legal point of view, I know you had the view that the vendor could never allowed this go to court, but from a legal point of view, from what you now know, do you accept that the enforceability of this by the company would have been a virtual impossibility?

A. I totally do, yes.

Q. That's

A. I must, that was only pointed out to me two days ago.

Q. I appreciate that. And do you accept that a member of the public looking at this particular transaction could well view the transaction as just a way of getting money or giving money to Mr. Haughey under the guise of a transaction which essentially was virtually worthless from a legal point of view?

A. No, people read papers in different ways. The fact about it is this; that the agreement is bona fide, the document is bona fide. There was an opportunity for Mr. Haughey to back out of the deal. As I say it was only pointed out to me two days ago that he could do that, that is not on at all, he would not do that.

Q. Now, I appreciate you held the man in high esteem and you were of the view that his word was his bond?

A. That's correct.

Q. But that was as far as it went

A. Yes.

Q. in real terms, in real legal terms; isn't that right?

A. Yes.

Q. So do you think that a member of the public could be criticised from just viewing it from the point of view of either the giver or the receiver of the money, that there was nothing that could be legally enforced here, it was just a guise of getting money to Mr. Haughey because of admiration for the man, to allow his indebtedness to be reduced somewhere else?

A. Well yes, let me yes, if I was reading it as a third party, that is probably what I would assume.

Q. Thank you very much.

CHAIRMAN: You have no, you had no advice at all yourself, Mr. Gallagher? You discussed it with your brother Paul?

A. That's correct.

CHAIRMAN: And the matter was then private to the two of you and to Mr. Haughey and then the shortly afterwards to Mr. Traynor?

A. That's correct.

CHAIRMAN: And it was Mr. Traynor who was an accountant not a solicitor, who drew up the agreement?

A. That's correct, yes.

CHAIRMAN: Yes. And had you before the unfortunate collapse of the Group, had you felt a disquiet or fear that

there might not be completion?

A. No, none what so ever.

CHAIRMAN: It was, in your view, events over took the proposed deal by virtue of misfortune of your family group?

A. That's correct.

CHAIRMAN: Thank you very much, Mr. Gallagher.

A. Thank you.

THE WITNESS THEN WITHDREW

MR. HEALY: Now, sir, I propose to call a witness, Mr. Cousins. No statement has been circulated concerning Mr. Cousins' evidence, but Mr. Cousin is in fact going to give evidence which Mr. Gallagher might to some extent have been able to give, but Mr. Cousins is in a better position to give, and it simply provides some of the technical support for evidence Mr. Gallagher would have given.

Perhaps I should say at the outset, lest any person here has an objection, and needless to say any person not here to have to be at liberty, subject to you, sir, to reserve their position. He is simply going to give evidence concerning the writing of the cheque, the possible account on which it might have been drawn and the rough timescale on which it might have been passed to Guinness & Mahon.

CHAIRMAN: On that basis it seems if it is a departure at all from a statement, an insufficiently tangible one, to

necessitate deferral.

MR. GLEESON: If I could ask for limited representation in respect of Mr. Cousins as well. Could I apologise, I only was aware that he would be of assistance this morning. The Tribunal should be aware Mr. Gallagher has returned from Zimbabwe to assist the Tribunal. It was only having met him yesterday that it emerged that Mr. Cousins might be of some assistance and we spoke to him this morning in that case.

CHAIRMAN: Perhaps it scarcely necessitates a separate order. I take it implicit from your having attended on behalf of Mr. Gallagher and Mr. Cousins too, that he may take part and you may take part as regards Mr. Cousins if the need arises.

MR. GLEESON: I am obliged sir.

MR. HEALY: Mr. Cousins.

JOHN COUSINS, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY

MR. HEALY:

A. John Cousins.

CHAIRMAN: Thank you Mr. Cousins

Q. MR. HEALY: Thank you, Mr. Cousins, and I appreciate that you are making yourself available to assist the Tribunal on short notice, and based on your memory of things that

happened some considerable time ago, and indeed if anything occurs to you after you leave the witness-stand you should have no hesitation in coming back to the Tribunal to correct it or if you wish to add to it in anyway.

Now, will you just tell the Tribunal what your position was with the Gallagher Group in 19, in the 1970's and early 80's?

A. I was financial director of the Gallagher Group.

Q. Does that mean that you are the person with overall responsibility for the custody of the money of the group?

A. Correct.

Q. And you have heard the evidence, and I think from discussions with Mr. Gallagher and his lawyers you are familiar with the questions the Tribunal is seeking to find answers to?

A. Yes.

Q. And you have heard the evidence of Mr. Gallagher, that he agreed to pay €300,000 to Mr. Haughey and that this was to be by way of a deposit on the terms of the agreement that we have heard a moment ago. Now, you were asked obviously to deal with this. What was the first, if you can remember, approach you had or request you had in relation to it?

A. Well, my recollection is a request for a cheque.

Q. A request for a cheque. When was that conveyed to you?

A. I don't know.

Q. You are aware that from the evidence of Mr. Gallagher a moment ago, and from his statement, that he attended a celebration or victory dinner or party in Abbeville after Mr. Haughey became leader of Fianna Fail, which would have been on the 11th of December of '79, he thinks it would have been the following Sunday, were you at that party?

A. No.

Q. So presumably it was sometime later you were asked for the cheque?

A. Correct.

Q. What did Mr. Gallagher ask you for?

A. He just asked for a cheque for €300,000.

Q. Did he say what the purposes of it was?

A. He did, yes.

Q. What was the purpose?

A. Deposit on land.

Q. Did he say who it was to be made payable to?

A. My recollection is Guinness & Mahon.

Q. From what account did the money, was that money drawn?

A. The only clearing accounts that the Gallagher Group had were in Bank of Ireland, Rotunda.

Q. Were the current accounts which you wrote cheques for in the Bank of Ireland (Rotunda). You may have had investments at accounts at other banks?

A. Correct.

Q. So if cheque were to be written it would have been on Bank of Ireland (Rotunda)?

A. Yes.

Q. Bank of Ireland. You are the person who would have signed such a cheque?

A. It required two signatures.

Q. Yours and another director?

A. Myself, Patrick or Paul.

Q. I see. Now, what did you do with the cheque when you wrote it, can you recall?

A. I think I just gave it to Patrick.

Q. You think you gave it to Patrick. Now, what was the amount, you were asked to write a cheque for €300,000, and you are certain so far as you can recall that it was for 300,000 you wrote a cheque and not any lesser or greater amount, and the amount did not go from your bank account, your company bank account in two tranches of a 150 or anything like that?

A. My recollection is one cheque.

Q. I see. I see. Have you any recollection as to whether you wrote that cheque before Christmas of that year or afterwards?

A. No recollection.

Q. And do you remember anything else about the transaction?

A. Nothing at all.

Q. Thank you very much, Mr. Cousins.

MR. CONNOLLY: No questions.

CHAIRMAN: Nothing you want to raise, Mr. Gleeson?

MR. GLEESON: No, thank you very much.

CHAIRMAN: Thank you very much, Mr. Cousins, for coming to testify.

THE WITNESS THEN WITHDREW

CHAIRMAN: Are we proceeding to a different subject now?

MR. HEALY: I am quite happy to proceed, sir, to deal with Bank of Ireland witness, Ms. Genevieve Tracey.

GENEVIEVE TRACEY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

A. Genevieve Tracey.

CHAIRMAN: Please sit down, Ms. Tracey.

Q. MR. HEALY: Ms. Tracey, I think your position in the bank is as acting manager of Bank of Ireland (Ballsbridge)?

A. That's correct.

Q. Now, you are aware that the Tribunal has raised certain queries with the bank through its legal, through its law agents concerning some of the cheques, or two of the cheques mentioned in evidence today and yesterday, I think you were here both days?

A. No, this is my first time.

Q. I see, you were not in the Tribunal yesterday?

A. No.

Q. I see. The two cheques are cheques which have been drawn

to your attention already, one for €100,000 and the other for 16,000 odd pounds, each of them drawn on account of Mike Murphy Insurance Brokers Limited and each of them stamped "approved for credit to an external account"; isn't that right?

A. That's correct.

Q. Now, the queries which the Tribunal initially raised with Bank of Ireland concerned the Dundrum branch; isn't that right?

A. That's correct, the cheques are actually drawn on the account of Bank of Ireland (Dundrum) of Mike Murphy Insurances, however on the 22nd of September of '92 the accounts were transferred to Ballsbridge, that's why I am here.

CHAIRMAN: The date again please?

A. 22nd of September of 1992, when it was opened in Ballsbridge.

Q. MR. HEALY: So does that mean after the 22nd of September it wouldn't have been possible to operate this account otherwise than through the Ballsbridge branch?

A. Exactly, any cheques presented for payment would have been sent through to Ballsbridge branch. The reason the cheque, the possible or probable reason that the cheque was shown as drawing on Dundrum is that it takes about six weeks or it did in '92 take about six to eight weeks to get cheques printed with Ballsbridge on, so they continued to use the

Dundrum cheques.

Q. I see. Now, the two cheques in question, do you have a copy of them in front of you?

A. I don't, no. I can see it from here.

Q. Can you see it on the monitor, that's one for a hundred thousand. Now, you see each of the cheques are marked "approved for credit to an external account"?

A. Yes.

Q. Now, this is part or one of the steps the bank takes in processing cheques intended to be sent outside the country and which therefore come within the rules governing exchange control; isn't that right?

A. That's correct.

Q. And there will be a witness from the Central Bank, but I am sure you are just as familiar with these rules as a bank official, essentially exchange control was a matter under the control or under the governance of the Department of Finance, managed for the Minister for Finance by the Central Bank, and the Central Bank operated in general, through the individual banks operating in the country and through individual branches of those banks who were effectively given a significant amount of discretion to operate the system as exchange control agents, provided they kept within the rules; is that a fair summary?

A. That would be correct, yes.

Q. Now, in order to obtain or pay, in order to pay money out of the country or lodge money to an external bank account

it was necessary to have exchange control, and in general what had to be shown is that there was some good commercial reason, such as the purchase of some object or the payment for some service, which would warrant the making of the payment; isn't that right?

A. That's correct.

Q. And as long as you could establish to the satisfaction of the Central Bank that that is what you were doing you would get, in general you would get exchange control?

A. That's right.

Q. And the way the system operated was that you would go to your bank and if your bank were satisfied then they would mark your cheque "approved for payment to" or "lodgement to an external account"?

A. They would, the cheque would be presented to us completed and it would, for goods and services it would be always backed up by the sight of an invoice, you stamp the invoice and the cheque and hand both back to the customer and complete an E 4 form.

Q. Let's take those steps one by one. In the ordinary way if a complaint came to you with a cheque for payment you would ask him what was it for and we say "look, there it is, it is made out to so and so building contractor or so and so architect or whatever in a foreign country, and I am paying for work this person did and here is the invoice"?

A. Exactly.

Q. If a person was dealing with you regularly, do I understand

correctly, that it might be sufficient for that person

merely to explain to you that they had an invoice or would

you actually insist on the production of the invoice?

A. We actually insist on the production of the invoice.

Q. And the invoice would have to be for the amount that was on

the cheque, yes, and for the payee?

A. And for the payee.

Q. And now I think there were special rules applicable where a

cheque was made payable to a bank account abroad, and you

had to be particularly careful that there was a legitimate

reason for any such cheque; isn't that right?

A. I would assume so.

Q. For the obvious reason you could simply be opening a bank

account abroad?

A. Anything that was out of the norm, it would have been

referred on.

Q. When you say "referred on", referred on to your superiors

or to the Central Bank?

A. To our superiors or the international department who would

obviously refer us to Central Bank at that stage.

Q. You would know that whereas a payment to an individual in

respect of the supply of a service was obviously something

that could be matched up with an invoice, a payment to a

bank account is, of course, something else altogether and

might have no relationship to or bear no relationship to

any invoice without further proof that the account was the

account of the supplier named in the invoice?

A. I am sorry, say that again.

Q. Do you want me to go over that again?

A. If you wouldn't mind.

Q. I am trying to summarise these rules and I am trying to make them as simple as I possibly can. If you have read the Central Bank documentation you will see they are far from simple, but in general term if the cheque contains the name of a supplier, then it is simply a matter of checking the identity of the supplier against the invoice?

A. Yes.

Q. On the other hand if the cheque contains the payee on the cheque of the bank account, then you can't obviously on the face of it, it is not for the supplier at all, isn't that right, it is for a bank account?

A. Yes.

Q. And that would certainly be something that would be quite out of the ordinary?

A. It would, in that is the type of transaction that would be referred onwards.

Q. Now, were you working in this bank at that time in 1992?

A. I was working in Bank of Ireland but not in either Ballsbridge or Dundrum.

Q. You are now the person responsible for the Ballsbridge bank?

A. Yes.

Q. In due course would it be possible to identify and obtain evidence from the person actually operating in the bank at

the time?

A. Well, it would depend on who stamped the cheque, and even saying that no documentation was photocopied or held, no E 4 forms were

Q. Yes, we will come to that in a moment. The evidence that was given to the Tribunal yesterday and copies of which, certainly an indication of which was sent to the bank solicitors, is that these cheques were presented by Mike Murphy Insurance Brokers to the bank blank?

A. I am sorry. I would be very surprised if any official of a Bank of Ireland stamped cheques with blank

Q. Yes, it would enable somebody it would be a complete abdication of the responsibility of the bank, wouldn't it?

A. It would, yes. The procedure is that the cheque is fully completed, it is an invoice backing up the payee on the cheque, and both the cheque and the invoice are stamped and handed back to the customer.

Q. If, and I am not saying as yet that certainly this has been established, and if the evidence, and if the facts were as has been suggested in evidence, that a bank official were to stamp a cheque "approved for exchange control" while the cheque was blank, he would have to have known what he was doing, wouldn't he, he would know he was breaking the rules, wouldn't he?

A. They would, and that's why I would be very surprised if any official of the Bank of Ireland would do something like that.

Q. Now, I take it that in stamping a cheque the bank official would not only check the amount on it or clarify the amount on it, but would also clarify that it contained the name of the payee, I don't know whether he would go further and check the date?

A. Normally it would be date, payee, signatures and the amount.

Q. All those things would be checked?

A. Yes.

Q. But you would agree with me that while a bank official might overlook accidentally the absence of a date, it would be very hard for any bank official, trained bank official looking at cheques to overlook the absence of a payee?

A. It would, that's the first thing to look at, it is a fundamental prerequisite before negotiations, any cheque, the first thing to do is look at who it is payable to.

Q. And likewise, any bank official who stamped a cheque marked payable to a Credit Suisse account in London for a œ100,000, purported to be written on the account of an insurance broker would want to know what that was for, wouldn't they?

A. He would.

Q. And you think it would be referred to the international

A. If it wasn't a normal transaction, if there wasn't an invoice attached I would expect the person would refer to the international banking who may then refer us on to Central Bank or we may go directly to the Central Bank.

Q. Could you help me with the stamps or marks on the cheque for €100,000. You can see from, you may need to examine a copy, you have a hard copy. There is a stamp on the top in the centre of the cheque with the numbers 9211244612 on it, do you see that?

A. I see that.

Q. Above that "IBD Dublin", what does that mean?

A. IBD is International Banking Division, Dublin.

Q. I see. Above that, is that Bank of Ireland?

A. It is actually.

Q. Yes, I can't make it out, but I am sure you can tell?

A. The code number 901394 to the right of that is the Bank of Ireland code for international banking.

Q. And 9211244612?

A. Probably a reference in relation to a particular cheque.

Q. In relation to the cheque or the transaction?

A. To the cheque, because that would be

Q. I see. Does that mean that particular cheque went through the International Banking Division of the bank in Dublin?

A. It would have.

Q. And underneath that it says "received for credit to external account" and then it looks like

A. "Approved for credit to external account", is that it?

Q. No, underneath the 9211244612, it received "received for credit to the external account", and then there is something like, anyone from the Central Bank can correct me when I am on my feet, it looks like "eligible remits for

immediate credit". Do you understand that?

A. I don't.

Q. In any case we may be able to take it up with another witness, we know the money left the account and I am sure you have seen it as well. We know the 100,000 did leave the account of Mike Murphy Insurance Brokers?

A. In Ballsbridge branch.

Q. Yes.

CHAIRMAN: I am aware from internal correspondence that I think Mr. Feeney and Mr. Hogan from McCann Fitzgerald have informally been retained on behalf of the Central Bank. It is probably no harm I take it you will be seeking limited representation?

MR. FEENEY: I will be seeking for the Central Bank. Thank you, Mr. Chairman.

CHAIRMAN: I accede to that in the usual way.

MR. FEENEY: Thank you, Mr. Chairman.

Q. MR. HEALY: You therefore would presumably find it very hard to accept the evidence given yesterday, that any member of the bank could have been party to stamping a document like this?

A. I would.

Q. That in other words, it would have been unacceptable, indeed it could have amounted to a criminal offence for anyone to do this; isn't that right?

A. On the criminal side of things I am not too well up.

Q. It would have been a very, very serious matter?

A. It would not be normal practice to do something like that.

Q. It would have had the most enormous repercussions for the bank if the Central Bank were to take steps in relation to it; isn't that right?

A. Yes.

Q. Now, it is the official in Dundrum or Ballsbridge who would have been putting the stamp "approved for credit", but it is the International Banking Division which would have been paying out on the cheque and putting the stamp on it?

A. Not necessarily anybody in Ballsbridge who would have stamped it "approved for credit", it could be done at any Bank of Ireland branch.

Q. It could have been done at any Bank of Ireland branch. I think the evidence of Mr. Murphy was he brought it, he couldn't remember, to either Dundrum or Ballsbridge I beg your pardon, I am sorry, Dundrum or College Green, and I think ultimately he corrected it to say Dundrum?

A. Okay.

Q. So it is, that particular stamp would have been put on by a bank official at the first stage of the process?

A. That's it.

Q. And the other stamp would have come on or been put on at the point where the cheque came to be collected; isn't that right?

A. It would. When the account was debited with the amount by

the bank, when the bank paid out on the cheque, it would come before the account was actually debited, I am not sure of the exact

Q. I accept that, but it is certainly part of the collection end of the banking process as opposed to the drawing cheque end?

A. Absolutely.

Q. Now, what information would the International Division have before it to enable it to put that stamp on it?

A. Well, we would have sent an E 4 or the person would have completed an E 4 form and sent that to our International Banking Division.

Q. The person who stamped it "approved", I see, would send the E 4 form to the International Banking Division?

A. Yes.

Q. Would a copy of that E 4 form or a return of that E 4 form also in the ordinary way have gone to the Central Bank?

A. No, the process was the branch completed the E 4 form, sent it to International Banking, and within seven days of the following month International Banking would collect all of the E 4 forms for all of the branches in the bank and send it directly on, directly onto the Central Bank.

Q. I see. Would it merely be the production or the sighting of the E 4 form in the International Banking Division which would then enable the International Banking Division to pay out or that it was appropriate to pay out on the cheque?

A. I don't know for sure, I would imagine yes, but I don't

know.

Q. What I am trying to get at is they didn't exercise any further, make any further judgement, didn't evaluate any document other than checking that the E 4 form had been filled out?

A. Exactly.

Q. In other words that was their way of checking that the official in the branch had gone through the appropriate exchange control procedure; isn't that right?

A. Yes, that's correct.

Q. Now, I understood that the bank had been unable to locate an E 4 form in relation to that?

A. We don't hold E 4 forms.

Q. At all?

A. No.

Q. Do you have any record of having sight of the E 4 form, other than that document there?

A. I don't, no.

Q. I see. And again I think you are aware that evidence will be given by the Central Bank that they have no record of an E 4 form in relation to this cheque, I think you may be aware of that from

A. All I can say is that the Bank of Ireland official would have filled out the E 4 form, went to the International Department and the International don't hold a copy either, would have sent it onto the Central Bank.

Q. If there was an E 4 form?

A. There would be an E 4 form because that was the procedure we went through at the time.

Q. Of course, provided the procedure was gone through there would have been an E 4 form, there is no E 4 form in the Central Bank at the moment or certainly one has not been located?

A. Again all I can say is we sent the E 4 to the

Q. You don't know that, you believe it must have been done, you don't actually know?

A. It was the procedure we followed.

Q. I fully accept that. On your examining the documents, and what you are saying is from the documents there must have been an E 4 form?

A. Absolutely.

Q. If there isn't, that would seem to suggest that somebody may not have followed the procedure; is that right?

A. I would doubt that, but that's what you are saying.

Q. I see. Well, when you say you doubt it, and of course this is your view, I hasten to add, that you weren't involved in this transaction?

A. Absolutely.

Q. You feel absolutely confident that no official would have done this?

A. Absolutely.

Q. And you realise that evidence has been given that it was done in a way which certainly would not be in accordance with the regulations?

A. I am not familiar with any previous evidence.

Q. I just told you what it is, but you would regard it as absolutely surprising to you?

A. I would be very surprised if any official did not follow the regulations of the Central Bank in terms of negotiating the cheques.

Q. And the reason I am pressing you on it, and again I accept that you were not involved in it, is that the witness in fact said that he did this on an usual, or regular basis?

A. I would be very surprised at that.

Q. I see. Can you assist the Tribunal in relation to who the Tribunal should go to, to get further information concerning these cheques, you are the person now dealing with the branch?

A. Yes.

Q. What the Tribunal sought from the bank was information concerning the circumstances in which these cheques were drawn and were stamped; is there somebody in the bank who can provide that information? I am not criticising you for not having it, that was the request the Tribunal, is there somebody?

A. The only person who can clarify that is the person who stamped the cheques.

Q. Failing that person is the manager of the branch at that time going to be available?

A. No, I don't know who the manager of the branch at that particular time was. Again it doesn't necessarily have to

be the manager of the bank to stamp the cheque.

Q. Why were you asked to give evidence?

A. As I explained when I started there, I am the manager or acting manager of Ballsbridge branch where the account is now domiciled, and we were asked, requested, at least I was requested on behalf of the bank to give a statement as manager of the branch where the account is.

Q. But the actual perhaps I will just go through your statement lest there is any doubt about it so that the Tribunal will know where you stand.

You refer to phone calls with Dominick Cleary of Group Legal Advisors, Bank of Ireland; isn't that right?

A. That's right.

Q. Regarding a question from the Tribunal in relation to a cheque for €100,000 drawn on the accounts of MMIB in Bank of Ireland (Dundrum)?

A. That's right.

Q. You say the account was subsequently transferred to Ballsbridge branch and as a result you are replying to this request for information?

A. That's right.

Q. What did you actually get?

A. I have no copy of the request, I was requested to make a statement on behalf of Bank of Ireland (Ballsbridge) as manager in relation to the cheques that were negotiated.

Q. Could I just ask you to look at a memorandum of information

sought from the bank, do you have a copy of it?

A. I don't.

Q. I will let you have a copy. (Handed to witness). Do you see that document?

A. I do.

Q. It says; "The Dundrum branch of Bank of Ireland has been requested to provide the following information to the Tribunal" now, did you ever see that document before?

A. I don't remember seeing it.

Q. Well, it would only have come into existence in the last few days, surely you would remember?

A. I do, but you didn't say it had come into existence in the last few days.

Q. I see. You have never seen it?

A. I haven't seen this form before.

Q. Until now, it was never given to you?

A. No.

Q. Do you see the request contained on it; "The Dundrum branch of Bank of Ireland has been requested to provide the following information to the Tribunal:

The circumstances in which a cheque in the sum of €100,000, dated 21st of September, 1982", that should be 1992, "and drawn on account of Mike Murphy Insurance Brokers Limited with the Bank of Ireland was stamped, 'approved for credit to an external account'?"

A. I do.

Q. Now, I don't want to criticise you, you were not the person

who approved, who stamped it?

A. No.

Q. You don't know the person who stamped it?

A. No.

Q. You weren't the manager of the bank at that time?

A. No.

Q. In Dundrum?

A. No.

Q. Nor were you even a staff member at the time?

A. No.

Q. What questions were put to you then by the bank which would have enabled the Tribunal to get the information it was looking for?

A. I got a call asking us to get the originals of two cheques which you showed on the screen there. Those cheques were drawn and paid out at an account in Bank of Ireland (Ballsbridge), that's where we are involved.

Q. But can you agree with me that whereas you have undoubtedly been of assistance to the bank in explaining how you believe the bank should have dealt with these cheques, you haven't been able to deal, or the bank by asking you to give evidence hasn't been able to deal with any of these requests for information; isn't that right?

A. Well, from what I am looking at here the only person who will be able to deal with the specific questions that you are asking is the person who actually stamped the cheque, because you are obviously relying on somebody to say they

saw an invoice.

Q. Yes, or perhaps the manager of the branch at the time who might know who would have been involved in these transactions?

A. Maybe.

Q. Yes. Were you ever in a senior position in a branch during the period when exchange control operated?

A. No.

Q. Were you working with the bank at the time?

A. I have been working with the bank since 1980.

Q. So you were with the bank right up to 1992?

A. I was, yes.

Q. In any bank branch when an official stamps a cheque like this, what sort of supervision is he subject to?

A. I wouldn't know because it was back in 1992, I wouldn't have been familiar with the supervision.

Q. Did you stamp a cheque like this in 1992?

A. I would have.

Q. And when you would stamp it, was there anyway the bank would know that it was you who had stamped the cheque?

A. There isn't no, not outside of this particular branch, there is no date on it, no cashier number on it, there is this no way of tracing who actually stamped that cheque.

Q. Does the E 4 form contain any information of the official by whom the transaction has been approved?

A. I have a copy of the E 4 form. There is in Section C at the bottom of the first page of the form, there is a

section "signature of official in financial institution", I

would imagine that's the signature.

Q. That's how you would identify the official who approved the transaction?

A. Yes.

Q. So therefore, if the E 4 form couldn't be located there would be no way of identifying the official who had approved a transaction, if the transaction was one which hadn't gone through the proper procedures?

A. Exactly.

Q. What system did the bank have for ensuring that E 4 forms were filled out?

A. I am not aware of it.

Q. If you filled out an E 4 form when you were working in the bank can you remember what you did with it?

A. I would have given it to somebody who would send it to International Banking.

Q. And would somebody in International Banking check that each E 4 form had been signed or would somebody in the branch check before it had gone in to them?

A. I don't know, it is 1992 and I don't recall.

Q. It is not a long time ago, it is, it is not a long time ago to remember how the system operated. Were the penalties and the implications of breaches of exchange control brought to the attention of bank staff?

A. They were.

Q. Were bank staff informed there were criminal offences

involved if procedures weren't followed?

A. We knew what Central Bank regulations were in relation to transactions of this nature and we followed these procedures closely.

Q. You were warned, were you, that this to be taken

A. We knew if it was a Central Bank regulation it was important, and common sense would tell us if we didn't do what we were supposed to do, obviously there would be repercussions for the bank or the official concerned.

Q. If this was happening on a regular basis, as Mr. Murphy of MMIB indicated, doesn't that mean there were regular breaches of the regulations in the bank?

A. What I am saying to you is that I would be very surprised if an official of the Bank of Ireland was regularly stamping cheques or that were not fully completed.

Q. But of course you, I appreciate it is not your fault, but you don't know?

A. What I am saying is that we had procedures there in place.

Q. But there is no evidence that those procedures have been followed in this case?

A. All I am saying is that the procedure was we completed the E 4, sent it to the Central Bank and after that

Q. Of course, the proof that the procedure had been followed would be if the E 4 form was in existence today?

A. Yes.

Q. And it isn't?

A. Well, we sent it to the Central Bank.

Q. Well, it is not there now?

A. Well, that's not conclusive of the fact that we didn't

Q. You don't know that?

A. International department

Q. No, you don't know that?

A. I personally don't.

Q. Isn't it as likely as not if it is not in the Central Bank

it was not sent, what interest would the Central Bank have

in mislaying one particular E 4 form?

A. How do you know they didn't mislay other ones?

MR. CONNOLLY: I have no questions, Chairman.

THE WITNESS WAS THEN CROSS-EXAMINED BY MR. FEENEY AS

FOLLOWS:

Q. MR. FEENEY: I have a few questions to ask. Kevin Feeney,

I am representing the Central Bank, Ms. Tracey. If I could

just ask you a few questions. First of all the procedures

to be followed are something you can give evidence about,

you operate it yourself and you are clear about; is that

correct?

A. I am clear on the normal transaction for goods and services

which was the completion of the E 4 form and the stamping

of the cheque and the sight of the invoice.

Q. The procedures to be followed?

A. Yes.

Q. Essential to the procedures, is the first thing that you

would look at is the proposed cheque to be stamped, and you have commented that the payee would have to be identified but equally the amount would have to be identified?

A. It would.

Q. It would be no use having the payee and a blank amount?

A. No.

Q. That would defeat the whole purpose of exchange control because any amount might be filled in?

A. Absolutely.

Q. So anybody stamping a cheque, if they were to follow proper procedures would have to see who the payee was, the beneficiary of the cheque and the amount?

A. Yes.

Q. And if either of those were missing it would, in fact, be impossible to fill out an E 4 form; wouldn't that be correct?

A. It would.

Q. The E 4 form on the face of it requires information that, you would have to identify who was the beneficiary of the cheque and the amount of the cheque?

A. It does.

Q. So if somebody in Bank of Ireland was to have stamped it with either or both of those missing, it would also follow that that person couldn't fill out an E 4 form?

A. Yes.

Q. Now, the two cheques differ in relation to the stamps, if you could, if we could get them back up on the screen.

The bottom one is €16,624 and that is payable to DB Agencies, it is an identifiable payee and beneficiary, and the correct procedures would, I think, your evidence, demand that the person stamping it would look to see that it was DB Agencies, look to see the amount and then look for an invoice from the DB Agencies in that amount and then stamp the cheque stamp, its invoice and return an E 4 form, an E 4 form?

A. Yes.

Q. That would be the correct procedures?

A. Yes.

Q. Now, the cheque for the larger amount isn't payable to an identifiable beneficiary through a bank account, does that in proper procedure trigger something else to occur?

A. Well, I can only speak for myself, and yes it would.

Q. For yourself. You would follow what Mr. Healy had been asking you, you would now want further proof that that was, in fact, to an identifiable beneficiary and a proper cheque to stamp?

A. Well, we would want to make sure that exchange control regulations were being complied with.

Q. Would that mean sending it to the International Division?

A. It would normally mean a phone call to ask what we needed.

Q. A phone call. In this instance we see in that cheque the stamp from the IBD Dublin, is that at the stage when the cheque is coming back into Ireland?

A. I am not a hundred percent sure of that, I think it is.

Q. Because I am just wondering about your procedures and your record keeping. What I followed from what you had said is when the cheque is stamped for approval you will at that stage have an invoice, and if you are following procedures have stamped it and filled out an E 4 form; the cheque will then go out and when it is coming back in it will also again be looked at by the bank?

A. We would have to get somebody to confirm that from International Banking.

Q. This was confirmed from International Banking on the way back in?

A. You would have to ask somebody or get that confirmed by somebody in International Banking, I don't know the exact mechanisms.

Q. That doesn't appear to have happened in the cheque for the smaller amount. There is a stamp which I recognise as an every day stamp that we see on Irish cheques in the top right-hand corner; is that correct?

A. That's right.

Q. So it appears that the €100,000 cheque seems to have had some extra degree of scrutiny at some stage from the International Division of the Bank of Ireland?

A. It appears like that.

Q. And that would probably be when it came back in for payment?

A. It may have been.

Q. And the code number you say of the 9211244612 would relate

to that particular cheque?

A. It would.

Q. Now, would you have documentation in the Bank of Ireland dealing with that?

A. I don't know because I didn't request it.

Q. And when it comes back in to the International Banking Division and a query of some sort has been raised in relation to its eligibility, because it is now after they consider it they stamp it as eligible; would they have wanted to check as to whether or not it was properly dealt with?

A. Again I don't know the system of international banking.

Q. You have no idea?

A. I haven't.

Q. But it would appear that the Bank of Ireland would be taking responsibility at the time that it was stamped on the way out and also is considering the matter when it comes back in?

A. Yes.

Q. And you have no idea what procedures are followed there, what documentation is done, is there any documentation, you have not the slightest idea?

A. No, because I never worked in international banking.

Q. Fine. And what you can certainly say is that anybody working in Bank of Ireland would have known that you should not put a stamp "approved for external account", unless the cheque was filled out in relation to the person to be paid

and the amount?

A. We wouldn't negotiate any cheque unless we knew the amount and the person on it.

Q. It would be a very serious matter and everybody would note for that to be done?

A. Yes.

Q. You would equally know, you couldn't in fact even begin to fill out the E 4 form if you were stamping cheques blank?

A. You wouldn't be able to because it has a section to say beneficiary and state the currency and amount.

Q. So, if a bank official for whatever reason stamped a cheque which had either or both missing, the payee or the amount, that person couldn't produce an E 4 form?

A. Correct.

Q. Thank you.

THE WITNESS WAS CROSS EXAMINED BY MR. FULLAM AS FOLLOWS:

Q. MR. FULLAM: Yes, Ms. Tracey, I appear for Mr. Mike Murphy. I think it is the position that you really can't help us very much in relation to what actually happened on this occasion? You don't have any documentation, I think you have already told us that nothing has been photocopied or indeed held; isn't that so?

A. That's correct.

Q. And the statement that we have received from the Central Bank witness indicates that the Central Bank searches have revealed no E 4 form in their possession in relation to

this transaction; isn't that so?

A. That's correct.

Q. Yes. And you have been told that it has been the evidence of Mr. Mike Murphy that he presented these two cheques and in the case of the €100,000 cheque the payee was blank; isn't that so?

A. That's what I believe he said.

Q. Yes. And the extent of your evidence is that you are surprised if the procedures weren't followed?

A. I would be very surprised if somebody stamped a cheque with no payee on it.

Q. Can I just clarify one thing. The stamp of the IDB that appeared on, is it your evidence that appeared on the cheque on the way back after when it was presented for collection?

A. The IDB stamp?

Q. Yes.

A. Again I can't confirm that, but yes, it probably was, but I can't confirm it.

Q. But if the payee, Credit Suisse London, were on the cheque when it was presented to the bank that would have triggered some form of inquiry; is that right?

A. It would have

Q. Yes.

A. if there were no invoices attached to it.

Q. But it is your evidence that the stamp was more likely to be put on on the way back; is that so?

A. Yes.

Q. Is it the normal practice for the bank to whom the documentation is presented to keep a copy of the statements or the invoices that accompany?

A. It is not, no.

Q. It is not.

A. No.

Q. And would you know what the procedure would be in the case of the specific situation that arose here, where Mr. Murphy has told the Tribunal that he was going to Paris to negotiate settlement of an open account, for the amount, where the amount wasn't determined at the time he presented the documentation to the bank; what would the bank do in those circumstances?

A. Sorry?

Q. Where the amount was not finalised, finalised, where the details were not finalised of the transaction that a person was going to complete in a foreign jurisdiction?

A. In other words would we stamp the cheque?

Q. Would you stamp the cheque in those circumstances?

A. We wouldn't, no.

Q. I see. In this situation both cheques have been stamped; isn't that so?

A. That's correct.

MR. HEALY: Sorry just one matter

CHAIRMAN: Perhaps I should just inquire of Ms. Cleary,

even though there is no formal representation order. Ms.

Cleary, I am aware you have been involved with some correspondence on behalf of the Bank of Ireland, so if you are particularly anxious to make any inquiry I would certainly exercise discretion, seemingly not so

THE WITNESS WAS THEN CROSS EXAMINED BY MS. CLEARY AS FOLLOWS:

Q. MS. CLEARY: I would just like to confirm whether my initial contact with her in relation to Ballsbridge was on foot of a request from the Tribunal to seek the two cheques?

A. It was, yes.

Q. And I had, prior to that, tried to make contact with Dundrum but were unable to get the cheques there?

A. That's right.

Q. Because the accounts were at the time opened in Ballsbridge?

A. Yes.

Q. So any involvement that you would have had in providing a statement would have been on foot of an initial request from the Tribunal to seek these cheques?

A. Absolutely.

Q. Thanks fine. Thank you.

THE WITNESS WAS RE-EXAMINED BY MR. HEALY AS FOLLOWS:

Q. MR. HEALY: Just one matter, sir. Ms. Tracey, just so you

understand precisely what the evidence is, you weren't here when it was given so just so you understand precisely what the question is, it is this; Mr. Coughlan was asking Mr. Murphy how the cheques came to be stamped "approved", and he asked Mr. Murphy about the condition of the cheques at the time they were presented for stamping and he said; "And you believe that the cheques sorry I should refer to the page. It is Day 19, page 14, Questions 98 to 100:-

"And you believe that the cheques, the two cheques, the one for 100,000 and the one made out to DB Agencies for approximately 16 odd thousand, would have been stamped for approval blank? A: I believe that, yes", said Mr.

Murphy. "Question: Well, if that is so, does it also mean that there was nothing at all on the cheque, it wasn't dated, there was no cheque number, there was no amount, there was no payee and there was no signature?" The answer was "It was probably a blank cheque". Then there was some question about whether the date might have been on it, but apart from the query about the date it was a blank cheque and that ultimately is what the Tribunal will want to know from the bank, how a blank cheque, if that is the evidence, could have been

A. What I am saying to you is I would be very surprised if any official of the Bank of Ireland would stamp a cheque.

Q. Would do that. Thank you.

CHAIRMAN: Very good. It is a quarter to one. We will take up matters at five to two. Thank you Ms. Tracey.

A. Thank you.

THE WITNESS THEN WITHDREW.

THE HEARING THEN ADJOURNED FOR LUNCH

THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:

CHAIRMAN: Mr. Healy?

MR. HEALY: Yes Sir. Louis O'Byrne please.

LOUIS O'BYRNE HAVING BEEN SWORN WAS EXAMINED BY MR. HEALY

AS FOLLOWS:

Q. MR. HEALY: Thanks Mr. O'Byrne. Now, the Tribunal has asked the Central Bank to offer its assistance as the agent responsible for operating exchange control regulations in this country up to the time that the Exchange Control Act ceased to apply, that is up to the 31st of December of 1992; isn't that right?

A. That's correct, yes.

Q. And the bank has very helpfully provided a statement which contains some of the background material to the operation of the exchange control scheme; and some of this is perhaps of relevance, but it is relevant in a background way; and what I would propose to do is to quickly read it into the record and maybe, it may be of assistance to the stenographer if I say that I am going to read it as quickly as I can and we will make copies available to the stenographers later.

First of all you describe the legislative background and you say "Section 5 of the Exchange Control Act 1954 provided that, except with the permission of the Minister for Finance, a person was not firstly to make or commit himself to make any payment to or by order of, or on behalf of any person resident outside the scheduled territories, or to place or promise to place any sum to the credit of any person so resident. In September of 1992 the scheduled territories comprised only of the State.

In other words, at that time, which is the time you have been asked about, a person could not, without the permission of the Minister for Finance, make a payment or enter into a contract to make a payment outside the State; isn't that right, without permission?

A. That's correct, yes.

Q. "The Act was initially enforced for a period of four years, and thereafter renewed for successive periods of four years by the Exchange Control Acts 1958 to 1986. The Exchange Control Act 1990 continued the act in force up to the 31st of December 1992 when it expired. Section 25 of the Act provides that any permission granted under the Act could be either general or limited to a particular transaction and either be absolute or conditional and could be revoked or amended. A person availing himself of any permission granted under the Act was obliged to comply with any conditions attached to the permission. Grants of

permission were at the discretion of the Minister.

Section 26 of the Act provides that the Minister could give directions to, amongst others, authorised dealers being directions as respects the exercise of any functions, exercised by them by virtue of, or by virtue of anything done under, any provision of the Act or directions as to the terms on which, amongst other things they might sell, lend or otherwise dispose of foreign currency; and the furnishing to the Minister of returns of transactions in foreign currency and of payments made to or received from persons resident outside the scheduled territories.

Any direction given under Section 26 could be either general or particular and could be revoked or varied by subsequent directions. Directions under Section 26 could be given in such manner as the Minister thought appropriate.

Section 28 provided that the Minister could to such extent and subject to such restrictions and conditions as he might think proper, delegate or authorise the delegation of any of his powers other than a power to make any order or regulation to any person or any class of persons approved by him".

That part of your statement deals with the powers conferred on the Minister under the Act to enable him to operate a system of exchange control.

A. That is correct, yes.

Q. Now, you then pass on to describe the delegation of powers to the Central Bank of Ireland and you say: "By letter dated the 26th of April of 1965 the Minister delegated to the Central Bank of Ireland certain powers exercisable by him under the Act, including his powers under Section 5 in respect of granting of permission for payments to persons resident outside this the scheduled territories. His power to give directions under Section 26 of the Act in relation to the substantive powers delegated to the Central Bank and the authority to delegate, to authorised dealers any of the powers delegated to the bank".

In shorthand, I think that what the effect of that letter was, is or the effect of that letter was, to appoint the Central Bank as the authority for regulating exchange control?

A. Yes.

Q. Subject of course to the overall power of the Minister?

A. That's correct.

Q. It did not authorise the Central Bank to make regulations, but the powers the other powers under the Act were delegated. They could give directions?

A. Correct.

Q. And those delegations could deal with general classes of business or particular types of transactions or whatever, just as he himself could have done under in the exercise of his own powers?

A. Yes, that is our understanding, yes.

Q. You then go on to describe the exchange control notices.

You say that: "In 1974 a set of exchange control notices was prepared and published by Central Bank which contained an outline of the exchange control rules. These had previously been contained in circulars being either individual circulars, which were available to the public or confidential circulars which were available only to banks. The exchange control notices were amended and replaced from time to time. The exchange control rules which were applicable in September of 1992, when the cheques which are the subject of this statement of evidence were drawn". I am sorry I will just read that again;"the exchange control rules which were applicable in 1992, in September, when the cheques which are the subject of this statement of evidence were drawn, which were summarised in a notice published by the bank effective from the 1st of April of 1990. Certain changes to the April 1990 notice were made which took effect in 1991 and 1992. Which are of no relevance to the matter set out in this note". And you have included a copy of the notice as annexed to this statement and that can be added to the record of the Tribunal's proceedings and I don't think we need to go into it.

"The number of forms required to be completed under the exchange control rules was reduced from 16 to 4 under the terms of the 1990 notice".

A. That should that should read five. We confirmed that

later, my apologies

Q. Don't worry about that. "The number of forms required to be completed under the exchange control rules were reduced from 16 to 5 under the terms of the 1990 notice".

Now, we are coming to the two cheques and in the context of what you said in your statement and your appreciation of the situation concerning the cheques, I would just like to go over what we know about them from the face of the cheques themselves, and what the evidence to date suggests in relation to the manner which the cheques were drawn and in which they were processed by the bank, through the banking system; because apart from what you stated here it may be necessary to ask you some further questions concerning the consequences of the way in which the cheques were dealt with. If we could just have the cheques on the screen?

Now, you heard evidence this morning of the manner in which a cheque such as that cheque for €100,000 which you see on the screen, would in the ordinary way have gone through the banking system; and I take it you agree that where somebody doing business in Ireland and engaged in a transaction involving this, the payment for the supply of a service or something else, by an external supplier, wishes to pay that person; he would, in the ordinary way go to the bank and vouch the transaction that he was engaged in. Show the bank what it was he wanted to pay for, and again in the

ordinary way, we will go into the details later, the bank, as an agent of the Central Bank and authorised under the exchange control notices to do so, would stamp the cheque as approved for credit to an external account. In other words, they would allow the money to be taken out of the country, to put it in simple terms, as long as there was a legitimate commercial reason for so doing?

A. That's correct.

Q. Now, in order to do that the bank official in the ordinary way would require, he would require to know the name of the person in Ireland who was doing the paying; isn't that correct?

A. Correct.

Q. He would need to know the transaction the person in Ireland was seeking to give effect to?

A. Yes.

Q. Assuming that it was a commercial transaction, paying for some service, in the ordinary way, that shouldn't create any problem; isn't that right?

A. Correct, yes.

Q. He would need to know the identity of the person who was to be the beneficiary of the cheque, the payee of the cheque?

A. Yes.

Q. And he would need to be sure that was the same person by whom the services, or whatever else had been supplied, was as vouched; isn't that right?

A. That is correct. We need to know the designation of the

cheque, the designation of the payment.

Q. When you say designation, you mean the individual?

A. I mean who was entitled to the funds involved.

Q. Yes?

A. They had to verify that.

Q. Yes?

A. From the documentation.

Q. He had to be sure that I am now leaving the precise name of the payee on this cheque out of it for the moment, he would have to be sure that where a cheque was presented to him that the person named on the cheque as the payee was the person to whom the payment was being made and the person whose right to that payment was being vouched by the documents that were produced to him; is that right?

A. Yes. Yes.

Q. And also he would have to be sure that the amount for which the cheque was being drawn tallied with the documentation which was being produced vouching the transaction?

A. Tallied or was less than.

Q. Or was less than?

A. Yes.

Q. Is that because of course you could be making a payment on account?

A. You could be making a payment on account, and the procedure there would be to stamp the documentation with "paid so much on such and such a date" and then the balance could be paid

Q. I was just about to come to that, because obviously you could produce the same account all the time if you were paying on account.

A. The reason for stamping the documentation was to make sure that the same documentation was not used for payment of multiple amounts on the basis of the same

Q. Of course, can I just come to that. In the context then of the first payment, and I think what I will do is I will read your statement first and then I will come back to that particular issue of payments on account.

A. Yes.

Q. You say: "A cheque dated the 21st of September of 1992 drawn on a branch of Bank of Ireland (Dundrum) Dublin by Mike Murphy Insurance Brokers Limited in favour of Credit Suisse London for €100,000 is the first cheque to which you referred, and the second cheque is a cheque dated the 28th of September of 1992, also drawn on that branch from Mike Murphy Insurance Brokers in favour of DB Agencies for €16,624.62".

We will call the first cheque the €100,000 cheque, if you want to you call it the Credit Suisse, I think in the evidence so far we have called it the €100,000 cheque and we have called the other one the 16,000 odd pounds cheque, I think it is easier to identify them that way.

You say the "Central Bank has been informed by the solicitor to the Tribunal that: Evidence has been given before the

Tribunal that the 16,000 pound cheque was issued in respect of a payment due for services rendered or insurance cover obtained by DB Agencies, a company operating from Monaco.

The Tribunal has been informed in evidence that the œ100,000 cheque also related to services rendered by DB Agencies. And the œ100,000 cheque was ultimately sent to the London branch of Credit Suisse with instructions that it was to be credited to Credit Suisse Zurich for the amount of Ansbacher. And the account number given is 0835/945743/64".

And then you go on to the relevant exchange control rules.

Now, again I think I will read these quickly and we will come back to discuss them in more detail.

You say that: "Section 7 of the 1990 notice general obligations of residents provided that payments in excess of 250 pounds to non-residents were to be affected through a financial institution in the State, unless otherwise permitted by the Central Bank; and that residents should not send Irish pound cheques in excess of œ250 outside the State without first having them branded "eligible for credit to an external account" by the paying institution.

Section 10 of the 1990 notice stated that financial institutions had authority to make payments in respect of services supplied to residents by non residents on sighting documentation from the non-resident payee. Banks were allowed to affect payments for services imported by their

own commercial customers without the need to inspect documentation in every case, where such payments were in accordance with the customer's normal payment pattern. For new customers, banks were obliged to make reasonable inquiries at the outset to establish the likely pattern of payments over the first 12 months and query any perceived variation from that pattern. Variation from normal payment pattern of established customers was also required to be queried. Documentation was required to be inspected where the customer requested that payment be made to a bank outside the State except where the bank was satisfied that the account was that of the supplier and not that of the purchaser".

Now, if I could just summarise some of that. As I understand it, what that seems to suggest is that from 1990 onwards a bank marking a cheque approved for credit to an external account, could do so as long as it had sight of the relevant documentation. It seems that the bank wouldn't, in every case, need to inspect that documentation; is that right?

A. That is correct.

Q. Where the payments were in accordance with the customer's normal payment pattern?

A. Yes.

Q. Does that mean that in practice a customer who might be paying a supplier abroad would, or could have, a cheque

approved for payment to that customer without actually producing an invoice?

A. Oh, yes. The background to that was that a decision had been made to abolish the exchange control system. And a date had been put on it of the 31st of December of 1992. The decision was made at that stage by the Department of Finance, that we should make every effort to relax any bureaucratic elements in the rules as much as possible.

So instead, one of the things we did was that instead of expecting the banks to inspect the documentation and invoices and statements in every instance, that where there was a regular pattern of payments, which is the case in most companies, that provided that it stuck to that normal pattern of payments, then there was no need to inspect documentation in the case of every payment, which took that bureaucratic job or chore from the banks. But that was on condition that if there was a departure from the pattern the normal pattern of payments, that they would ask questions and would then inspect the documentation.

Q. Now, does that mean could I ask you about two things, does that mean that the bank, if presented with a cheque made payable to a foreign or an external supplier in the case of some trading relationship between the drawer of the cheque and that supplier, does that mean that the bank had to query the account holder and establish the purpose for which the payment was made without seeing the documentation, or would it be simply sufficient to stamp

the cheque once it was paid to anybody overseas?

A. If it kept the same pattern.

Q. How would the bank now the pattern? By the identification of the payee, is it?

A. Yes, most companies have a fairly standard pattern of suppliers that they pay. And if that pattern was maintained, in other words both in terms of amount and in terms of payee, and the banks generally in my experience know their customer's business very well, for the obvious reasons; well then, if it was the normal course of business following the normal pattern both in amount and payee, then they just paid it in the normal course of events. If it departed from that then the responsibility was on the bank to make sure they queried it.

Q. I see. A form E 4; you go on to say "a form E 4 giving details of the Applicant, i.e the resident of the State making the payment, the transaction, the beneficiary, and the currency, was required to be completed and returned to the Central Bank in respect of all payments for services in excess of œ10,000. A copy of form E 4 is" - you have annexed a copy of the E 4 form to your statement and I think we might just put it is on the overhead projector.

A. Yes.

Q. You say that "forms E 4 were used by the Central Bank to verify compliance with delegated authorities or specific permissions in respect of exchange controls"?

A. Yes.

Q. And we are not talking about a specific permission here but rather the exercise of a delegated authority; isn't that right?

A. Yes.

Q. "They were also used to aggregate statistical information for the Central Statistics Office regarding capital movements from the State. Financial institutions were defined in the 1990 notice as including an office in the state of an authorised dealer. An authorised dealer was defined as a bank in the State authorised under the Exchange Control Acts to transact foreign exchange business, within terms specified by the Central Bank. Bank of Ireland was an authorised dealer for the purposes of the 1990 notice.

Section 8 of the 1990 notice, (general obligations of financial institutions) reflects the provisions of Section 10 outlined above. It also provided that where a permitted payment was being made in Irish pounds the relevant cheque or other instrument was to be branded "eligible for credit to an external account" by the issuing bank. Any documentation inspected and any exchange control form being returned to the Central Bank was required to be stamped with the paying institution's official stamp and details of the amount and the date of the payment were required to be marked on both the documentation and the form".

Now, can I just ask you one thing about the form. If we could have the rest of the form please up on the screen?

Now, if we could go to the top of the form once again. The form contains the name and address of the Applicant, and the name and address of the financial institution.

A. That's correct.

Q. Now, I now want to turn to one of the cheques we had a moment ago. I don't want to put it up on the screen because I want to stay with the form. We know that the cheque, the €100,000 cheque was drawn on the account of Mike Murphy Insurance Brokers, in order for that cheque to be stamped approved for external control, one of these forms should have been signed; isn't that right?

A. That's correct.

Q. And that form would therefore contain the name of the Applicant for exchange control who would be Mike Murphy Insurance Brokers; isn't that right?

A. Yes.

Q. And that would be known to the bank of course. The name and address of the bank is what goes on to the right-hand box at the top of the page. Then, underneath that you have details of transaction. Underneath that you have name and address of beneficiary. Then you have currency, and amount and so on. And at the bottom you have a declaration, declaration that the information you have given is correct. "I am aware that giving false or misleading information is an offence". Who would sign that? It says

Applicant or financial institution. I presume the

Applicant wouldn't always be signing it himself would he?

A. No, the Applicant from our point of view, the important thing was that it had been verified by a bank.

Q. I see.

A. And the normal situation that I experienced was that it would be signed by either, and often the form seemed to be brought along with the documentation in a large

Q. Because obviously that made it easier, you just checked the documentation and the documentation spoke for itself?

A. The bank would normally put a stamp on the right-hand corner which would have the date incorporated and usually initials and that would follow through then.

Q. Could I ask about the situation however, where you wouldn't have the documentation. Where a bank was, as you have indicated it would be perfectly entitled to stamp cheques approved, because it was satisfied from the pattern of dealing that these were within the normal range of activities of a particular customer in Ireland dealing with a customer abroad. In that case how would the bank fill in details of the transaction?

A. They would fill it in from the explanation of their customer.

Q. So where the bank were operating without actually sighting documentation they would have to know from the customer that "I am paying an invoice. I owe somebody in France or paying somebody in France money I owe on foot of an invoice

I got for €100,000" or whatever?

A. That's correct.

Q. And that would go in?

A. That's correct, yes.

Q. "Payment for insurance, architectural, whatever, services abroad"?

A. Yes.

Q. Now, you go on then to deal with the application of the rules to cheques. You say: "The following are comments based on the information regarding the cheques which have been given to the Central Bank by the solicitor to the Tribunal and which is outlined above. The information we mentioned a moment ago. If MMIB was an established customer of Bank of Ireland (Dundrum) the bank would not have been required to observe what was otherwise the general obligation to inspect documentation in respect of the cheques. If however, the cheques or either of them represented a variation from MMIB's, that is Mike Murphy Insurance Brokers, normal payment pattern that variation should have been queried by the Bank of Ireland. If, as the Central Bank has been informed by the solicitor to the Tribunal, the €100,000 cheque was accompanied by an order to pay it to a particular bank account, and if Bank of Ireland was made aware of this by Mike Murphy Insurance Brokers, Bank of Ireland should have inspected documentation in connection with the payments unless it was satisfied that such account was that of the supplier and

not that of the purchaser.

Bank of Ireland (Dundrum) should also have completed and returned to the Central Bank a form E 4 in respect of the payments. A search of the Central Bank's records for the period has been made but no records of any such form having been submitted has been found. The foregoing requirements continued to apply up to the date of the abolition of exchange control on the 31st of December 1992".

Now, could I just go back for a moment to something you mentioned earlier, and that we put aside. This is this question of a payment on account. Can we now consider the situation that obtained at the time toward the end of 1992 when a lot of the bureaucracy had been taken out of the system and an Irish customer wished to pay part of the account of the supplier of a service in France on account. He wished to pay €100,000 on account?

A. Um hum.

Q. How would the bank establish, or how would the bank record, if you like, the payment on account so as to avoid the duplication of exchange control for a similar transaction time and time again, as you mentioned earlier?

A. The normal way would be on the basis of an invoice that would relate as part of the account, but I have also seen it used where a statement would have been received and would have been stamped.

Q. Well let's take the simple case of a statement then. If

you had a statement what would happen the statement itself
if it were for €250,000 and you wished to pay €100,000;
what would the stamp say?

A. The stamp would just be a brand of the date, the amount
paid and the time.

Q. Right. And that would indicate that €100,000 had been paid
off so that that particular statement couldn't be used
again for anything other than the balance of that?

A. That is correct.

Q. Amount due?

A. That is correct.

Q. Yes?

A. Yes. Well, the situation was rather unique in the sense
that the exchange controls were going at the end of
December 1992. That sort of system would be less
satisfactory if they were continuing long-term. Because
the next statement could have been used, but in the
circumstances that was regarded as satisfactory.

Q. But there was at least that safeguard?

A. That's right, yes, yes. There was also the safeguard that
banks in general do know their customer's business.

Q. Of course. Now, the cheque that I've put up on the screen
at the outset of your evidence was a cheque for €100,000.

It was not made out to a supplier, it was not made out,
this is from the evidence now, to the bank account of a
supplier, but was made out to the bank account or to a bank
account of a third party, a person who was in fact wholly

unconnected with the transaction in respect of which the money was supposed to be paid.

Now, what would the obligations of a bank be if that cheque was presented for approval, and I think we can take it there wouldn't have been other cheques coming from this; I am not sure of this, but I certainly am making an assumption, and it can be corrected if I am wrong; that for the sake of the question you can assume that there would have been no other payments to that Credit Suisse account from that particular Irish account?

A. Yes. The bank would be required to check that the amount was not more than the amount due, and that the payee was it was a bank account, that it was the bank account of the non-resident, not a bank account of the resident.

Q. So if the bank officials were told what we now know to be the true facts, which is that that money was intended to be paid into a bank account unconnected with the supplier; could it properly have received external approval for credit to an external account?

A. No, not in my opinion.

Q. And for a bank to have so stamped it, either knowing those facts or failing to establish the facts could, I won't say would; could have left them open to the suggestion that they were in breach of exchange control; isn't that right?

A. Well, on the basis that that cheque came, and they saw a bank account, that would have been paid to a bank on the

bank account. Then they would have to satisfy themselves that that bank account was the non resident's bank account, and it would only be the Bank of Ireland could say whether they were demanded explanations of that sort of thing, but if it is not as the evidence has shown, the bank account of the .

Q. Supplier.

A. The non-resident, the supplier then they should not have objected, not have stamped it rather.

Q. Now can I go a step further? The evidence of Mr. Murphy, the person by whom the cheque was drawn, is that it was blank apart possibly from the date. There is some dispute about the date but I don't think that need concern us. We do know that if it was drawn, it was drawn prior to the end of December 1992 because we know that the cheque was met prior to that date, so it was drawn within the time during which the exchange control regulations operated, and if that cheque was stamped by a bank, if it was stamped by a bank blank, as Mr. Murphy contends, then I don't need to ask you to confirm that that would have been just a flagrant breach of the regulations, wouldn't it?

A. Yes, it would have been completely, I reckon.

Q. Now, even if it had the amount on it, and Mr. Gresty, Mr. David Gresty gave evidence here this morning and yesterday and said that when he got that cheque or when he saw that cheque in the course of a meeting in Paris at the end of September, and when it was given to him, at least

momentarily, there was an amount on it but no payee?

A. Um hum.

Q. Once again wouldn't that be a flagrant breach of the regulations if a bank had stamped such a cheque?

A. Yes. It would not have been acceptable under the rules as they applied at that time. The rules are very specific.

You had to do two things. You had to check that the amount was due and that it was going to the correct person, not to a resident, and you could not do that.

Q. What I am coming to, no matter how much of a relaxation there had been of the rules, at the very least you had to know, you had to have a cheque with the name of the payee on it and the amount of money, at the very least?

A. It would have defeated the purpose.

Q. The entire purpose?

A. The entire purpose, if you had not got that precisely.

Q. Now, if the bank, meaning the Central Bank, became aware that a practice like this was being conducted, and the evidence is that it wasn't unusual for this to happen, would the bank have been obliged to take steps?

A. We would certainly have taken serious steps on that, yes, that would have been unacceptable from the point of view of the way the system operated.

Q. What steps, in the ordinary way, would the bank take if something like that came to its notice?

A. Assuming that it was Bank of Ireland (Dundrum).

Q. Yes?

A. The first thing would have to be to write to Bank of Ireland (Dundrum) and ask for an explanation. If from the correspondence with Dundrum it seemed that there was a serious breach involved, then we would have followed that through. Usually with the Head Office. And we would have taken whatever steps were necessary to make sure that the practice stopped.

Q. What would have happened to the transactions carried through by the bank? Now I have to be careful about this, what would have happened to the transactions carried through if, as has been stated, they were carried through by the bank in the way that that has been described in the evidence?

A. The most likely thing is that we would have insisted on an unwinding of the transaction as far as that was physically possible.

Q. Well, the bank might have had to take the consequences for that rather than the individual; isn't that right?

A. Exactly.

Q. But perhaps also the individual?

A. Well, we would have hoped that it would go right through the system, yes.

Q. I see. Now, what I am trying to get at is why a bank, knowing as indeed one assumes bank officials must have known, that consequences as serious as that could have ensued; how would a bank have persisted, as has been suggested, in a practice like this? And what I want to ask

you is, if a practice like this was shown to the satisfaction of the Central Bank to be continuing, what steps would the bank take?

A. We would have taken steps right up to the point of withdrawing their delegated authority, either for specific transactions or for groups of transactions.

Q. Now, I want to ask you about one other thing and I don't think this has been taken up with the Central Bank yet, but in the light of the evidence today it may have to be taken up. And it concerns the other cheque for €16,624.62. I don't think that the bank have been asked, the Central Bank have been asked whether they have any E 4 form record in relation to that transaction; but I am sure that a similar search could be carried through, could it?

A. We don't have a form.

Q. I am not sure whether you are familiar with the way in which these records, which I know are archived records of the period in question are kept by the Central Bank, but are records in relation to suppliers having regular dealings with foreign suppliers, having regular dealings with Irish residents are they kept in a file by reference to the Irish account holder or how are they kept? Can they be traced, in other words, readily?

A. I am not, I haven't been involved in this for seven years. I am not sure how the records are actually stacked at the moment but what we keep are almost inevitably just the forms themselves and they are actually and they are kept,

records, in boxes as far as I am aware, they are, by date.

So we could search them relatively easily, yes.

Q. I see. So it would seem to be appropriate wouldn't it to see whether other E 4 forms of the relevant period in respect of the same two ends of that type of transaction i.e. between Mr. Gresty and Mr. Murphy are available; would that seem appropriate if you were to examine this œ16,000 transaction?

A. Yes. We have searched the records for, I think it is for the œ100,000 from Dundrum.

Q. You haven't searched the records for 16,000 and you haven't been asked, have you?

A. As far as I know we haven't searched for it. I don't know if we have found it. If we have found anything on that.

Q. Well, I am sure the solicitor for the Tribunal will be formally in touch with you. Thank you for your assistance.

MR. CONNOLLY: I have no questions, Mr. Chairman.

CHAIRMAN: Mr. Feeney, do you wish to raise anything?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. FEENEY:

Q. MR. FEENEY: Just one or two questions for clarification if I could. Mr. O'Byrne, could you have the cheque for œ100,000 on the screen if possible, and I am sure you have a hard copy in front of you?

A. Yes, 100, yes.

Q. There is just a few matters. The stamp at the top from the IDB, I think you have been able to, I think, decipher in greater detail what the actual word on that is, is that correct?

A. Well, our opinion on it was that the bottom left-hand corner "asked is it eligible", but it is very difficult to make out.

Q. Yes?

A. That would be a matter of course

Q. As far as you can see the stamp from the IDB, also the number is numbers 921 etc. that appears to be to be in fact the date of the year 92, the month November, the day the 24th, and then the actual transaction number is 4612?

A. Yes.

Q. So it appears that there is 4,612 rather than 9,000 million transactions?

A. That's correct, yes. Of course that would be for Bank of Ireland would have to verify that.

Q. That would appear to be the case. Now, Mr. Healy asked you in extreme circumstances where a practice was identified as inappropriate and continuing, you would withdraw delegated authority; was that a threat or was that something that was in fact ever activated by the Central Bank?

A. It was activated, yes.

Q. In to what extent, I don't want you to name the particular institution, but could you indicate?

A. Over the period to very serious extent where we withdraw

authorised dealership briefly from a bank until they got their act together.

Q. What was the consequence or affect on an authorised bank?

A. The effect was it that they became an ordinary person under the agent in the sense that every single payment had to come into the Central Bank to be authorised, which made their business almost impossible to run. So they very quickly organised themselves so that everything was in order.

Q. And did it produce an element of contrition and humility?

A. Yes, from memory, it did, very seriously.

MR. FEENEY: Thank you.

CHAIRMAN: I suppose during those latter couple of years of the exchange control regime there would be some loose analogies to a form of self assessment being brought in?

A. Perfectly true.

CHAIRMAN: Yes?

A. In the sense that we made every effort literally to get all forms all bureaucracy everything we could out of the system and have it so that it was rundown in an orderly manner.

It was a unique situation, a very strange situation, but

that was the attempt and basically while we had delegated

authorities for the banks right from the war time years,

where these regulations came from, we kept increasing and

increasing the delegation to the point where the payment

and transaction was made as the most efficient way to do

it, and the one that had the least bureaucracy. We were depending then to an increasing amount on the banks, both to make the payments properly and to, in my experience they did it very conscientiously, to assess themselves

CHAIRMAN: Insofar as you were in essence trusting both customer and banker to operating the system lawfully in response what degree of supervision by way of spot checks or auditing were you able to exercise?

A. Well a good example in this particular context is the fact that as the E 4's came back we spot-checked them and questioned them quite frequently on something that either wasn't very clear or that looked very, it looked a bit strange to us. So we did follow through and we kept that contact with the bank all the time.

CHAIRMAN: Yes, but I suppose inherently the latter years could potentially have been more susceptible towards a measure of cutting corners than in the more stringent earlier regime?

A. Human nature is human nature.

CHAIRMAN: Thank you for your assistance.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Paul O'Brien.

PAUL O'BRIEN HAVING BEEN SWORN WAS EXAMINED BY MR. COUGHLAN

AS FOLLOWS:

Q. MR. COUGHLAN: Mr. O'Brien, I think you are an authorised officer of the Central Bank, and you have been authorised to give evidence concerning a transaction recorded for value on the 24th of January of 1980 on the current account at Central Bank of Ireland of Guinness & Mahon Limited; is that correct?

A. That's correct.

Q. And I think you have furnished a statement to the Tribunal which is fairly lengthy with a number of appendices dealing with the whole question of how the Associated Banks, or the banks, keep accounts at the Central Bank and the settlement of various accounts on the transactions on given days; is that correct?

A. Yes.

Q. I will try and go through it as quickly as possible and I may not read it all and some of the appendices, if nobody objects, may be taken as being read for the purpose of the record. But I will come to that in due course.

Now, I think in your statement you set out that you received a request from the Tribunal and the request you received, the Central Bank of Ireland; "the Central Bank has been informed by the solicitor to the Tribunal of Inquiry that internal records of Guinness & Mahon show by reference to an account which Guinness & Mahon described as cash at Central Bank, that on the 24th of January of 1980 there was a debit to that account in the sum of €150,000 in respect

of a cheque sent for Central Bank funds account JD

Traynor".

I think you also say that the bank has also been informed that the nature of this entry reflects a receipt of 150,000 pounds in the books of Guinness & Mahon for the account of the late Mr. Traynor and that Guinness & Mahon consider it probable that on the same, that on the same day value was received by it by means of a cheque drawn on another bank.

I think you also say that the Central Bank has been requested to advise the Tribunal of any records or documents or information relating to that transaction which might assist in the identification of the cheque to which the transaction relates; is that correct?

A. That's correct.

Q. I think you have then set out for the assistance of the Tribunal and for the public, how current accounts of the Central Bank and interbank payment and settlement were arranged in 1980; isn't that correct?

A. That's right.

Q. And you have informed the Tribunal that "each authorised bank in Ireland maintains a current account with the Central Bank, and would have done so in 1980 for the purposes of recording and giving effect to transactions between itself and other banks or with the Central Bank itself and its customers account i.e. the Government". It means that the Central Bank's customer is the government?

A. That's right.

Q. And you have attached to part of your statement of evidence a paper entitled "Interbank payment and settlement arrangements in 1980" which you have marked as Exhibit A and that gives full details of the operation of current accounts at the Central Bank?

A. That's correct.

Q. I don't think for the moment we need to open that in full detail. You have informed the Tribunal "that amounts would be debited or credited by the Central Bank to such accounts on foot of instructions received from those account holders"; is that correct?

A. That's correct.

Q. "Except with respect to certain limited classes of transactions with the Central Bank itself, entries would be made on those accounts only on foot of individual duly authorised debit instruction slips furnished to the Central Bank by account holders"; is that correct?

A. That's correct.

Q. And you have a sample of a debit instruction slip which you exhibit at B and we might just show that on the monitor if we could. Yes, that is the type of instruction which would be received from the banks to the Central Bank to allow for transactions to take place on their accounts with the Central Bank?

A. That's correct. Perhaps it might be dealt with later but I might say now that this was - any information on this was

other than the bank to be debited and the bank to be credited was therefore the debiting bank's own information, it was not required by the Central Bank.

Q. Yes, it was their own?

A. It was their own information. It was the equivalent of say so, they would have it on a carbon copy or the stub of a cheque book. The Central Bank only required the two banks involved to be identified, in other words the debiting bank and the bank that was to be credited.

Q. In other words what you are the only information the Central Bank needed for its purpose is this was a transaction, a settlement of accounts between two?

A. Between two banks.

Q. Two banks holding accounts at the Central Bank?

A. We are not party to the transaction.

Q. You were not party to the transaction and what the Central Bank needed was to receive an instruction to debit one bank's account and credit the other bank's account in settlement of the arrangement which have been reached between those two banks at the end of any given day, for example in settling transactions between the banks?

A. Yes. Yes.

Q. And I think you have informed the Tribunal "that any cheques drawn by their own customers on accounts maintained in their own books by such banks or bank drafts issued by such banks might ultimately give rise to payments across the current accounts maintained at the Central Bank"?

A. Yes.

Q. You have informed the Tribunal that "it is important to note, however, that such cheques or bank drafts or other payment instructions would at no stage have been presented to or be in the possession of the Central Bank"?

A. That's correct.

Q. I think they would have been cleared and settled through the payment system operated by the Dublin Bankers Clearing Committee or by reference to the special presentation system and ultimately have been returned to the bank upon which they were drawn?

A. Yes.

Q. And just to distinguish so that the public and the Tribunal can be quite clear, the Dublin Bankers Clearing Committee, that was a Committee of the banks?

A. Of the main banks.

Q. Of the main banks?

A. It was a system for the clearing of what we call "bulk retail cheque payments".

Q. Yes?

A. Which they would exchange between themselves drawn on their own customers and they set the rules and regulations for the operation of this.

Q. And that is run by themselves?

A. They run it themselves. The Central Bank is a member but it is run by banks.

Q. And the purpose of that is that in the normal course of

banking business there are cheques drawn on one bank everyday and all the banks meet or they have a system of clearing these through each other; is that correct?

A. So that at the end of a particular day they would have multi lateral obligations to settle between themselves for these cheques which are drawn by their customers.

Q. Yes; and that allows for adjustment in the various customer accounts within the banks debiting one and crediting another?

A. Yes. If I might add, when you mentioned the other system, the special presentation, it is quite different.

Q. Yes. We will come to that in due course because this is something I want to ask you particularly in relation to the specific query that has been raised with the Central Bank.

Now, you have informed the Tribunal that: "The Dublin Bankers Clearing Committee system involved a daily aggregation and mutual settlement between the banks of cheques drawn by their respective customers payable to customers of other banks, and resulted in a net payment or payments on a daily basis being made by which ever banks might have a net debit to which ever banks might have a net credit balance"?

A. Yes.

Q. That is simply as we have just said, they have a whole load of cheques drawn on one bank made payable to another bank in respect of various customers and they just settle them up between themselves?

A. Yes.

Q. And you say that the banks in debit would instruct the Central Bank to make an appropriate payment in its current account at the Central Bank to the banks in credit and would give to the Central Bank a debit instruction slip in respect of the appropriate amounts?

A. That's correct.

Q. So that at the end of the day once the adjustment had been done, with between, say we will take two banks, say Bank of Ireland and Allied Irish Banks where various cheques had been drawn on behalf of customers in both banks and they, for example, were reaching a settlement at the end of the day; there might be a balance in somebody's favour one bank towards another. So they would issue an instruction to the Central Bank to debit their account and credit the other bank's current account with the Central Bank and that is how the adjustment took place.

And you have informed the Tribunal "that a crediting of the current account at the Central Bank of any bank was sometimes referred to as payment of the relevant amount "in Central Bank funds". That phrase would simply have signified that appropriate entries had been made across the current account maintained at the Central Bank in respect of the banks concerned and did not signify in any sense that value had been given for the payment by the Central Bank itself".

So, what you are saying is that the record of the payment across the current account of the account in the Central Bank was merely a record of that and wasn't a record of value being given by the Central Bank?

A. For specific items, no.

Q. Now, you say that "records of the Central Bank in respect of transactions on current accounts in 1980. You say that the bank has retained copies of current accounts ledger cards for 1980 but does not have copies of debit instruction slips in respect of transactions in 1980. Such slips are routinely destroyed on the basis of a retention policy of current paper plus paper for the previous six years. As will be noted from the specimen form in Exhibit B" that is the one we have already had. "However, no details of any transactions giving rise to any particular debit instruction would in any event normally have been supplied to the bank. There would just merely have been an instruction to debit one account and credit another account" that is all?

A. For instance on the exhibit, there is a reference to "SP" which sometimes banks would write for their own purposes indicating that it was a Special Presentation, but the bank did not use that or record that in the sense that it was strictly for their own records.

Q. For their own records?

A. Yes. Sorry, I might just add, if that was blank the Central Bank didn't do anything about it. It was not required.

Q. The Central Bank just carried out the instruction of debiting and crediting the current accounts of the various banks within the bank?

A. Yes.

Q. Now, turning to the transaction for value, on the 24th of January of 1980, that is the €150,000 entering the Guinness & Mahon the JD Traynor special account in Guinness & Mahon. You say that "attached at Exhibit C is a copy of a ledger card for the current account of Guinness & Mahon at the Central Bank for the period between the 23rd of January of 1980 and the 28th of January of 1980. And you say that on any day a number of transactions debits and credits would ordinarily be passed over any current account at the bank. You say that there are approximately 25 entries on that card but details of all other entries except the one referred to above this is the €150,000 one have been omitted from the copy".

And you say "that there are four credit entries to the account made for value on the 24th of January of 1980. One of which is a credit of €150,000. The stated particulars or transactions for the entry is B/IRL indicating that the credit to the relevant account arose from a debit instruction given by Bank of Ireland with respect to its own current account at the Central Bank.

You say that the entry of 150,000 pounds is the smallest of the four credits to the current account of Guinness & Mahon

on that day. You say that it is obviously likely that this entry corresponds to the receipt of the same amount reflected in the books of Guinness & Mahon. You say though that the Central Bank is not in a position however, to say definitively that this entry represents the proceeds of a cheque drawn on the Bank of Ireland and specially presented for settlement in Central Bank funds across the respective current account of the banks at the Central Bank, nor that any other of the credits to the current account of Guinness & Mahon for value that day could not have been the source of the receipt of €150,000 in the books of Guinness & Mahon".

Now whilst you say that you cannot say definitively that that particular transaction across the account in the Central Bank on that day represents the proceeds of a cheque drawn on Bank of Ireland and specially presented for settlement, can you say as a matter of probability that it does?

A. I don't think we can be that definitive even, if that payment in that payments transaction for special presentations as I said earlier, we would never see the underlying cheque for any of those transactions. If that was a special cheque, a cheque being specially presented by Guinness & Mahon and it was drawn on Bank of Ireland, they would present it physically bilaterally to Bank of Ireland and Bank of Ireland would give the receipt which is a guarantee that we are going to pay across the stated amount

and Bank of Ireland would instruct us to debit the account. We would never see the cheque, it doesn't come to the Central Bank.

Q. I appreciate that. What I am asking you for is your opinion as a central banker in relation to this particular transaction. And at that time, perhaps we should go into the question of special presentation in a little bit of detail. I think what we are talking about, special presentation means that faith and value is given for the cheque on the day, isn't that right?

A. That's correct. So therefore the cheque can never be returned unpaid if it is paid. It doesn't go through clearing systems as a normal cheque.

Q. It doesn't go through a clearing system. First of all we should say there is probably a number of characteristics to it. First of you as of 1980 you could only have a special presentation for a cheque in excess of €100,000?

A. That's correct.

Q. Secondly, it didn't have to go through the clearing system so you could obtain value for it, if specially presented on the same day; isn't that correct?

A. That's correct.

Q. So that when there was the settlement of the accounts around 3:30 on that day that it received faith and value; isn't that correct?

A. That's correct, yes.

Q. And therefore once that happened it is as you say it could

never be returned?

A. That's correct.

Q. Now, that particular, and I appreciate that the Central Bank itself wouldn't have the underlying documents, but they were a designated walk in offices; isn't that correct of the various banks?

A. That's correct.

Q. And it meant that if I had a cheque as of 1980 for €100,000 or in excess of it, drawn on any branch of a bank, I could go to the walk in office of that bank, the designated office of that bank; isn't that correct?

A. Yes.

Q. Well, you say "you" .

A. I would say the bank would do it for you.

Q. Yes, my bank. Your bank would go to the designated office of the bank on which the cheque was drawn, we see here let's take this for an example. Say it was Bank of Ireland. If I had a cheque for €150,000 drawn on Bank of Ireland. I would go to their designated office which was probably in College Green at the time?

A. Yes.

Q. Is that correct?

A. I think so, yes.

Q. And I would receive from that particular branch a docket; isn't that correct?

A. Yes, if the cheque was drawn on that particular branch.

Q. Yes?

A. And that bank could confirm that the customer, the account which was drawn was there and had funds and were prepared to pay the cheque, because there had been instances where cheques are not paid, but if it is paid and they, the messenger who brought the cheque would receive a copy of a docket indicating that Bank of Ireland would pay those funds across its settlement account at the Central Bank that day.

Q. Yes; and once that had been done what happened then?

A. Later in the afternoon the Bank of Ireland would present its dockets to us physically at the Central Bank, later in the day, and the Central Bank would act on those.

Q. Yes?

A. And we have the entries.

Q. So the purpose of going to the designated or walk in office of the bank on which the cheque was drawn was for them to issue a certificate or a docket?

A. Yes.

Q. Having satisfied themselves that the customer's account on which the cheque was drawn was good for the funds and that they would allow that transaction to take place by 3:30 that afternoon at the Central Bank; isn't that correct?

A. That's correct.

Q. And once that was done there was no going back, the money had moved?

A. Yes, that's correct.

Q. Now, if the cheque was not drawn on the particular

designated office, the walk in office, say in the case of the Bank of Ireland it was on the College Green and it was drawn on another branch of Bank of Ireland; what would the person who received the cheque do?

A. If it was in the, if it was in a reasonable - if the cheque was drawn on a branch outside the city people wouldn't walk it because physically they couldn't do it within the timescale. If it was, let's say in a Baggot Street branch of the Bank of Ireland it would go to that branch and if the bank, then the Bank of Ireland made the inquiries on the account and if there was sufficient money and they were prepared to pay it and they would issue the messenger with what was called a "banker's payment" which is a payment order between banks and which would instruct the - that messenger would take it to the designated walks office and present that and receive the docket that he would have got. In the other example if it had been appropriate to walk to the designated office initially.

Q. So what we are talking about, are two separate ways of doing it. One would be a one stage transaction if the cheque was drawn on the walks office branch, all one did was go to the walks office receive the docket there, that in due course whatever time in the afternoon, would have gone to the Central Bank and the transaction would have been complete. If it was a branch other than the walks office branch, you went to the branch on which the cheque was drawn, and you obtained from that branch a banker's

payment, which was then taken to the walks office of the same bank and the docket was then received and the transaction then took place in the Central Bank. And that is what special presentation or walking clearance was about?

A. And the system still exists.

Q. For a moment - you have to have well in excess of œ100,000 to have a .

A. Minimum of 500,000.

Q. Yes. On that particular, sorry, on the day we are talking about, or the series of days we are talking about, that the ledgers, that the ledger in respect of Guinness & Mahon, there is, but not shown here, I think there are other transactions in respect of Guinness & Mahon for the day; aren't there?

A. That's correct.

Q. And it looks like an aggregate figure doesn't it, the other transactions?

A. Well, we are really not in a position to say at this stage what the transactions are for, it is substantially larger?

A. There is larger than 150,000.

Q. We will have it in a minute. It is probably in excess of a million pounds; isn't that correct?

A. Yes, but we are not in a position to say.

Q. Just bear with me for a moment.

A. Okay.

Q. We will establish the facts first. It is probably in

excess of a million pounds; isn't it?

A. One of the other transactions is in excess of a million.

Q. Which would probably, I suggest, indicate the daily settlement on the account of Guinness & Mahon in the normal course of business, the normal daily settlement of the account of Guinness & Mahon; wouldn't that seem likely from your experience as a Central Banker?

A. I can't really say that. I mean, I was not personally involved at the time, although I am familiar with the principles of the operation.

Q. Now Mr. O'Brien, I am going to have to push you on this, I am going to have to push you on this. Just because you don't have the underlying documentation; I am asking you for your view as a Central Banker, on this. You have a large transaction 1.115 million. There is another transaction; isn't that right?

A. That's correct, yes.

Q. And you have this transaction moving across in the Central Bank current account representing a credit to Guinness & Mahon of €150,000, obviously coming from Bank of Ireland; isn't that right?

A. Well, according to the record it would appear that it is confirmed.

Q. Now Mr. O'Brien, you are a Central Banker. Isn't that what you would understand it to mean?

A. Well yes.

Q. Right. Let's just take your understanding so. Let's just

take your understanding of this. And might I suggest to you that it would be your understanding that the larger movement would probably be what you would expect of the settlement of the daily aggregation and settlement, isn't that what that would more than likely represent?

A. Not necessarily. The system over the years since 1980 has changed somewhat. And having discussed this with some people who were involved at the time, there was some view that in 1980, certainly around this time, that a lot of items were not aggregated but rather they were there individually. Certainly the system in the late 80's and early 90's, it was a system of what we called "a gross aggregate system". Rather than listing all of the transactions against all of the other banks in 1980, particularly around this time we moved into a new system in 1980, late 1980 or certainly in the mid late 1980s; so it is not quite as clear-cut in 1980 as if it was later, as to what the transaction might be.

Q. Well, if we just, and perhaps I should put up the if we put up the second one. I am sure the copy is poor but you have a copy yourself, do you?

A. Yes, I do.

Q. And you can see on that day, crossing, there is a transaction across the current account of Guinness & Mahon at the Central Bank, and you have two sums; two sums being, two separate ones now. They are both Bank of Ireland isn't that right?

A. That's correct, or at least that is what the record states.

Q. Oh Mr. O'Brien, come one. It is the Central Banks record.

Come one. Isn't that what it represents?

A. That is that is what the statement states.

Q. Isn't that listen, forget about that. Isn't it your understanding that that is what happened on that day?

A. Yes.

Q. Right. So we have a credit crossing the account from Bank of Ireland of €150,000 and we have a credit crossing the account from the Bank of Ireland representing €1.115,000 pounds and wouldn't it be, I suggest to you, very reasonable to infer from that that the larger sum is the aggregate settlement of the day?

A. No, not necessarily.

Q. You are saying that you think that that is one transaction; is that what you are saying?

A. Well I am saying that we don't know.

Q. Yes. Well, if Guinness & Mahon do not have any one single transaction, one single transaction crossing their own books, would you accept that in those circumstances that is probably the settlement on the day of the aggregate in respect of Bank of Ireland?

A. Well, what is possible to do and we have not done it, perhaps is that is to look at the Guinness & Mahon statement and endeavour to reconcile, if it is possible, between our accounts, but we have not done that.

Q. So, you are saying that the - are you saying sorry are

you saying that the Central Bank, the Central Bank cannot offer a view about that at all; is that what you are saying?

A. Well at this particular point we can not offer any definitive view on it.

Q. I am asking you for a view?

A. Not for no view on it.

Q. You would offer no view, the Central Bank is offering no view on that transaction?

A. No, no view on that transaction.

MR. CONNOLLY: I have no questions Chairman.

CHAIRMAN: Anything Mr. Feeney?

MR. FEENEY: I have no questions.

MR. COUGHLAN: Those are the witnesses for today.

CHAIRMAN: Very good. Half past ten on Monday then.

THE HEARING THEN ADJOURNED TO MONDAY THE 24TH MAY 1999 AT
10.30 AM