

08:37:27 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON**

2 **WEDNESDAY 25TH JULY 2007 AT 10 AM:**

3
4 CHAIRMAN: Good morning.

10:06:42 5
6 MR. QUINN: Morning. Mr. Gilmartin, please.

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8 MR. SREENAN: Chairman, before Mr. Gilmartin resumes could I just observe that
9 we of course received a message yesterday that Mr. Gilmartin was ill and unable
10 to testify and everybody understands that somebody can become ill at the last
11 moment, but it does seem to be a bit unsatisfactory that in the case of a
12 public Tribunal such as this, that the legal representatives of the witness
13 concerned do not turn up at the appointed time.

14
15 Unsatisfactory both from the point of view of the Tribunal and those who are
16 here to cross-examine, simply to explain what has happened to the Tribunal and
17 put in a medical report, if a medical report is required. I simply observe
18 that and make no further comment.

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10:07:10 20 CHAIRMAN: Well, the position yesterday was that within I think five minutes of
21 the Tribunal being informed that Mr. Gilmartin was unwell your solicitor was
22 informed and unfortunately many of your legal team are from Cork so, but these
23 things happen and we have no, we are satisfied that from the information we
24 were given by Mr. Gilmartin's solicitor, that he was unwell yesterday. And we
10:07:58 25 accepted that in good faith.

26
27 MR. SREENAN: I have no difficulty, Chairman, in accepting what you say about
28 the promptness with which we were informed, my point was simply that perhaps
29 out of courtesy to the Tribunal and to those who were prepared to cross-examine
10:08:10 30 the legal representatives should have attended before the Tribunal and simply

10:08:14 1 made that point publicly.

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CHAIRMAN: Right. Well, we take your point.

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10:08:18 5 MR. SREENAN: Can I just raise one other matter Chairman, we understand from
6 the list of witnesses circulated that Mr. Gilmartin will not be here on Friday.

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And in those circumstances clearly the cross-examination on behalf of

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Mr. O'Callaghan is not going to finish by then. Could I simply enquire of the

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Tribunal as to when the Tribunal would propose to recommence the

10:08:38 10 cross-examination of Mr. Gilmartin?

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CHAIRMAN: I think the 11th September.

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MS. DILLON: I think the 11th September was mooted but I, yesterday, but I

10:08:48 15 understood then from communication from Messrs Ronan Daly Jerymn that the 11th
16 September did not suit because of the prior indication by the Tribunal that

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Mr. Gilmartin would resume on the 18th. So I understand that, if that is the

18

position, or still the position, that the Tribunal will resume with Quarryvale

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related matters on the 11th, but will resume with Mr. Gilmartin on the 18th.

10:09:10 20

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Now if the position has changed and Mr. Sreenan and his team are available on

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the 11th then of course, no, Mr -- if Messrs Ronan Daly Jerymn and Mr. Sreenan

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are available on the 11th, then Mr. Gilmartin can resume on the 11th.

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10:09:27 25 CHAIRMAN: Perhaps we can leave it until tomorrow, you can talk to --

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MR. SREENAN: I can clarify it, Chairman, my instructing solicitor was taken

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somewhat by surprise by the reference to the 11th and said he would have to

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check the matter out to see if people were available, but people are available

10:09:40 30

and can resume the cross-examination on the 11th September.

10:09:43 1
2 CHAIRMAN: Then I think it's preferable that we resume with Mr. Gilmartin --
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4 MR. SREENAN: To finish as quick as possible on the 11th.

10:09:50 5
6 CHAIRMAN: Which is a Tuesday, is it? Yes.
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8 MS. DILLON: It's a Tuesday, yes.
9

10:09:56 10 CHAIRMAN: Yes, the 11th.
11
12 MR. SREENAN: Thank you, Chairman.
13
14 CHAIRMAN: Sorry Mr. Gilmartin.

10:10:07 15
16 **TOM GILMARTIN RETURNS TO THE WITNESS BOX.**
17 **AND CONTINUES TO BE CROSS-EXAMINED BY MR. SREENAN AS FOLLOWS:**
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19 CHAIRMAN: Morning, Mr. Gilmartin.

10:10:16 20 A. Morning. First of all I would like to apologise for yesterday.
21
22 CHAIRMAN: That's all right.

23 A. I got a problem with my blood pressure dropping.
24

10:10:26 25 CHAIRMAN: That's fine.

26 A. Occasionally it happens.
27

28 CHAIRMAN: I understand. That's not the issue that Mr. Sreenan --
29 A. I do apologise.
10:10:35 30

- 10:10:35 1 CHAIRMAN: No, that's all right.
- 2 Q. 1 Good morning, Mr. Gilmartin. Mr. Gilmartin, you might remember that the last
- 3 day that you were testifying, that you gave evidence to the effect that
- 4 Mr. O'Callaghan's legal team had misrepresented to the High Court the
- 10:10:52 5 circumstances of your evidence in relation to Mary Harney and had
- 6 misrepresented your correction as something that had been extracted from you in
- 7 cross-examination. Now, I think you have had the benefit of access to the
- 8 transcripts from the Tribunal since last Friday. Can you tell us, have you
- 9 reviewed those transcripts?
- 10:11:12 10 A. I have.
- 11 Q. 2 And do you want to correct your evidence?
- 12 A. I didn't find that reference in the transcript.
- 13 Q. 3 And do you accept now that your evidence in that regard was incorrect?
- 14 A. Yes, I do.
- 10:11:26 15 Q. 4 And do you withdraw it?
- 16 A. I withdraw it, yes. But I did read it somewhere.
- 17 Q. 5 Well, that seems to be a half hearted withdrawal, Mr. Gilmartin. Where did you
- 18 read it?
- 19 A. I don't know, it must have been, might have been in the press, but I did read
- 10:11:48 20 that particular words somewhere.
- 21 Q. 6 Or it might be something that you misunderstood having heard or having read?
- 22 A. Possibly.
- 23 Q. 7 Right. You might have misunderstood other things that you have heard and read
- 24 over the past 20 years as well?
- 10:11:59 25 A. I don't think so.
- 26 Q. 8 Do you remember when we ceased the cross-examination last Friday we were
- 27 talking about the circumstances in which you believed you had an absolute
- 28 guarantee of designation in respect of the Quarryvale site?
- 29 A. That's correct.
- 10:12:17 30 Q. 9 Yes, and do you remember me suggesting --

10:12:20 1 A. A guarantee insofar as that the several Ministers had volunteered that to me.
2 That all three sites was getting designation.

3 Q. 10 And we discussed the fact that you would have negotiated with various vendors
4 of land with that guarantee in mind?

10:12:40 5 A. I picked that site because it was the best site.

6 Q. 11 Yes, when you were negotiating you had spoken to various Ministers and received
7 what you regarded as a guarantee, the vendors had not spoken to those Ministers
8 or received such a guarantee?

9 A. When I started assembling the site I hadn't spoken to any Minister about that
10:13:00 10 site. The only person that I would have discussed it with would have been
11 Mr. McClune.

12 Q. 12 That's when you first saw the site, when you went about purchasing the various
13 plots of land you had at that stage an assurance in respect of designation?

14 A. No, I did not.

10:13:15 15 Q. 13 I suggest to you you wouldn't have assembled it if you didn't?

16 A. No, I actually had a brochure. I drew up, had a brochure I paid for a brochure
17 and I had, before I discussed it with the Ministers I was able to show them the
18 brochure I had for that site.

19 Q. 14 Can I suggest to you that what you were trying to do there was to make a
10:13:35 20 financial killing as a result of a tip off that you got that the lands would be
21 designated or that you believed you got?

22 A. If you look at my brochure you will see that the, any financial, any benefits
23 was going to the people of Clondalkin.

24 Q. 15 Yeah, you were not getting any financial benefit out of it?

10:13:58 25 A. Not really.

26 Q. 16 No profit at all?

27 A. I was bringing investment into it.

28 Q. 17 Yeah, you were getting no profit at all?

29 A. Well, sure that people, I would have expected payment for my work.

10:14:11 30 Q. 18 So you would have put in say five and a half million of your own money and

- 10:14:15 1 borrowed another eight million, but say five and a half of your own, and you
2 would have sold off a 50 per cent interest for anything that could have been
3 10, 20, 40, 50 million on the figures you have given and you say that's not a
4 financial killing?
- 10:14:31 5 A. If you look at my brochure it will show where the money was going, any gains
6 from the shopping centre element of it will show where the money was going.
7 There was a leisure centre and that which was a loss leader, as well as
8 industrial and hi-tech development on it.
- 9 Q. 19 And --
- 10:14:56 10 A. And on top of that there was also international business exchange.
- 11 Q. 20 And is it still your evidence to this Tribunal that you weren't in this for
12 profit?
- 13 A. Of course everybody expects a profit.
- 14 Q. 21 And I suggest --
- 10:15:17 15 A. Hence the reason the efforts your client put into steal it and pay crooked
16 politicians to do it.
- 17 Q. 22 I suggested to you --
- 18 A. That must have been his motivation, is it Mr. Sreenan?
- 19 Q. 23 And I suggested to you last Friday that your motivation in paying 50,000 pounds
10:15:36 20 over to Pdraig Flynn was to ensure that you got that designation which in your
21 own words would have been a huge bonus, and to ensure that you got the
22 Corporation lands?
- 23 A. Once again, Mr. Sreenan, I never gave a penny to Mr. Flynn. I gave a donation
24 to the Fianna Fail Party.
- 10:15:53 25 Q. 24 And you have told us --
- 26 A. Which I handed to the treasurer which I've got numerous people who knew before
27 and after that I gave a donation to Fianna Fail.
- 28 Q. 25 And you have told us many times on Friday that you were advised that that was
29 not illegal, to give it to Fianna Fail?
- 10:16:13 30 A. Well, if it was illegal your client would be in jail for the rest of his life

10:16:18 1 with the amount of money he passed hand through his hands.

2 Q. 26 Do you remember, Mr. Gilmartin, would you answer the questions please?

3 A. So would a lot of other donors to the Fianna Fail Party.

4 Q. 27 Mr. Gilmartin, do you remember saying last Friday that you were advised that

10:16:33 5 that was not illegal?

6 A. That's correct.

7 Q. 28 Now who advised you?

8 A. Giving a donation is not, is not illegal.

9 Q. 29 Who advised you of that?

10:16:41 10 A. Numerous people.

11 Q. 30 Who?

12 A. That giving a donation to a party is not illegal.

13 Q. 31 Yeah, but who?

14 A. Is it illegal, Mr. Sreenan?

10:16:50 15 Q. 32 Mr. Gilmartin, this is not a game of ping pong, you are here to answer

16 questions that I am posing. Now who advised you?

17 A. But you are a legal gentleman, I am not, you are a legal eagle, Mr. Sreenan, so

18 is it illegal to give a party a donation, answer the question?

19

10:17:06 20 CHAIRMAN: Mr. Gilmartin, the only question that's being asked is, do you know

21 or can you say who of the many people, or can you name any of the many people

22 who said to you that it wasn't illegal to. That's not suggesting it was

23 illegal, it's just asking you who told you that it wasn't illegal, or are you

24 in a position to identify those?

10:17:30 25 A. I don't remember exactly who told me, but I was advised that giving a donation

26 to the party is not illegal.

27 Q. 33 Can we just test your memory then again on this, Mr. Gilmartin, your evidence

28 is that a number of people advised you that giving a donation to the party was

29 not illegal, but at this stage you cannot remember one of them?

10:17:52 30 A. Well, I'd say one of the people that would have advised me or would have said

10:17:57 1 it, that if I had to give, because I was complaining about the demands for
2 money off me, and they said if you have to give anything the only legal way is
3 to give it to the party, one of the people that would have said that to me
4 would have been Seamus Maguire. He would have been one of them, probably Paul
10:18:17 5 Sherwin would have said it to me as well.

6 Q. 34 Now when you mention the two of those are you simply speculating that they
7 would have been people who would have told you without any memory of them
8 having told you?

9 A. I hadn't thought about it, Mr. Sreenan. I am just saying they would have been
10:18:32 10 two of the people who I would have talked about what was going on to.

11 Q. 35 O.k, well we can ask them about that when they come to give evidence.
12
13 I want to ask you a bit about your monthly payments to Mr. Liam Lawlor?

14 A. No, I never gave a penny to Liam Lawlor. Which was my downfall. Arlington
10:18:53 15 took him on as a consultant after he gate crashed a meeting and demanded large
16 sums of money on behalf of the government incidentally.

17 Q. 36 Mr. Lawlor, we heard, received cheques of some three and a half thousand pounds
18 monthly in relation to Arlington, is that correct?

19 A. From Arlington, yes.

10:19:15 20 Q. 37 Who handed him the cheques?

21 A. I did, some of them I did.

22 Q. 38 And from, on whose account were those cheques drawn?

23 A. On my account, and I was refunded by Arlington.

24 Q. 39 And on the basis that you were refunded by Arlington do you believe that the
10:19:34 25 answer you just gave on oath to the Tribunal a moment ago, that you paid no
26 money to Liam Lawlor was a truthful answer?

27 A. I personally objected to Liam Lawlor getting anything whatsoever, as a matter
28 of fact I stopped it and sacked Liam Lawlor. What happened after that I don't
29 know, but I had nothing -- I personally would never have given a cent to Liam
10:20:03 30 Lawlor.

- 10:20:04 1 Q. 40 Do you believe that your answer a moment ago to the Tribunal was a truthful
2 answer?
- 3 A. I was instructed by Arlington who appointed Liam Lawlor as a consultant, he
4 persuaded them that they needed him.
- 10:20:14 5 Q. 41 Why not let Arlington pay him?
- 6 A. Because I was, most of the money for the sites and that was passed through me.
- 7 Q. 42 But if you deeply --
- 8 A. I was the manager or project manager on assembling the Bachelor's Walk site.
- 9 Q. 43 Did project management on assembling the Bachelor's Walk site involve making
10:20:39 10 monthly payments to Mr. Lawlor?
- 11 A. Mr. Lawlor persuaded Arlington that they had to have him on board and because
12 of -- he was very persuasive so they took him on as a consultant.
- 13 Q. 44 If you deeply objected to it why were you paying the money by cheques out of
14 your own account?
- 10:21:02 15 A. Because I paid out for a lot of the sites as well from my own account.
- 16 Q. 45 Why did you deeply object to the payments to Liam Lawlor?
- 17 A. Because I was rightly or wrongly, I was appointed by Arlington to, on their
18 behalf, to negotiate all of the sites as well as to negotiate with the
19 government on various things.
- 10:21:24 20 Q. 46 Did you did you consider the payment to Mr. Lawlor objectionable?
- 21 A. I did indeed.
- 22 Q. 47 Why?
- 23 A. Because of the ways he gate crashed the meeting and demanded the money on
24 behalf of the government, he demanded a 20 per cent stake in it.
- 10:21:40 25 Q. 48 Did you think it was an improper demand?
- 26 A. I did.
- 27 Q. 49 Did you think the payments of three and a half thousand a month were improper
28 payments?
- 29 A. I did.
- 10:21:48 30 Q. 50 I think 10 payments were paid altogether totalling some 35 thousand pounds, is

10:21:54 1 that correct?

2 A. That's correct.

3 Q. 51 And I think all but one or two came from your account?

4 A. That's correct. As did quite a lot of the money from the fir -- for the

10:22:06 5 assembly of the sites.

6 Q. 52 I think the last cheque that you would have paid Mr. Lawlor would have been in

7 around March or April 1989, is that correct?

8 A. That's correct.

9 Q. 53 Now, to return again to the payment of 50,000 pounds, to review where we are, I

10:22:24 10 suggest to you, you paid money you say to Fianna Fail, the sum being 50

11 thousand pounds?

12 A. That's correct.

13 Q. 54 And that was a party that at the time you regarded as corrupt, you so told Mary

14 Harney?

10:22:39 15 A. That's correct.

16 Q. 55 And even before --

17 A. Sorry, I have to qualify that. I didn't think all the party was corrupt, there

18 is decent people in Fianna Fail, so I did not, and I was a dyed in the wool

19 Fianna Fail from birth, from my father.

10:23:02 20 Q. 56 How many payments had you made by way of political contribution or otherwise to

21 Fianna Fail before the figure of 50,000 pounds?

22 A. I never gave them anything before that because the occasion never arose, I

23 wasn't here.

24 Q. 57 I asked you --

10:23:17 25 A. I was 50 years or 40 odd years in England.

26 Q. 58 I put to you last Friday that you had no political affiliation to Fianna Fail

27 and you agreed, now you come back and say you were dyed in the wool Fianna Fail

28 yet you never gave --

29 A. My family were, I never voted for anybody in Ireland in my life, my father was.

10:23:35 30 Q. 59 At the time when you met Mary Harney, as far as you were concerned Liam Lawlor

- 10:23:40 1 had demanded a share in the Bachelor's Walk development on behalf of the
2 government?
- 3 A. That's correct.
- 4 Q. 60 Did you regard that as corrupt?
- 10:23:48 5 A. I did.
- 6 Q. 61 And had you --
- 7 A. I told them on the night that he was a hustler.
- 8 Q. 62 And demanded a payment then of three and a half thousand a month?
- 9 A. What he negotiated I wasn't present for that negotiation, because we left the
10:24:05 10 meeting, myself and Mr. Dudley went to a hotel and I wasn't present for what
11 arrangement he came to with Arlington.
- 12 Q. 63 But you knew about the payments?
- 13 A. Mr. Lawlor advised me that he had been taken on as a consultant.
- 14 Q. 64 Did you regard that as corrupt?
- 10:24:21 15 A. I regarded Mr. Lawlor as a hustler and how he managed to persuade Arlington
16 that they needed him as a consultant I don't know, because --
- 17 Q. 65 But at the time of your discussions with Mary Harney you knew all about that?
- 18 A. That's correct.
- 19 Q. 66 Yes. And your comment to Mary Harney was made even before you had received the
10:24:49 20 demand for five million pounds in Dail Eireann according to your own evidence?
- 21 A. That's correct.
- 22 Q. 67 Yes. So after you received that demand in the environs of a meeting at which
23 cabinet members were present, you must have regarded the party as even more
24 corrupt?
- 10:25:06 25 A. Yes, I did.
- 26 Q. 68 And you paid the money then to Fianna Fail you say by handing a cheque to
27 Pdraig Flynn at a point where you also say Mr. O'Callaghan told you that he
28 had arranged for the then Taoiseach, Mr. Haughey, to re-route the Lee Tunnel to
29 suit a private development of his?
- 10:25:30 30 A. That's what Mr. O'Callaghan told me.

- 10:25:32 1 Q. 69 And you knew that according to your own evidence at the point of time when you
2 paid the 50,000 pounds?
3 A. That's correct, Mr. O'Callaghan was enlightening me on how business was done
4 here.
- 10:25:42 5 Q. 70 According to yourself you were also informed or had been informed at that time
6 by Mr. O'Callaghan, that he had paid a substantial sum of money to Mr. Bertie
7 Ahern in relation to the Quarryvale site?
8 A. Not at that time, no.
- 9 Q. 71 When were you told that?
10:25:58 10 A. No, are you referring to the first meeting I had with Mr. O'Callaghan?
- 11 Q. 72 No, I am referring June of 1989 at the point in time where you paid the money
12 to Fianna Fail you say by handing a cheque to Padraig Flynn?
13 A. Not in June, it was much later than that.
- 14 Q. 73 O.k. So can we clarify this now, your sworn evidence is that the statement to
10:26:20 15 you by Mr. O'Callaghan about a payment to Bertie Ahern was not in June of 1989
16 or before that, it was much after that?
17 A. It was not in June, it was after that.
- 18 Q. 74 O.k. But it was after a point in time you told us on Friday last, that
19 Mr. O'Callaghan had told you that a company used by Fianna Fail for fundraising
10:26:46 20 was a money laundering operation, Taca?
21 A. Taca.
- 22 Q. 75 Yes. You told us that last Friday?
23 A. That's correct.
- 24 Q. 76 Yes.
10:26:56 25 A. I don't think I used money laundering operation, but the questions were being
26 asked as to what was happening to the money because Fianna Fail were seriously
27 in debt.
- 28 Q. 77 You did, Mr. Gilmartin so can we clarify that, are you saying that
29 Mr. O'Callaghan said or did not say now that it was a money laundering
10:27:16 30 operation?

10:27:16 1 A. Well, if that's what I said that's the, that's the impression he gave me.

2 Q. 78 I'm not talking about an impression, did he say that?

3 A. I think so, yes.

4 Q. 79 You think so?

10:27:28 5 A. Yeah.

6 Q. 80 And with all of that knowledge, armed with all of that knowledge about Taca,
7 about the Lee Tunnel, about the demands in relation to Arlington, about your
8 own views as expressed to Mary Harney, you nevertheless gave the cheque for
9 50,000 pounds to that party?

10:27:51 10 A. I gave the cheque to the party to get a level playing field.

11 Q. 81 Yes.

12 A. I had substantial monies at stake.

13 Q. 82 And you actually handed --

14 A. I was being thwarted.

10:28:02 15 Q. 83 You actually handed the cheque to the very Minister responsible for the
16 designation of your site?

17 A. The site never got designation, Mr. Sreenan.

18 Q. 84 If it had got designation as you had the absolute guarantee of this was the
19 Minister you told us who was responsible for it?

10:28:18 20 A. It didn't need designation.

21 Q. 85 Let's not try and divert ourselves from the answer to the question,
22 Mr. Gilmartin, you told us this was the Minister?

23 A. I'm giving you an honest answer, Mr. Sreenan. This site did not need and I
24 made that clear at the presentation of my, of the scheme in the Berkley Court.

10:28:39 25

26 CHAIRMAN: Mr. Gilmartin.

27 A. Publicly.

28

29 CHAIRMAN: Mr. Gilmartin, the question Mr. Sreenan is asking is, he is asking
10:28:45 30 you to confirm that the person you gave the cheque to for Fianna Fail,

- 10:28:51 1 Mr. Flynn, was the Minister who could give you tax designation?
- 2 A. I don't think so, I think it was the Minister of Finance. I think that
- 3 decision was the Minister of Finance.
- 4 Q. 86 Why did you tell us last Friday it was the Minister for the Environment?
- 10:29:12 5 A. It's the Minister of Finance who, as I understand it, that has to give the go
- 6 ahead for any such designation.
- 7 Q. 87 Has somebody been talking to you about your evidence since you last testified
- 8 on Friday, Mr. Gilmartin?
- 9 A. Not about that particular --
- 10:29:27 10 Q. 88 Answer the question, please. Has somebody been talking to you about your
- 11 evidence since you last testified on Friday?
- 12 A. No.
- 13 Q. 89 Well, why did you say --
- 14 A. Sorry, I have discussed it with my son. I discussed the various things with my
- 10:29:42 15 son.
- 16 Q. 90 Did you discuss who is responsible for designation?
- 17 A. He wouldn't have known anything about that.
- 18 Q. 91 Did you discuss who was responsible for designation?
- 19 A. No, I did not.
- 10:29:52 20 Q. 92 Why did you tell us last Friday that Mr. Flynn was the Minister responsible for
- 21 the designation in respect of Quarryvale?
- 22 A. They were your words, Mr. Sreenan, you said I gave a cheque to the Minister who
- 23 was responsible for designation, that's, that was your line of questioning
- 24 wasn't it, Mr. Sreenan?
- 10:30:12 25 Q. 93 We can go back on the transcript and establish it in due course, but you
- 26 indicated last Friday that Mr. Flynn was the Minister responsible for
- 27 designation?
- 28 A. You said he was the Minister responsible.
- 29 Q. 94 And you agreed?
- 10:30:22 30 A. You said it, Mr. Sreenan. You accused me of giving a bribe to Mr. Flynn

- 10:30:27 1 because he was responsible for designation.
- 2 Q. 95 So you want to reverse out of that now, Mr. Gilmartin, is that it?
- 3 A. No, I am not reversing out of it, it's a matter of fact. The Minister of
- 4 Finance is the gentleman who gives -- the Minister of the Environment may
- 10:30:46 5 announce it, but it's the Minister of Finance who makes that decision.
- 6 Q. 96 Who was the Minister for Finance at the time?
- 7 A. I don't know -- it depends, it would have been Mr. Reynolds.
- 8 Q. 97 How many discussions did you have with Mr. Reynolds about the designation of
- 9 Quarryvale?
- 10:31:01 10 A. None whatsoever.
- 11 Q. 98 How many discussions did you have with Mr. Flynn about the designation of
- 12 Quarryvale?
- 13 A. A few.
- 14 Q. 99 This is the same Mr. Flynn?
- 10:31:09 15 A. I think I had about two.
- 16 Q. 100 This is the same Mr. Flynn that Mr. Kay told us in his memorandum that we
- 17 looked at on Friday, 4206, that you were expecting a call from Mr. Flynn to
- 18 travel to the west to discuss the position with him?
- 19 A. I never travelled to the west, there was no such arrangement, ever.
- 10:31:30 20 Q. 101 That position being the position in relation to designation?
- 21 A. There was no such arrangement ever.
- 22 Q. 102 And you didn't tell Allied Irish Banks that the Minister for Finance would be
- 23 ringing them to confirm that designation would be granted, you told them that
- 24 Minister Flynn, the Minister for the Environment?
- 10:31:48 25 A. I didn't need to tell AIB anything, they more contact as they told me, they had
- 26 far better contact than I could ever hope to have, that was a statement made to
- 27 me by Mr. Donagh.
- 28 Q. 103 And the government official that you identified to the Tribunal last Friday as
- 29 having asked you for money so that could you get justice was Mr. Flynn?
- 10:32:11 30 A. No.

- 10:32:12 1 Q. 104 Who was it?
- 2 A. If I had to give a donation to give it to the party, so I gave a donation to
- 3 the party, to the treasurer of the party.
- 4 Q. 105 Do you remember being asked about your evidence last Friday where you referred
- 10:32:28 5 to a government official having asked you for money and you identified the
- 6 government official as Minister Flynn?
- 7 A. Yes, as did Mr. Haughey, as did Mr. Ahern and others, and Mr. Sherwin who was
- 8 the chief organiser for Fianna Fail.
- 9 Q. 106 Why did you say no a moment ago when I put that to you?
- 10:32:46 10 A. I said no about what?
- 11 Q. 107 When I put it to you that you had identified Minister Flynn as the government
- 12 official who had asked you for money last Friday, you said no?
- 13 A. He had asked me for a donation.
- 14 Q. 108 He had asked you for a substantial donation to smooth the way, is that it?
- 10:33:02 15 A. No, I expected something to be done about what was going on.
- 16 Q. 109 Did he ask you for a substantial donation in order to smooth the way?
- 17 A. He asked me for a substantial donation, if I gave a substantial donation to the
- 18 party after the complaints were made, and incidentally it wasn't me who took
- 19 the case to the Fraud Squad, it was John Haughey, the then Taoiseach's brother
- 10:33:28 20 who felt that it was outrageous, what he seen happening with Lawlor, Redmond
- 21 and company.
- 22 Q. 110 Did he tell you that if you made a substantial donation that it would or might
- 23 help to curb the activities of people like Mr. Redmond or Mr. Lawlor?
- 24 A. No, he didn't. I don't think that Mr. Flynn said that. I said that.
- 10:33:51 25 Q. 111 Can we have document page 2178 please? This document, Mr. Gilmartin is a page
- 26 from your own statement of May 2001, paragraph 26 deals with your meeting with
- 27 Mr. Flynn. You said in that:
- 28
- 29 "I had another meeting with Mr. Flynn then Minister for the Environment in
- 10:34:32 30 early 1989. I believe the meeting took place in the afternoon of Friday 3

- 10:34:36 1 February 1989." Do you remember that meeting?
- 2 A. Well, at this remove I'm not quite sure.
- 3 Q. 112 O.k. Well, your memory fails you now for a meeting in 1989?
- 4 A. Well, it's in there so I assume it's correct.
- 10:35:01 5 Q. 113 You said "I believe the meeting took place in the afternoon of Friday 3rd
6 February 1989. I had outlined the difficulties which I had encountered with
7 the Quarryvale development". What were the difficulties that you had outlined
8 to Minister Flynn as of February 89 four months before you made the payment?
- 9 A. The interference with the, the interference with the complete project which I
10 discovered was being orchestrated by your client.
- 11 Q. 114 And what had you told --
- 12 A. Who had hired Mr. Lawlor and others to frustrate my, any attempt at me getting
13 that off the ground.
- 14 Q. 115 What had you told Minister Flynn at that meeting about the interference with
15 your project, had you told him that there was interference by Mr. Lawlor?
- 10:35:47 16 A. He was well aware of it because from February '89 Mr. Haughey had taken,
17 brought the case to Mr. Feeley and in turn it was passed onto the Fraud Squad.
- 18 Q. 116 I want to know what you had outlined by way of difficulties to Mr. Flynn?
- 19 A. Mr. Flynn was well aware --
- 10:36:10 20 Q. 117 At your '89 meeting?
- 21 A. Mr. Flynn was well aware of what my complaints were.
- 22 Q. 118 Yes, but what did you outline to him?
- 23 A. If I said anything it would be a repeat of what had been passed onto the Fraud
24 Squad.
- 10:36:21 25 Q. 119 Mr. Gilmartin, this is your own statement, it's only May 2001 that you made
26 this statement, you say your words were "I had outlined the difficulties which
27 I had encountered with the Quarryvale development". Now what had you outlined
28 to Mr. Flynn at that meeting or prior to that meeting?
- 29 A. The interference with the land, the interference with the negotiation for the
10:36:48 30 land, the and various other dirty strokes that was being pulled.

- 10:36:55 1 Q. 120 And had you identified to Minister Flynn who were the persons who were
2 interfering?
- 3 A. I'm quite confident that he was well aware because the, and they would have
4 repeated what was -- what was repeated to the Fraud Squad.
- 10:37:14 5 Q. 121 You would have repeated it to Minister Flynn?
- 6 A. Yeah.
- 7 Q. 122 So you --
- 8 A. But he already was aware of it because Mr. Feeley and Mr. Haughey had taken the
9 complaints to Mr. Flynn in the first place.
- 10:37:30 10 Q. 123 You go on to say "I referred to the demands for money which I had received."
11 A. That's correct.
- 12 Q. 124 Now what demands for money did you tell Minister Flynn about at that time?
- 13 A. Well, there was Mr. Hanrahan who wanted £100,000; 50,000 upfront, which your
14 client has verified here happened.
- 10:37:52 15 Q. 125 No, you are well aware, Mr. Gilmartin, my client has not verified that such a
16 thing happened. My client has verified that coming from the meeting you made
17 such a statement to him, which is a different matter. Now continue, please.
18 Who, what were the demands that you outlined to Mr. Flynn apart from
19 Mr. Hanrahan?
- 10:38:13 20 A. There was a number of demands made of me for money.
- 21 Q. 126 We know you say there were a number of demands I want to know which ones you
22 told Mr. Flynn about at this meeting.
- 23 A. I can't remember offhand, at this distance exactly, he was well aware from the
24 evidence that was given to him by Mr. Feeley.
- 10:38:35 25 Q. 127 So as of May 2001 you were able to say to the Tribunal that you had referred
26 Mr. Flynn to the demands for money which you had received, but you cannot now
27 at this stage remember which ones you told him about other than Mr. Hanrahan?
- 28 A. No, I can't remember at this distance exactly. But he was well aware because
29 he already had gone through the various complaints that was listed to
10:39:01 30 Mr. Haughey and Mr. Feeley.

- 10:39:02 1 Q. 128 And you said that you also referred to the trouble which Mr. Redmond had been
2 causing. What did you tell Mr. Flynn about the trouble Mr. Redmond had been
3 causing?
- 4 A. Interfering with meetings, interfering in the land deal, going to the press and
10:39:20 5 talking about cosy deals with the Dublin Corporation and in anyway he could
6 trying to upset any plans I had for that site.
- 7 Q. 129 O.k. You tell us in your statement that in response to you outlining the
8 difficulties that you incurred with the, that you encountered with the
9 Quarryvale development, referring Mr. Flynn to the demands for money that you
10:39:53 10 had received, telling him about the trouble that Mr. Redmond had been causing,
11 that Mr. Flynn had, in your very words are "Very little to say other than that
12 I should make a substantial donation as it might help to curb the activities of
13 Mr. Redmond and others."
- 14 A. Yeah.
- 10:40:14 15 Q. 130 Now you told us a moment ago that Mr. Flynn had not asked for the substantial
16 donation for the purposes of curbing?
- 17 A. No, I did not tell that you he had not asked for a substantial donation.
- 18 Q. 131 Of curbing the activities of Mr. Redmond and others. You told us a moment ago
19 Mr. Gilmartin and the Tribunal will be checking the transcript very carefully
10:40:34 20 before writing a report on every one of these issues that I am asking you
21 about, you told us just a moment ago that Mr. Flynn did not say to you that if
22 you made a substantial donation it might help to curb the activities of
23 Mr. Redmond and others. Now you say the opposite in your statement, which is
24 the truth, what you were telling the Tribunal in your statement or what you
10:40:56 25 told the Tribunal only five minutes ago?
- 26 A. What's in my statement is exactly what happened.
- 27 Q. 132 So the truth is what's said in the statement not what you said to the Tribunal
28 five minutes ago?
- 29 A. I was responding to a particular question by you because you were trying to
10:41:14 30 infer that I gave a bribe to Mr. Flynn.

- 10:41:16 1 Q. 133 Even responding to a particular question, Mr. Gilmartin, you are still obliged
2 to tell the truth on oath, you appreciate that, don't you?
3 A. Well, I wish everybody coming in here would do that.
- 4 Q. 134 Well, do you appreciate it, Mr. Gilmartin?
10:41:27 5 A. I wish --
- 6 Q. 135 Concern yourself about yourself please, you are the one in the witness box. Do
7 you appreciate that?
8 A. I appreciate I am on oath and I would not knowingly lie on oath, Mr. Sreenan.
- 9 Q. 136 And this very government Minister who in response to your complaints about
10:41:47 10 difficulties that you had encountered with the development, your references to
11 demands for monies that you had received, your references to the trouble that
12 Mr. Redmond had been causing you, this is the very Minister that you make the
13 request, or that you pay the sum of 50,000 pounds by way of cheque to?
14 A. I did not pay Mr. Flynn a single penny.
- 10:42:18 15 Q. 137 This is the very Minister that you hand the cheque to?
16 A. This is, I handed it to the treasurer of Fianna Fail.
- 17 Q. 138 And you handed it to the man who, in, on your own evidence asked for a
18 substantial donation as it might help to curb the activities of Mr. Redmond and
19 others, which was the precise matter that you were complaining about?
10:42:39 20 A. Yeah.
- 21 Q. 139 And wasn't that a bribe?
22 A. No. Well, I made the comment that I had to pay for justice.
- 23 Q. 140 Yes, isn't that a bribe?
24 A. What?
- 10:42:50 25 Q. 141 You are bribing someone to give you justice, that's your own words?
26 A. No, I gave the party a donation.
- 27 Q. 142 You are bribing the party to give you justice, is that it?
28 A. Well, you put your own terms on it.
- 29 Q. 143 No. I am putting it to you, do you agree or disagree?
10:43:07 30 A. I disagree with you, Mr. Sreenan, I gave the party a donation, which I was

10:43:12 1 advised was not illegal.

2 Q. 144 You handed that donation to the very person who asked you for a substantial

3 donation?

4 A. Mr. Ahern asked me as well. As well as Mr. Sherwin did, which he was here, he

10:43:27 5 gave the evidence and he also gave evidence to this Tribunal that when he asked

6 me for the donation I had advised him I had already given a donation to the

7 party, that was a couple of months after.

8 Q. 145 You know full well, Mr. Gilmartin, that Mr. Sherwin didn't ask for a donation

9 on the basis that it might help to curb the activities of Mr. Redmond and

10:43:55 10 others and it was after this payment?

11 A. I never said that. I never said that.

12 Q. 146 Why do you mention it in the same context?

13 A. Mr. Colm Scanlon came into my office one evening, he was aware that there was

14 something going on, he discussed it with me what was happening, so I made the

10:44:17 15 statement to him that if I could I would get out of here. He asked me not to

16 do that, because this scheme was too good for, for it to be at thwarted in this

17 way and he asked me if I would meet a friend of his.

18

19 He took me across to Mount Street into an office in Mount Street, and he

10:44:44 20 introduced me to Mr. Sheeran and he asked me to repeat to him what I had just

21 told him about what was going on. So I did tell Mr. Sherwin what was going on,

22 Mr. Sherwin's response to that was for, would I give the party a donation, they

23 were three and a half million until debt he says, and if I'd give the party a

24 donation.

10:45:14 25

26 I said I have already given a donation to the party. He asked me how much and

27 I said 50,000 pounds. He said we have no record of that. He said, "I don't

28 remember anything like that." He said, "who did you give it to?" I said, "I

29 gave it to Mr. Flynn" and he went out of the office, he came back some time

10:45:37 30 later and he announced that Mr -- that they had not got a donation and that

10:45:47 1 Mr. Flynn must have pocketed it.

2 Q. 147 Mr. Gilmartin, this I think is the fourth time that we have had this evidence

3 from you, my question was when you were being asked this specific question

4 about handing a cheque to a person who had asked for a substantial donation as

10:46:03 5 it might help to curb the activities of Mr. Redmond and others, why you

6 mentioned Mr. Sherwin in that context?

7 A. You just asked me the question, did I tell Mr. Sherwin about Mr. Redmond and

8 Mr. Lawlor and company.

9 Q. 148 No, Mr. Gilmartin.

10:46:18 10 A. Yes, you did, Mr. Sreenan.

11 Q. 149 Well, again --

12 A. Yes, you did, Mr. Sreenan.

13

14 CHAIRMAN: Just go back, this is important. My understanding was, I may be

10:46:26 15 wrong, was that you had asked Mr. Gilmartin in effect to explain the basis on

16 which he was asked by Mr. Sheeran for a donation, or Mr. Sherwin for a

17 donation. He explained how this Mr. Scanlon came to see him who then brought

18 him to Mr. Sherwin's office, it's gone off my screen now but Mr. Gilmartin

19 explained how he repeated his complaints or words to that effect to Mr. Sheeran

10:47:00 20 who then asked him for a donation.

21 Q. 150 Chairman, as the Tribunal are aware I don't have the facility of the live

22 transcript down here, it would certainly be helpful if it could be made

23 available in September.

24

10:47:10 25 CHAIRMAN: I only have it for a brief moment.

26

27 MR. SREENAN: Yes. I can only go by recollection, Chairman.

28

29 CHAIRMAN: That's my understanding as to the basis on which you asked

10:47:21 30 Mr. Gilmartin to explain what would have been said to, or by Mr. Sherwin at the

10:47:30 1 time he was asked by him for a donation.

2

3 MR. SREENAN: My recollection and it's purely recollection, Chairman, was that

4 I was asking Mr. Gilmartin why he mentioned Mr. Sherwin in the context of a

10:47:42 5 question that was asked in relation to a cheque that was handed to somebody who

6 on his own evidence had asked for a substantial donation as it might help to

7 curb the activities of Mr. Redmond and Mr. Lawlor. But there is not much point

8 I think in spending too much time over something like this without the live

9 transcript in front of us both to debate it, and it might be best just to move

10:48:05 10 on.

11

12 JUDGE FAHERTY: I think I went back a little bit, Mr. Sreenan. I don't know if

13 it helps you, I think it was Mr. Gilmartin who raised Mr. Sherwin and Mr. Ahern

14 in answer to your questions about Mr. Flynn.

10:48:18 15

16 MR. SREENAN: That's correct.

17

18 JUDGE FAHERTY: And I think one of the questions you put, I don't know if this

19 is of assistance to you you put it to Mr. Gilmartin "You know full well,

10:48:28 20 Mr. Gilmartin, that Mr. Sherwin didn't ask for a donation on the basis that it

21 might help to curb the activities of Mr. Redmond and the others and that it was

22 after this payment". Now I can't read just a couple of words are off the

23 screen.

24

10:48:44 25 MR. SREENAN: Yes, that's my recollection. My recollection was then, Judge,

26 that I followed it with a question as to why he had mentioned Mr. Sherwin as a

27 result in the context of a payment to somebody who had made a request for a

28 substantial donation linked as it was to Mr. Redmond's activities and

29 Mr. Lawlor's so --

10:49:03 30

10:49:03 1 JUDGE FAHERTY: You are correct, Mr. Sreenan. I can't raise the screen what
2 activity I had on it seems to have stalled, but that might be of assistance.
3
4 MR. SREENAN: That might be but perhaps it's best to move on.

10:49:16 5
6 And you made that payment as we established, Mr. Gilmartin, against advice from
7 Mr. McClune?
8 A. Yes. He said I gave them nothing.

9 Q. 151 And in a rush to pick up this spare cheque that you had to ring Mr. Sheeran
10 about?
11 A. That's correct.

12 Q. 152 And a rush it seems to ring up Mr. Rice of the department to arrange to meet
13 Mr. Flynn that night?
14 A. I was in no rush, well, I wasn't in a rush but I was in Dublin that day so I
15 decided to do it then.

10:49:48 16 Q. 153 And not because as you testified on Friday you already had a prearranged
17 appointment with Mr. Flynn?
18 A. I think I had a phone call but I am not quite sure, for an appointment with
19 Mr. Flynn.

10:50:00 20 Q. 154 Yes. And of course as we know you left the cheque blank?
21 A. No, I did not leave the cheque blank, I filled in the cheque and the only thing
22 left blank on the cheque, it was filled in and dated and the only thing left
23 blank on the cheque was I did not know to whom I made it payable.

24 Q. 155 Right.
10:50:20 25 A. And I asked Mr. Flynn and he said leave it, leave it.

26 Q. 156 O.k. you left the payee of the cheque blank?
27 A. That's correct.

28 Q. 157 Right. You obtained no receipt for it?
29 A. No, I handed it to the treasurer of the party.

10:50:37 30 Q. 158 You keep on referring Mr. Flynn as the treasurer of the party?

- 10:50:41 1 A. He was the treasurer of the party at the time I was told.
- 2 Q. 159 Is that because of convenience that it now makes the payment somewhat anodyne
3 if it's paid to the treasurer?
- 4 A. The payment went to the party.
- 10:50:55 5 Q. 160 Yes.
- 6 A. Of all the hundreds of thousands of pounds paid to the party by various people,
7 I don't see what the problem is.
- 8 Q. 161 And that was the same Minister whom you told us had sought money from
9 Arlington?
- 10:51:22 10 A. That's correct.
- 11 Q. 162 But Arlington didn't bite when he sought money?
- 12 A. Mr. Ahern and Mr. Flynn sought money from Arlington, both of them were at a
13 meeting somewhere in London, the Reform Club or somewhere, and both of them
14 were looking for money, for the party.
- 10:51:47 15 Q. 163 Were you in the habit of making out cheques and leaving the payee blank?
- 16 A. No, but I needed to know to whom I was making it payable.
- 17 Q. 164 Yes. Is it not the case that apart from the fortuitous existence of this
18 cheque that no record of the payment has been kept by you?
- 19 A. Well, I'm not quite sure because of the, the cheque that I had to collect, I
10:52:22 20 did not have my cheque book on me.
- 21 Q. 165 No. Apart from the cheque that you had to collect which was then filled out?
- 22 A. The record would be in the bank records and I am quite sure the Tribunal have
23 that.
- 24 Q. 166 Yeah, but that's the cheque, unless you are referring a line which simply
10:52:39 25 debits the sum of 50,000 pounds to your account, which doesn't explain what the
26 payment is for at all, but apart from the cheque there would be no record of
27 the payment of this sum in these circumstances?
- 28 A. I kept the record.
- 29 Q. 167 What was the record?
- 10:52:53 30 A. Well, you seen in Mr. Smyth's statement where there was a mistake made by him

10:53:01 1 or somebody, there was 150,000 pounds which I paid to St. Patrick's Trust was
2 mistakenly put down as a public donation, as a political donation, it should
3 have been the other way around, the 50,000 was the political donation.

4 Q. 168 But this was a sum that you claimed much later when you were leaving Barkhill
10:53:24 5 without any explanation for the sum other than political donations?

6 A. That's correct.

7 Q. 169 And you sought and received 150,000 pounds under that heading, although you
8 tell us it was a mistake?

9 A. A bank official knew I was paying a political donation.

10:53:38 10 Q. 170 Yes.

11 A. A member of the Dublin Corporation knew I was paying a political donation.

12 Q. 171 Yes.

13 A. Mr. Sherwin knew I had given a political donation.

14 Q. 172 Yes.

10:53:53 15 A. And you can twist it how you like, Mr. Sreenan, I gave a political donation.

16 Q. 173 Yes.

17 A. And as a matter of fact, well, no, I'll leave that for the moment.

18 Q. 174 No, go ahead, I'm not going to interrupt your answers.

19 A. No, no, it's o.k. Mr. Sreenan, carry on.

10:54:11 20 Q. 175 What were you going say?
21
22 CHAIRMAN: He doesn't have to say, it's probably just as well.

23 Q. 176 Well, you were well used I must suggest to you to making out blank cheques for
24 payments that you regarded as inappropriate and corrupt?

10:54:24 25 A. Where?

26 Q. 177 Let's look at document 15766, this is a telephone conversation that you had
27 with Mr. Hanratty on the 17th April 1998, it was your fourth telephone
28 conversation with Counsel for the Tribunal. And if we go to the second page of
29 that, page 15767, the second last paragraph you say "In the cheques which were
10:55:01 30 given to Liam Lawlor the payee was left blank and he filled in the payee

10:55:07 1 himself". How do you explain that?

2 A. He asked for that.

3 Q. 178 Sorry?

4 A. He asked for that. He actually demanded it of my bank manager because I gave

10:55:18 5 my bank manager the authority, since Arlington had asked me to pay him his

6 salary or his wage, which they had hired him as a consultant.

7 Q. 179 You explained to us these are your cheques from your cheque book, you handed

8 over some of them to Mr. Lawlor yourself?

9 A. I did.

10:55:38 10 Q. 180 You signed the cheques?

11 A. I did.

12 Q. 181 You knew the payee was blank?

13 A. I did.

14 Q. 182 Why did you do that?

10:55:43 15 A. Because Mr. Lawlor wanted it that way.

16 Q. 183 Why did he want it that way?

17 A. I don't know.

18 Q. 184 But if somebody asks you leave the payee blank are you going to do it?

19 A. Mr. Lawlor asked and it was going to Mr. Lawlor and it was Arlington's problem,

10:55:59 20 not mine.

21 Q. 185 So you washed your hands of it a bit like Judas?

22 A. If that's how you want to put it, I didn't want anything to do with it quite

23 frankly.

24 Q. 186 You didn't want anything to do it?

10:56:12 25 A. I was hired and being paid.

26 Q. 187 You didn't want to do anything -- anything to do with it?

27 A. I was being paid by Arlington to do a job for them and I done that job.

28 Q. 188 According to your own evidence you didn't want anything to do with it because

29 you told us you regarded the payments as wrong, inappropriate, corrupt?

10:56:30 30 A. Well, that was my belief.

- 10:56:33 1 Q. 189 And you participated in it?
- 2 A. Mr. Lawlor was not a consultant as I seen it and as a matter of fact was
- 3 absolutely no benefit whatsoever.
- 4 Q. 190 And you participated in it?
- 10:56:47 5 A. I was ordered to do so, because I was at that time being paid handsomely by
- 6 Arlington to do a job for them.
- 7 Q. 191 So because you were being paid handsomely you were prepared to do something
- 8 that you regarded as wrong?
- 9 A. I done what I was ordered to do.
- 10:57:05 10 Q. 192 But is it because you were being paid handsomely that you did it?
- 11 A. I done what I was ordered to do, it was against my wishes but they felt that,
- 12 they felt that it was better to have him on board than not, he convinced them
- 13 that it would be better for them to have him on board.
- 14 Q. 193 And is it because --
- 10:57:30 15 A. Which was a mistake by them.
- 16 Q. 194 Is it because you were going make a handsome profit out of Quarryvale, a huge
- 17 bonus or as you said yourself, "I have an awful lot at stake here," that you
- 18 paid the 50,000 to, as you say Fianna Fail by way of cheque handed to Pdraig
- 19 Flynn?
- 10:57:45 20 A. Yeah, all I wanted was a level playing field. I wanted fair play, which I
- 21 didn't get.
- 22 Q. 195 And is it pure coincidence that the payments that we have been able to identify
- 23 that appear to be corrupt on your evidence, the ones you made to Mr. Lawlor and
- 24 the one that you made to Fianna Fail by way of cheque handed to Pdraig Flynn,
- 10:58:10 25 that all of them have the payees blank?
- 26 A. I was asked to leave it, I was not advised by Mr. Flynn to whom I made it
- 27 payable, so he said leave it, so I left it.
- 28 Q. 196 Well, you gave us a story about why you left the payee blank in the cheque that
- 29 you handed to Mr. Flynn, that you didn't know the name of a company that was
- 10:58:31 30 fund raising to Fianna Fail, that's a matter for the Tribunal to decide whether

10:58:35 1 they believe that or not. But you certainly knew who Mr. Liam Lawlor was, you
2 had no difficulty in identifying who was to be the recipient of that money,
3 isn't that so?

4 A. I was working under orders from Arlington Securities and they themselves have
10:58:50 5 confirmed that to this Tribunal.

6 Q. 197 But you had no difficulty in identifying who the recipient was for the cheques
7 for three and a half thousand pounds?

8 A. I had no difficulty at all, Mr. Lawlor was larger than life, nobody could --

9 Q. 198 So why did you participate in this charade of handing over blank cheques and
10:59:13 10 leaving the payee blank?

11 A. No, I didn't hand over blank cheques. They were fully filled in bar, it's only
12 where he ordered me to leave the payee blank.

13 Q. 199 But why did you think the payee was being left blank?

14 A. Well, since Arlington employed him I didn't care whose name went on, who the
10:59:29 15 payee was, I just didn't care.

16 Q. 200 Why did you think he was asking you to leave the payee blank?

17 A. I don't know. I knew he was, he had some scheme up his sleeve or some reason
18 for it, so I left it.

19 Q. 201 And you willingly participated in that scheme by leaving the payee blank?

10:59:50 20 A. I participated in the scheme because I was ordered to do so.

21 Q. 202 And it was only months after you had been paying these cheques to Liam Lawlor
22 that you handed over the next cheque with the payee blank to Mr. Flynn?

23 A. Well, whenever.

24 Q. 203 It wasn't your modus operandi, Mr. Gilmartin, to leave the payee blank in
11:00:14 25 respect of a payment that you regarded as improper?

26 A. To whom are you talking about now, Mr. Sreenan?

27 Q. 204 I am speaking specifically about Mr. Lawlor's cheques and Mr. Flynn's cheque?

28 A. Mr. Flynn's was a donation to the party, which everybody knew I gave. When I
29 say everybody knew, I did not try to hide anything because it was above board
11:00:46 30 and just because it was above board I had no problem whatsoever with it.

- 11:00:50 1 Q. 205 Well, this very substantial donation that you handed over, if it was above
2 board, the very least you'd expect is an acknowledgement, isn't that correct?
3 A. Well, I'm not quite sure how the party acknowledges, you know.
- 4 Q. 206 Why did you think it would be acknowledged by way of designation?
11:01:12 5 A. Pardon?
6 Q. 207 Did you think it would be acknowledged by way of designation?
7 A. No, I didn't think any such thing. I gave the party a donation, I was not
8 paying for designation, I was not paying, I never paid for a favour in my life
9 to anybody and I paid for that. I paid dearly.
- 11:01:32 10 Q. 208 Did you, did it occur to you that the very least you might expect is a simple
11 receipt on Fianna Fail headed paper for the sum that you had handed over?
12 A. At the time I couldn't care less whether I got a receipt or I didn't, if I had
13 to pay the party a donation it didn't matter to me whether I got a receipt once
14 I had to pay it.
- 11:02:03 15 Q. 209 We now know that you many years later, reclaimed that sum from Barkhill when it
16 came to your exit from Barkhill, did you intend at the time you made the
17 payment to reimburse yourself out of the assets of Barkhill for that payment?
18 A. I tried to make certain that I got my money back.
- 19 Q. 210 At the time --
11:02:31 20 A. The cost to me, all the costs connected with Barkhill.
- 21 Q. 211 At the time when you made that payment June 1989, by handing that cheque over
22 to Mr. Flynn, did you intend to get the money back from Barkhill?
23 A. I intended that any cost connected with Barkhill, that I would be reimbursed.
- 24 Q. 212 Why wasn't it paid from a Barkhill account or by way of a Barkhill cheque?
11:02:59 25 A. Because it was part of the calculation when I exited Barkhill.
- 26 Q. 213 No, that wasn't the question, Mr. Gilmartin, at the time when it was paid, if
27 it was supposed to be something that Barkhill were ultimately the payer for,
28 why not provide a Barkhill cheque or pay it out of the Barkhill account?
29 A. I assumed that it was paid by Barkhill.
- 11:03:21 30 Q. 214 Well, then why did you seek to reclaim it?

- 11:03:24 1 A. Because I paid it out, it was part of the costs, it was part of my costs in
2 assembling the Westpark site.
- 3 Q. 215 But if it had been paid by Barkhill you would be claiming for it on the double
4 by looking for it when you exited Barkhill?
- 11:03:42 5 A. No, I never looked for anything on the double, Mr. Sreenan, I don't think that
6 I can be accused of that.
- 7 Q. 216 You said, Mr. Gilmartin, that you believed the 50,000 pounds had been paid by
8 Barkhill and I am putting it to you that if that was true you would be getting
9 paid on the double by looking for it again when you exited Barkhill?
- 11:04:03 10 A. Barkhill did not exist until February 1990, I don't know when it was
11 registered, but it only came into play when I drew the money down from AIB on
12 the 19th February.
- 13 Q. 217 And why then did you not credit it?
- 14 A. 1990. So any costs on the Quarryvale site up to that came out of my pocket.
- 11:04:34 15 Q. 218 Well then, did you credit it to your director's loan at that stage with
16 Barkhill?
- 17 A. I assume that's what happened.
- 18 Q. 219 And is that why it was claimed then as a separate amount when you exited?
- 19 A. Sorry?
- 11:04:47 20 Q. 220 Is that why it was claimed as a separate amount when you exited, I'm putting
21 clearly it wasn't in your director's loan if it had to be claimed as a separate
22 amount?
- 23 A. It was added in as part of the costs.
- 24 Q. 221 Well, all the more reason then why you would need some class of a receipt from
11:05:06 25 Fianna Fail for the payment in order to provide for the records of the company?
- 26 A. I didn't need any receipt, I had the money had been paid out by me, the money
27 had been paid out by me from my personal account so I didn't need a receipt and
28 it was paid by cheque.
- 29 Q. 222 Is it the case that you didn't get a receipt because you never expected a
11:05:32 30 receipt and it was understood you never would be getting a receipt?

- 11:05:35 1 A. No, it wasn't understood, I did not know how Fianna Fail dealt with it.
- 2 Q. 223 But your payment was on the basis that you believed that by paying that money
- 3 the games would stop?
- 4 A. Well, I was hoping, since so many demands for money, illicit demands for money
- 11:06:08 5 from me that if I gave a donation to the party, that there may be somebody in
- 6 there who would see to it that the people who was using their name and abusing
- 7 the party, the government of this country, and the office of government of this
- 8 country, I assumed that there was some honourable people in there and that
- 9 perhaps I might get justice.
- 11:06:44 10 Q. 224 Yes.
- 11 A. Which I didn't.
- 12 Q. 225 And who did you get that impression from that if you you paid the money the
- 13 games would stop?
- 14 A. A number of people said it to me, if you have to give a donation, give it to
- 11:06:59 15 the party.
- 16 Q. 226 Who said it to you?
- 17 A. I think either, I'm not quite sure, Mr. Maguire might have said it to me, Mr.
- 18 Sheeran might have said it to me.
- 19 Q. 227 And who said it to you that the games would stop if you paid the money?
- 11:07:16 20 A. Well, you just brought up that meeting with Mr. Flynn where I made complaints
- 21 about what was happening, so he said, well, if I gave a donation to the party.
- 22 Q. 228 You had three meetings with Mr. Flynn that we know about in 1989 that we know
- 23 about prior to making this particular payment to him, isn't that so?
- 24 A. That's correct.
- 11:07:41 25 Q. 229 Your first meeting I think was on the 3rd February 1989, we saw reference to
- 26 that?
- 27 A. Yeah.
- 28 Q. 230 You had a meeting on the 19th April 1989, and another meeting on the 23rd May
- 29 1989?
- 11:07:51 30 A. Yeah, by that time I had four meetings with the current Taoiseach, Mr. Ahern.

- 11:07:55 1 Q. 231 And you had complained extensively to Mr. Flynn about the difficulties that you
2 believed you were encountering?
3 A. I also complained to Mr. Ahern.
4 Q. 232 Yes. But Mr. Flynn was the person to whom you handed the cheque not Mr. Ahern?
11:08:09 5 A. No, Mr. Ahern was the man who, as I seen it at the time, sent somebody in to
6 try and help me, as I seen it at the time. So I had four meetings with Mr.
7 Ahern, he was well aware of the games that was going on, as well as Mr. Flynn
8 and others.
9 Q. 233 And according to your own evidence, Mr. Ahern sent Mr. Joe Burke along to you
11:08:34 10 and Mr. Burke subsequently asked or hinted for and we'll come to that later, a
11 sum of 500,000 pounds?
12 A. That's correct. And as a matter of fact, Mr. Sreenan, I stated to Mr. Burke on
13 that occasion I'd pay 500,000 if I could get my money back and get out of this
14 corrupt place.
11:08:56 15 Q. 234 Yes. And what did you mean by that, that you would pay 500,000?
16 A. If I could extract my money and get out.
17 Q. 235 Pay 500,000 to whom?
18 A. To anybody.
19 Q. 236 Well, Mr. Burke on your evidence was making the demand on Mr, on behalf of Mr.
11:09:11 20 Ahern?
21 A. Yeah.
22 Q. 237 Are you saying that you would have paid 500,000 pounds?
23 A. I don't know who he was making the demands on, it was Mr. Burke who was talking
24 around the 500,000 pounds.
11:09:21 25 Q. 238 O.k. Let's assume for the moment that Mr. Burke is looking for 500,000 pounds
26 on behalf of some politician, X, is it your evidence that you would have paid
27 that 500,000 pounds then if you could have extracted your investment from the
28 country?
29 A. That's correct.
11:09:38 30 Q. 239 Yes.

- 11:09:39 1 A. I'd be quite happy leaving.
- 2 Q. 240 So in other words you would have paid --
- 3 A. Quite happy if I got my money back, got away from the corrupt, which was mostly
- 4 engineered by your client incidentally.
- 11:09:54 5 Q. 241 And in return for that 500,000 pounds you would have expected somebody to get
- 6 the release of your money from the country?
- 7 A. That's correct.
- 8 Q. 242 Yes. So you would have willingly paid a bribe of 500,000 pounds to politician
- 9 X to get your money out of the country?
- 11:10:09 10 A. I'd be quite happy at the time if I could get, extract myself from this country
- 11 and from the corruption, to pay 500,000 to the party or who ever, to get my
- 12 money back.
- 13 Q. 243 And that was before you made this payment of 50,000 pounds?
- 14 A. Whatever.
- 11:10:32 15 Q. 244 Your visit with Mr. Burke was before you paid the 50, 000 pounds to Mr. Flynn,
- 16 isn't that correct?
- 17 A. My visit with Mr. Burke, Mr. Burke's visit actually was 1990 where the money
- 18 was discussed.
- 19 Q. 245 Was it not 1989 when the money was discussed?
- 11:10:52 20 A. No, I think it was 1990.
- 21 Q. 246 O.k. We'll come back to that and explore it in more detail.
- 22 A. There was three meetings, there was a bit of confusion as to which meeting took
- 23 place when. There was three meetings took place around June, May/June of '89.
- 24 And there was one final meeting where Mr. Burke arrived in my office which was
- 11:11:16 25 the autumn of 1990.
- 26 Q. 247 But if it was in fact in May 1989 that this happened?
- 27 A. No, it did not happen May '89, it happened in 1990.
- 28 Q. 248 But if it was May 1989 that was your state of mind at the time you paid the
- 29 50,000 pounds?
- 11:11:34 30 A. I it did not happen then. It happened in 1990, the autumn of 1990, so it did

- 11:11:44 1 not happen, it happened after I gave a donation to Fianna Fail.
- 2 Q. 249 And May 1989, sorry, February 1989 would have been the time that according to
- 3 you, the request was made by Mr. Flynn for the substantial donation?
- 4 A. I don't remember exactly, but if the -- I don't exactly remember the date but
- 11:12:13 5 it was '89 some time.
- 6 Q. 250 In your statement to the Tribunal at paragraph 20, which is document 2175
- 7 perhaps, paragraph 20, sorry, 2174. You talk about your negotiations there
- 8 with Mr. McClune and you go on then in paragraph 21 to refer to the meeting in
- 9 Dail Eireann, isn't that correct?
- 11:13:28 10 A. Yeah.
- 11 Q. 251 And then if we go on to paragraph 30 of your statement which is on page 2180,
- 12 and this is where you deal with the payment in your statement, you say:
- 13 "Although I had submitted an increased and I believe inflated tender price to
- 14 acquire the Irishtown lands in order to complete my acquisition of lands for
- 11:14:00 15 the Quarryvale development, I was still concerned that Mr. Redmond or
- 16 Mr. Lawlor or both of them, would take some further action to prevent my tender
- 17 being accepted. I decided that I would try to arrange another meeting with
- 18 Mr. Flynn to see whether anything could be done about Mr. Redmond and
- 19 Mr. Lawlor.
- 11:14:17 20
- 21 A meeting with Mr. Flynn was arranged through his private secretary, Gerry
- 22 Rice. The meeting took place in early June 1989. I believe it was Friday 2nd
- 23 June 1989 at 7 pm in the evening in Mr. Flynn's office in the Customs House."
- 24 You then go on to describe the handing to Mr. Flynn of the cheque for 50,000
- 11:14:40 25 pounds.
- 26
- 27 You make no reference in your statement to the fact that this is a cheque that
- 28 you obtained from another branch, as a result of a request to Mr. Sheeran?
- 29 A. I did not have me, on the day I did not have my briefcase with me so I did not
- 11:14:59 30 have my cheque book.

- 11:15:00 1 Q. 252 But you explicitly say --
- 2 A. Incidentally that 7th, that's referred to 7th June there was the 7th, was the
- 3 12th May, that 7 pm meeting took place in the Dail and not in the Customs
- 4 House.
- 11:15:16 5 Q. 253 That was when, what date?
- 6 A. It took place I think it was on the 12th May.
- 7 Q. 254 So your statement is incorrect in this respect?
- 8 A. The date is, the date would seem to be incorrect in that because that 7 pm
- 9 meeting took place in the Dail.
- 11:15:35 10 Q. 255 Well, you are referring here to --
- 11 A. In the Dail and I think it was the 12th May.
- 12 Q. 256 Well, you are referring here to a meeting in Customs House on the 2nd June
- 13 1989?
- 14 A. Well, that's possibly the one that I paid the cheque to Fianna Fail.
- 11:15:55 15 Q. 257 It is the meeting at which you handed over the cheque, that's what I am asking
- 16 about, Mr. Gilmartin. Are you saying that that meeting didn't happen at 7 pm,
- 17 that that's a mistake in your statement?
- 18 A. The meeting at 7 pm took place, that was on May at 7 pm, it was in the evening,
- 19 I'm not quite sure of the time.
- 11:16:14 20 Q. 258 So that's a mistake in your statement that hasn't been corrected by A & L
- 21 Goodbody when they wrote in with various corrections on the 2nd March 2004?
- 22 A. The meeting that took place, took place in June in the Customs House, in the
- 23 Customs House, that meeting of the 7th, at 7 pm took place in the Dail and I
- 24 think it was in May, around the middle of May.
- 11:16:40 25 Q. 259 Right. Could you have met Mr. Flynn in the Dail?
- 26 A. I met Mr --
- 27 Q. 260 When you handed the cheque over?
- 28 A. No, I met him in the Customs House.
- 29 Q. 261 Because in that paragraph in describing the context for your meeting with
- 11:16:54 30 Mr. Flynn and your handing over of the cheque you said that you were still

- 11:16:58 1 concerned that Mr. Redmond or Mr. Lawlor or both of them would take some
2 further action to prevent your tender being accepted and that you decided to
3 try to arrange a meeting with Mr. Flynn to see whether anything could be done
4 about Mr. Redmond and Mr. Lawlor?
- 11:17:16 5 A. That's correct, but he already had, he had a Garda report.
- 6 Q. 262 Yes. Well, if he already had the Garda report, why the need for you now go
7 along and see him when you met him three times already in 1989?
- 8 A. I also went to Mr. Ahern with the same complaints.
- 9 Q. 263 But why --
- 11:17:33 10 A. I also went to Mr. Ahern with the same complaints.
- 11 Q. 264 Why the need to see Mr. Flynn now in this very context that you are talking
12 about to see whether anything could be done about Mr. Redmond and Mr. Lawlor
13 given the fact that prior to the 2nd June you said he had the Garda reports and
14 you had already complained to him prior to the 2nd of June about what was
11:17:52 15 happening?
- 16 A. I expected that Ministers in the government, if somebody is elected TD to
17 represent he is a member of the Dail, a deputy of Dail Eireann, I would expect
18 that the government or the powers that be would have some control over the
19 activities of the people acting in their name.
- 11:18:20 20 Q. 265 This being Mr. Redmond and Mr. Lawlor you are referring to?
- 21 A. I am talking of Mr. Lawlor and not only that, to extend it a little bit
22 further, Fianna Fail members of the County Council who was bringing the party's
23 name into disrepute. And I would expect any honourable Minister elected by the
24 people of this country to make sure such people didn't get away with the kind
11:18:49 25 of activity that was going on.
- 26 Q. 266 Well, that's fine if you say you would have expected them to do that, on the
27 3rd February 1989 as we saw you gave your complaints to Mr. Flynn and
28 presumably you would have expected --
- 29 A. No, I did not give my complaints to Mr. Flynn, it was Mr. Haughey and
11:19:07 30 Mr. Feeley took the complaints to Mr. Flynn.

- 11:19:09 1 Q. 267 We don't need to go back over this, Mr. Gilmartin, we have already dealt with
2 your evidence relating to your meeting of the 3rd February 1989 and the fact
3 that you had complained on that occasion to Mr. Flynn about what was going on
4 specifically Mr. Redmond and Mr. Lawlor?
- 11:19:27 5 A. Yes, I complained to Mr. Flynn and a number of others.
- 6 Q. 268 You dealt with that in paragraph 26 of your statement?
- 7 A. Yeah.
- 8 Q. 269 Page 2178, we have been through it in detail?
- 9 A. Yes.
- 11:19:38 10 Q. 270 Now having given your complaints to Mr. Flynn in February of 1989 if what you
11 say is correct, you would have expected him to act on them, there was no need
12 for you on the 2nd June 1989 to go back to Mr. Flynn in this very context of
13 your concern to see if something could be done in relation to Mr. Redmond and
14 Mr. Lawlor?
- 11:20:07 15 A. Well, nothing was done, was there, Mr. Sreenan?
- 16 Q. 271 Sorry?
- 17 A. I had every right to go back to the Ministers and as I did in May 1990 and June
18 to Mr. Ahern.
- 19 Q. 272 Yes. Isn't it the case that having given your complaints to Mr. Flynn,
11:20:26 20 Mr. Flynn having been well aware of your complaints since at least June 1989,
21 Mr. Flynn according to yourself having asked for a substantial donation to
22 smooth the way, you then decided in a rush on the 2nd June 1989 to hand over
23 this very large sum of money by way of cheque to Mr. Flynn?
- 24 A. To the Fianna Fail Party.
- 11:20:51 25 Q. 273 Because according to your own evidence "I have to do something because I have
26 an awful lot at stake here", that's what you told us on day 460 at question
27 183.
- 28 A. Yes, I had a lot at stake.
- 29 Q. 274 And the something that you had to do was to hand over this cheque for 50,000
11:21:16 30 pounds?

- 11:21:17 1 A. To the party.
- 2 Q. 275 And when you were asked for a substantial donation what did you understand
3 substantial to mean?
- 4 A. Well, since most of the demands were over 100,000 made of me by various people,
11:21:31 5 I didn't know what to make up of that so I was trying to think, so I said to
6 myself, well, if I give them 20 grand they probably would think it derisory so
7 I gave 50,000, I decided give 50,000.
- 8 Q. 276 And the figure was directly linked in your mind to demands that you regarded as
9 being corrupt?
- 11:22:02 10 A. Correct.
- 11 Q. 277 Of course if you didn't get your hands on those Corporation lands your
12 investment would have been a failure?
- 13 A. That's correct, but then I could have sold off the rest of the site and gone
14 away home for myself.
- 11:22:21 15 Q. 278 So getting your hands on those Corporation lands --
- 16 A. Incidentally, Mr. Sreenan I was invited by Dublin Corporation to do something
17 on those lands, they brought me out there. They had meetings with me in Dublin
18 Corporation more or less begging me to see if I could do anything for the
19 western towns, it was they who invited me to do it. I had pretty substantial
11:22:48 20 connections with major investors in England, investors in England.
- 21 Q. 279 None of whom you could line up to produce a penny in the absence of
22 designation, isn't that so?
- 23 A. Incidentally, Mr. Sreenan, the records will show that I funded, it was me and
24 my team who funded Mr. Owen O'Callaghan and brought in Grosvenor Estates.
- 11:23:21 25 Q. 280 You are talking about many many years later now and it's not true as you well
26 know, Mr. Gilmartin --
- 27 A. It is true.
- 28 Q. 281 We'll get to that in due course.
- 29 A. No, it is true, Mr. Sreenan.
- 11:23:29 30 Q. 282 We are talking here about '88/'89?

- 11:23:33 1 A. We brought in, we funded the scheme for your, for your client who ran away with
2 all the millions.
- 3 Q. 283 Not true, not true, Mr. Gilmartin.
- 4 A. Who bribed - who bribed, set up false companies, hired Frank Dunlop, hired Liam
11:23:50 5 Lawlor to make certain that I didn't get off the ground and paid out hundreds
6 of thousands of pounds taken out of my company incidentally, to fund, to pay
7 these people to thwart me. And despite all that you talk about begrudgery
8 Mr. Sreenan that I begrudge this and that, that's nonsense Mr. Sreenan, because
9 I went to the trouble of getting my team to get that funded for Mr. Owen
11:24:21 10 O'Callaghan and the bank on the request of the bank, and I defy you to tell me
11 that that is a lie.
- 12 Q. 284 You see, Mr. Gilmartin, we will see in due course that you were, and are,
13 deluded about the Corporation getting down on their knees effectively and
14 begging you to carry out a development in the western towns. You are deluded
11:24:43 15 about bringing in Grosvenor, you can't produce any witness from Grosvenor to
16 say that you brought them in?
- 17 A. I brought in Marks and Spencers, my team brought in Marks and Spencers, my team
18 brought in Grosvenor, they brought in Hammerson before that, LET and various
19 other people who were prepared to invest until they were interfered with. And
11:25:07 20 Mr. Lawlor was paid to make certain, to interfere with the investors who I had
21 lined up.
- 22 Q. 285 Mr. Gilmartin, you well know --
- 23 A. And they were paid by your client and the best it all was he was able to use
24 Barkhill's money to pay Mr. Lawlor and Mr. Dunlop to make certain I didn't get
11:25:26 25 out of ground, Mr. Sreenan.
- 26 Q. 286 You well know Marks and Spencers was a tenant, my question to you was in
27 relation to financial investors coming into to invest in Barkhill, none of
28 those, none of the people you contacted in '88/'89/'90/'91 put up a penny,
29 isn't that so?
- 11:25:44 30 A. I put up the money.

- 11:25:45 1 Q. 287 None of your investors put up a penny in '88/'89/'90/'91?
- 2 A. Because, when I set about, after I was requested by the Corporation and
- 3 encouraged by Mr. Lenihan, Mr. Ahern, Mr. Flynn and various other members, and
- 4 including Mr. Haughey, to make certain that I brought in this investment.
- 11:26:11 5 Q. 288 And as we have seen, Mr. Gilmartin, your efforts throughout those years to get
- 6 in financial investment for this project in the absence of designation
- 7 descended to the depths of having to contact people that you regarded as scam
- 8 artists in order to raise money, and still you were unsuccessful?
- 9 A. No, no, they were introduced to me. Incidentally the scam artists was
- 11:26:33 10 introduced to me by Mr. Sean Sherwin the chief organiser of Fianna Fail. He
- 11 introduced me to Mr. McMullen and arranged a meeting in the Conrad Hotel, at
- 12 which he introduced to me and told me that he was involved with Mr. Reynolds in
- 13 the Goodman, in the Goodman set up.
- 14
- 11:26:55 15 I don't know what the setup was, etc. etc, the gentleman showed me various
- 16 letter heads of major American financial institutions, including Merrill Lynch
- 17 so I was convinced that, because he was introduced by who he was introduced to
- 18 me that he had to be authentic.
- 19 Q. 289 Of course --
- 11:27:16 20 A. So it was just another, another investor along with the ones who told me if I
- 21 set up the scheme they would fund it, but they didn't want to have problems
- 22 with planning and zoning.
- 23 Q. 290 Of course you needed Mr. Flynn not just for designation, not just to sort out
- 24 Mr. Lawlor and Mr. Redmond, but you also needed him in order to provide access
- 11:27:41 25 to roads in respect of your development, isn't that correct?
- 26 A. You are trying to give a miss - a sort of comprehension here of the whole set
- 27 up, Mr. Sreenan. The site, the location of the site as I told you before, the
- 28 quality of the tenants, the quality of the investment that makes the value of
- 29 the site, not designation. Designation is a bonus to those occupying the site.
- 11:28:14 30 Q. 291 Not access it doesn't matter?

- 11:28:16 1 A. There was actually no benefit to me because it would, any benefit would be to
2 the investor investing in it, or to the tenants who were occupying the site
3 would have some tax benefits in it, but it had no bearing whatsoever on the
4 value or the quality of the site. The quality of any investment is the quality
11:28:43 5 of the tenants and if you fund it out to an institution it's the covenant that
6 matters, Mr. Sreenan, and you well know that.
- 7 Q. 292 Are you telling the Tribunal that it doesn't matter whether you have no access
8 or inadequate access to a site from the roads?
- 9 A. Sorry?
- 11:29:00 10 Q. 293 Are you telling the Tribunal --
- 11 A. What are you on about now?
- 12 Q. 294 Are you telling the Tribunal that it doesn't matter if you have no access or
13 inadequate access to the site from the roads or vice versa?
- 14 A. Where did that come into it, Mr. Sreenan?
- 11:29:18 15
- 16 JUDGE FAHERTY: Mr. Gilmartin, Mr. Sreenan put it to you a few moments ago if I
17 recollect his question, I think I am paraphrasing, that you just didn't need
18 Mr. Flynn in relation to designation, but also in relation to roads, that he
19 was the Minister who could deliver, I think that was the thrust of your
11:29:30 20 question.
- 21
- 22 MR. SREENAN: Yes, Judge. It was, Judge.
- 23 A. But sure there was access to the sites.
- 24 Q. 295 But I am putting to you --
- 11:29:37 25 A. There was access from Irishtown Road, there was access from Fonthill Road, so
26 what - Mr. Flynn is probably the Minister who sanctions whatever the roads, if
27 he was the Minister of the, for the Environment, but that had nothing to do
28 with me, that's the rules of the country.
- 29 Q. 296 But, Mr. Gilmartin, you would have been well aware of the fact that you needed
11:30:04 30 approval from Mr. Flynn in order to get access to roads?

- 11:30:07 1 A. I would have been made aware of what the, what the setup was, certainly,
2 because we had meetings with the roads engineers.
- 3 Q. 297 Yes. And in fact --
- 4 A. We had meetings in the council offices with the road engineers and we done a
11:30:26 5 traffic impact study as well.
- 6 Q. 298 In fact if we have page 15921, you see what you told your solicitor, Noel Smyth
7 about this, down at the end of that page you told him, "Because I was told I
8 had to have some form of access or approval from Flynn if I was going to gain
9 access off any of the new roads", the previous answer was, "We had arranged
11:31:01 10 meeting because we were sorting out the roads and the access to the site and
11 all the rest of it, and I had some agreement from Flynn because I was told I
12 had to have some form of approval from Flynn if I was going gain access off any
13 of the new roads."
- 14 A. From the M50.
- 11:31:19 15 Q. 299 Yes. But this is your state of mind at the time, you knew Mr. Flynn controlled
16 not only designation but also the question of access which was important to
17 you?
- 18 A. Well, if that's the, if that's the order in which things are done, I would have
19 been advised by Mr. Ciaran O'Malley and also by the roads engineers, the final
11:31:46 20 approval is down to the Minister for the Environment.
- 21 Q. 300 What did you understand the relationship between Liam Lawlor and Pdraig Flynn
22 to be?
- 23 A. I didn't know.
- 24 Q. 301 Did you regard them as being particularly close?
- 11:32:13 25 A. I regarded Mr. Lawlor was very close to Mr. Haughey.
- 26 Q. 302 Did you --
- 27 A. And actually Mr. Haughey, his final words to me at the meeting in the Dail was
28 "Is Liam taking care of you?"
- 29 Q. 303 And did you regard him as being particularly close to Mr. Lawlor?
- 11:32:36 30 A. Who? Mr. Flynn?

- 11:32:38 1 Q. 304 Sorry Mr. - yes, did you understand Mr. Flynn to be particularly close to
2 Mr. Lawlor?
3 A. They were all Fianna Fail Party members, so I didn't think of it, who was close
4 to who, that didn't cross my mind.
- 11:32:54 5 Q. 305 Did you hand over the cheque to Mr. Flynn because you thought he was
6 particularly close to Liam Lawlor and you wanted the activities of Liam Lawlor
7 stopped?
8 A. No, I did not.
- 9 Q. 306 Can I have document 15901 --
11:33:08 10 A. In any normal - in any normal civilized country I would expect the government
11 to make sure that people like this don't get away with this kind of activity.
12 Q. 307 Look at document 15901, and we'll see what you told your solicitor, Noel Smyth
13 about this, down at line 23 he asked you "Did Lawlor at that stage indicate who
14 he was looking for the 50 per cent shareholding for?" And this is in the
11:33:40 15 context of Arlington, your answer "He claimed the government. He was speaking
16 on behalf of the government. And at that time he was like that with Charlie.
17 Question: Yeah. Answer: And Flynn and company."
18
19 Now, Liam Lawlor was like that with Flynn and company. Is that what you -
11:33:59 20 that's what you told Noel Smyth, your solicitor?
21 A. That's what I thought at the time, Flynn, Lawlor, Ahern, Burke.
22 Q. 308 Why did you try to dodge that now when I asked you that question?
23 A. I didn't dodge it at all, I didn't know - I didn't quite, I knew he was quite
24 close to Mr. Haughey.
- 11:34:16 25 Q. 309 Yeah but you knew --
26 A. And I assumed he was, he would have been quite close to the others, the other
27 Ministers.
28 Q. 310 Yeah. But you specifically mentioned Flynn and company?
29 A. Yeah.
- 11:34:28 30 Q. 311 And when you wanted the activities of Mr. Lawlor stopped in June 1989 it's to

- 11:34:35 1 the same Mr. Flynn you went?
- 2 A. No, it was taken first by Mr. Feeley to Mr. Flynn and by Mr. John Haughey.
- 3 Q. 312 Yes.
- 4 A. And when he was asked, when Redmond made the comment to him "Ask your brother
- 11:34:53 5 what's going on" he said "I'm not my effing brother's keeper". That was
- 6 Mr. Haughey's statement and he said "I am 'going to see that these activities
- 7 stop". And it was Mr. John Haughey who went and took the thing to Mr. Feeley
- 8 and in turn took it to Mr. Flynn, so I assumed Mr. Flynn was the contact from
- 9 that, that he was the contact who had authority to sort out these people.
- 11:35:21 10 Q. 313 Yeah. And in February of, or in June of 1989 when you wanted the activities of
- 11 Mr. Lawlor stopped and you were saying to Mr. Feeley that you have to do
- 12 something because you have an awful lot at stake here, it was to the same
- 13 Mr. Flynn you went whom you regarded as like that with Mr. Lawlor?
- 14 A. That's correct, I expected Mr. Flynn, I was told was the gentleman who
- 11:35:48 15 Mr. Haughey and Mr. Feeley and company took the complaints to and who in turn
- 16 took it to the Fraud Squad, at the time.
- 17 Q. 314 Did you have any views as to which politicians could or could not be trusted at
- 18 that time?
- 19 A. Actually, believe it or not, I felt Mr. Ahern was the only one I could trust.
- 11:36:10 20 Q. 315 So why didn't you give the donation to Mr. Ahern?
- 21 A. Because I didn't meet Mr. Ahern on the day.
- 22 Q. 316 No, but you rang up Mr. Flynn?
- 23 A. And Mr. Flynn was the treasurer of the party at the time as I understand it.
- 24 Q. 317 But you rang up Mr. Flynn, why not ring up Mr. Ahern and see if he'd be
- 11:36:30 25 available to meet you and could hand the cheque to him?
- 26 A. I rung Mr. Flynn.
- 27 Q. 318 A politician that you thought you couldn't trust?
- 28 A. No, I didn't say anything like that. I did not say at that time that I didn't
- 29 trust Mr. Flynn nor I didn't trust any other politician, I actually trusted
- 11:36:50 30 Mr. Lenihan, I assumed they were above board, they were Ministers.

- 11:36:57 1 Q. 319 You just told us that the only Minister that you thought you could trust or the
2 only politician you thought you could trust was Mr. Ahern?
3 A. That's correct. Actually he was the only Minister that, when I rung to see if
4 he'd sort out the interference in the scheme he sent Mr. Burke in.
- 11:37:20 5 Q. 320 Yes. So if you --
6 A. So from that point of view, at that time I had reason to believe that he was
7 acting on what the complaints I was making.
- 8 Q. 321 So given the fact that you believe that Mr. Ahern was trust worthy, that he had
9 acted on the complaints you made, when you went to Mr. Burke and that was only
10 a short time previously, or when you went to Mr. Ahern and he sent Mr. Burke
11 that was only a short time previously, why not go back to Mr. Ahern to hand him
12 the cheque for the Fianna Fail Party or post it to Mr. Ahern for the Fianna
13 Fail party?
14 A. I was in Dublin on the day, there was some arrangement or phone call that had
15 been made, so I gave it to Mr. Flynn, he was the treasurer of the party.
- 11:38:06 16 Q. 322 But that doesn't answer the question why didn't you contact or post it to Mr.
17 Ahern?
18 A. Because on the day I met Mr. Flynn and I gave it to him, I gave it to the
19 treasurer of the party, a donation to the party.
- 11:38:28 20 Q. 323 Yes. Again you gave it to somebody who was responsible for designation, who
21 controlled access to the roads?
22 A. I didn't get designation, Mr. Sreenan. What favour did I get?
- 23 Q. 324 Who was like that with Liam Lawlor?
24 A. What favour did I get?
- 11:38:42 25 Q. 325 Who was like that with Liam Lawlor. What favour did you want when you paid the
26 money? You talk about smoothing?
27 A. What favour did I get, Mr. Sreenan?
- 28 Q. 326 The question, Mr. Gilmartin --
29 A. You tell me what favour I got for giving Fianna Fail a 50,000 donation, I will
11:38:57 30 tell you the favour I got, I got myself bankrupt. I got myself destroyed

11:39:03 1 because your client had far more clout than me. He was paying 100,000 here and
2 80 thousand there and 30,000 and 40 thousand to various members of the Fianna
3 Fail party so what chance did I have of getting any favour, Mr. Sreenan. None
4 whatsoever.

11:39:27 5
6 CHAIRMAN: Mr. Gilmartin, Mr. Sreenan was asking you, in your own mind what did
7 you hope would happen when you paid the 50,000?

8 A. I hoped that I'd get a level playing field, that I would get some kind of
9 decency. So you can go on until hell freezes over, Mr. Sreenan, trying to
11:39:49 10 associate me with bribery and corruption but you will not and -- because I did
11 not bribe anybody at all, at any time, and I categorically refused and it cost
12 me, boy did it cost me.

13 Q. 327 What --

14 A. Your client was a far better hand at it than I could ever hope to be.

11:40:11 15 Q. 328 Yes. But you are the man who just told us a moment ago you'd have happily paid
16 politician X 500,000 pounds at that time?

17 A. If I could get the hell out of Dublin, I'd be happy going up the road.

18 Q. 329 Yes. What favour --

19 A. I'd laugh all the way to the bank.

11:40:28 20 Q. 330 What favour did you expect to get when you talked about smoothing the way, what
21 did that mean for you in practice?

22 A. Pardon?

23 Q. 331 What did it mean --

24

11:40:43 25 JUDGE FAHERTY: Level playing field.

26 Q. 332 Sorry, what did you mean by that in practice to give you a level playing field,
27 what did you expect them to do for it?

28 A. I was invited to set the scheme up, I went about doing that at a particularly
29 substantial cost to me. I was invited by Dublin Corporation and I was
11:41:00 30 encouraged by several Ministers, including the current Taoiseach, Mr. Lenihan,

11:41:07 1 Mr. Flynn, Mr. Haughey, for to carry on. I went to extreme trouble to set it
2 up, as a matter of fact I, it was me that asked for the multi fibre agreement
3 to be removed because it was a major impediment to bringing in retailers, a
4 major impediment.

11:41:37 5
6 So in the previous thing to do with Arlington, Mr. Kirwan, their then
7 solicitors and all that gave evidence there to that effect. I put extreme
8 effort into bringing investment to Ireland, and the three western towns. Now,
9 I picked Quarryvale to do that, I worked at my expense to put it together, so I
11:42:09 10 went, to run up against corrupt politicians who all they wanted was money for
11 themselves before anything would be allowed to get off the ground. So that's
12 the level playing field I wanted, was to make certain that there was some
13 honesty and straightness in this little country of ours.

14 Q. 333 Well, specifically you wanted Mr. Lawlor dealt with?

11:42:37 15 A. Mr. Sreenan, Mr. Dunlop was the Press Secretary for Fianna Fail, he was hired
16 and paid to run a ring of corruption of which Mr. Lawlor was only one, an
17 absolute ring of corruption, who was involved with your client, paid for by
18 your client, to make certain that my scheme was thwarted so that he could step
19 in as the saviour, the cuckoo, he done it in Limerick, he done it in Athlone,
11:43:20 20 he done it to me.

21 Q. 334 Mr. Gilmartin, I will make another attempt to frame a question that you might
22 be able to answer?

23 A. I am able to answer every question you throw at me, Mr. Sreenan, no problem.

24 Q. 335 When you paid the cheque in the hope of getting a level playing field, did you
11:43:39 25 specifically want something done in relation to Mr. Lawlor's activities?

26 A. The least I expected was the government of this country to control their
27 members and not be soldiers of fortune instead of soldiers of destiny.

28 Q. 336 What did you mean by control?

29 A. To control what was going on.

11:43:59 30 Q. 337 How was Mr. Flynn supposed to control what was going on?

- 11:44:04 1 A. Well, there is laws in the country, I hope.
- 2 Q. 338 As you well know there are and there was a Garda investigation that you refused
- 3 to cooperate with, now why were you going to Mr. Flynn?
- 4 A. When I was cooperating with the guards I was told to F off back to England and
- 11:44:21 5 not to be coming over here making my allegations, but I didn't make the
- 6 allegations, it was Mr. John Haughey that went to the guards in the first
- 7 place. Mr. John Haughey who went to Mr. Feeley and in turn to Mr. Flynn and
- 8 eventually it wound up with the guards, and who told me not Mr. Sreenan, but a
- 9 gentleman called Byrnes rung me to tell me, and he was able to repeat
- 11:44:46 10 everything I had discussed with Mr. Sreenan and told me to F off back to
- 11 England.
- 12 Q. 339 And are you seriously claiming to this Tribunal that a man who claims to have
- 13 stood up to the IRA in England was so lily-livered that when he gets one call
- 14 from somebody who claims to be someone called Byrnes that he runs away from
- 11:45:04 15 cooperating with the forces of law and order in the State?
- 16 A. I didn't think there was any point. Because if, what I discovered in Ireland
- 17 was if it's, in my opinion it was totally corrupt, it extended to the Garda as
- 18 well from that conversations so it was pointless, as I said, it would be like
- 19 going to law with the devil in the court in hell.
- 11:45:28 20 Q. 340 Chairman, I am moving on to another page if that might be a convenient time.
- 21
- 22 CHAIRMAN: Well, we'll adjourn until 12 o'clock.
- 23
- 24 **THE TRIBUNAL ADJOURNED FOR A SHORT BREAK**
- 11:45:46 25 **AND RESUMED AGAIN AS FOLLOWS:**
- 26
- 27 MR. SREENAN: Can I have document 15912, please? This is another page from
- 28 your statement given to Noel Smyth, Mr. Gilmartin, and at line 19 you say that
- 29 "Flynn and Bertie Ahern arrived over demanding - over in London - I hope I'm
- 12:11:42 30 not interrupting, no, no. Answer: they arrived over in London looking for

12:11:48 1 money. Question: who arrived over? Answer: Flynn and Bertie Ahern and on the
2 grounds they were fundraising for Fianna Fail. Question: right. Answer: And
3 they were demanding money off Arlington."
4

12:12:05 5 Now in that statement, Mr. Gilmartin, I just ask you to note this is the second
6 time that you have used the term demanding in relation to Mr. Flynn and Mr.
7 Ahern on their visit to London. You say "And they were demanding money off
8 Arlington and they invited Ted Dudley and Raymond Mold and her to - here
9 somewhere, the inn in the park or somewhere, and they got the wrong end of the
10 stick, Arlington, or they pretended they got the wrong end of the stick.

11 Dudley got up on the stage and made some statements that there was people there
12 about how they were so happy to be involved in Dublin etc. etc. and the fine
13 job the government were doing and all the rest it, but they didn't volunteer
14 any money.

12:12:43 15
16 And Flynn was put out about that. Now Flynn arranged to meet me later that
17 evening and I turned up for a meeting that was arranged, and I can't for the
18 life of me remember the name of the rooms, but I went in there. Flynn was
19 definitely there because I had seen him, but I had to wait for over an hour and
12:13:01 20 a half and I eventually met him at 10 o'clock at which he suggested having
21 something to eat. And Flynn talked to me. He was kind of - seemed to be put
22 out about something. And he talked in sort of reels, he didn't - there was
23 nothing specific, you know, nothing specific at all.
24

12:13:17 25 But he kept - and then I began to get the message, you know, that there was
26 money involved, that they wanted money and if these were to get off the ground
27 etc. etc. it was important that certain things were taken care of, so I didn't
28 bite at all. So I walked out of that meeting. I walked out of that. I did
29 have a meal with him, and I left the thing and I began to realise the extent of
12:13:45 30 what was going on. And the Question: so stopping there, did that meeting with

12:13:48 1 Flynn take place before or after the famous meeting in the Dail where the --"
2 and the answer was "Oh, it was after."
3
4 Now the meeting in the Dail I think was the 1st February 1989, isn't that so?

12:14:02 5 A. That's correct.
6 Q. 341 And you are talking about your meeting here in London with Mr. Flynn and
7 Arlington as being after February of 1989?
8 A. That's correct.
9 Q. 342 But presumably it was before June of 1989 when you handed the cheque to
10 Mr. Flynn?
11 A. I never handed a cheque to Mr. Flynn. I gave a donation to Fianna Fail.
12 Q. 343 Well, you handed the cheque to Mr. Flynn, whose benefit it was intended for is
13 another matter?
14 A. I handed a cheque to the treasurer of the party for the party.

12:14:33 15 Q. 344 Whose name was Mr. Flynn?
16 A. His name was Mr. Flynn.
17 Q. 345 Now, did you do that after you had this meeting in London that you are telling
18 your solicitor about here?
19 A. Well, I'm not quite sure of the dates that have particular meeting in London,
12:14:52 20 but it took place, I think it was in the Reform Club, I'm not sure, somewhere
21 in, near Park Lane or in that area somewhere.
22 Q. 346 You described it in your statement there as the inn in the park or somewhere?
23 A. Being in the --
24 Q. 347 The inn in the park or somewhere?
12:15:11 25 A. Somewhere in that area yeah, I wasn't quite sure.
26 Q. 348 Now, you needn't worry about the date, I'm just asking you in relation to your
27 meeting with Mr. Flynn at which the cheque for 50,000 pounds was handed over,
28 was your meeting in London before or after that meeting with Mr. Flynn?
29 A. The cheque was in June, I don't know when this meeting took place, I can't
12:15:39 30 remember exactly when that, they were fundraising in London.

- 12:15:44 1 Q. 349 But presumably if it related to Arlington it must have been before June?
- 2 A. Well, it must have been. I'm not one hundred percent sure exactly the date of
- 3 that meeting in London.
- 4 Q. 350 Well, I'm not asking you to be one hundred percent sure of the date, I'm just
- 12:16:02 5 asking you did the meeting take place before June of 1989?
- 6 A. I cannot answer accurately that question for the simple reason I don't remember
- 7 what date the meeting in London took place.
- 8 Q. 351 Well, it stands to reason that it must have taken place before June of 1989?
- 9 A. I'm not quite sure if it took place after June 1989.
- 12:16:29 10 Q. 352 But anyway you describe Mr. Flynn as having been talking --
- 11 A. On reflection I think it took place after June of 1989.
- 12 Q. 353 And this was a meeting at which you regarded Mr. Flynn as having been over in
- 13 London demanding money from Arlington?
- 14 A. Well, they were requesting money, is that not a demand? They were looking for
- 12:16:56 15 money.
- 16 Q. 354 Yes --
- 17 A. No, from various people, not just Arlington.
- 18 Q. 355 Do you want to backtrack on the words used in your statement, you twice used
- 19 the words demanding money, which implies that there was something improper
- 12:17:11 20 about it?
- 21 A. What is asking for money, Mr. Sreenan?
- 22 Q. 356 Do you want to change the word demand?
- 23 A. Is that not a demand for money if you're asked for money, is it not a demand
- 24 for money?
- 12:17:19 25 Q. 357 Do you want to change the word demanding?
- 26 A. To me asking for money and demanding money is exactly the same thing.
- 27 Q. 358 And you say that then that night at 10 o'clock when you met with Minister Flynn
- 28 that he talked to you and was talking about something and eventually you were
- 29 getting the message that money was involved, that they wanted money, isn't that
- 12:17:47 30 so?

- 12:17:47 1 A. That's correct.
- 2 Q. 359 And not only did they want money, but they wanted money if these things were to
3 get off the ground, isn't that right?
- 4 A. That was the indication.
- 12:18:01 5 Q. 360 Yeah. So in other words it was a demand or a request, whatever word you use,
6 for a naked bribe. They were looking for money if the Arlington development
7 was to get off the ground, that was your understanding of matters?
- 8 A. That was my understanding of it, yes.
- 9 Q. 361 And all of this of course was reminiscent of your description of Joe Burke's
10 visit to your office where you also told the Tribunal that he was there talking
11 about round and round in circles and eventually you got the message that again
12 there was money involved, is that pure coincidence?
- 13 A. No, not coincidence, fact.
- 14 Q. 362 Did this ever happen?
- 12:18:47 15 A. Yes, it did happen.
- 16 Q. 363 You say you didn't bite?
- 17 A. That's correct. I believed I had already given the party a donation,
18 substantial donation, as you said, so.
- 19 Q. 364 But you realised the extent of what was going on, what did you mean by that?
- 12:19:19 20 A. Well, the extent of the, what was expected of anyone investing in Ireland.
- 21 Q. 365 So in other words, there are two possibilities, either that meeting took place
22 before or after your payment of 50,000 pounds. If it took place before your
23 payment of 50,000 pounds which I suggest to you is the more likely, you paid
24 over the 50,000 pounds after a demand for money of Arlington that you were a
12:19:56 25 witness to, and at a time when you realised the extent of what was going on?
- 26 A. I am reasonably sure and I think if it's checked out, that that meeting in
27 London took place after June, I am, I'm reasonably sure because that was on, it
28 was on my mind at the time that I had already given a donation.
- 29
- 12:20:23 30 MR. QUINN: Sorry Mr. Gilmartin, I think this has been the subject of evidence

12:20:26 1 in Quarryvale 1, and I think the evidence is that the meeting took place on the
2 23rd November 1989, if that's assistance.

3

4

CHAIRMAN: Whose evidence was that?

12:20:37 5

6

MR. QUINN: Mr. Ahern, Mr. Pdraig Flynn and I think maybe Mr. Dadley or

7

Mr. Mold gave evidence in relation to it.

8

9

MR. SREENAN: I'm grateful to My Friend.

12:20:47 10

11

Mr. Gilmartin, if that is correct if the meeting took place in November '89 I

12 suggest to you that it's even more serious from your point of view, because

13 when you use the terms "I began to realise the extent of what was going on",

14 included in that must have been your own payment of 50,000 pounds as a result

12:21:03 15

of a demand for a substantial donation?

16 A. Well, I'm certain that that would have been on my mind, every place you turned

17 somebody was looking for money. They weren't concerned about bringing

18 investment into Ireland or giving employment to people, they were only

19 concerned what was in it for them first.

12:21:30 20

Q. 366 Mr. Sheeran, as you described him, was a good friend of yours and he knew your
21 business?

22 A. Well he knew, I had discussed everything I was doing with him, because he was a

23 good friend and is a good friend of mine.

24 Q. 367 Yes. And he has given evidence already here at the Tribunal, you are aware of
12:21:54 25 that?

26 A. Yeah.

27 Q. 368 And I suggest to you that you told him about this payment before you made it?

28 A. That's correct, I did tell him what I wanted the cheque for.

29 Q. 369 And you told him what you paid it for?

12:22:17 30

A. Pardon?

- 12:22:18 1 Q. 370 You told him what you paid it for?
- 2 A. I probably told him that please God I might get the party or the government
- 3 might do something about sorting out what was going on.
- 4 Q. 371 It's a bit more specific than that. Can I refer you to day 483 of the evidence
- 12:22:40 5 at page 4? Question 15 was as follows. Paragraph 2 of your statement of the
- 6 supplemental statement of the 10th of the 2nd 2004, you say that in respect of
- 7 the payment of 50,000 pounds to Mr. Padraig Flynn "I was made aware of this
- 8 payment to Fianna Fail, it was made known to me almost immediately the cheque
- 9 was issued. In whatever way it had been made clear to Mr. Gilmartin that a
- 12:23:11 10 donation to Fianna Fail Party funds could possibly smooth your path re tax
- 11 incentives and zoning etc."
- 12
- 13 May I have page 2401 please? "And this is a cheque that was drawn on
- 14 Mr. Gilmartin's account in Blanchardstown, Answer: yes."
- 12:23:31 15
- 16 We are still reading from the transcript from day 483. Now, there Mr. Sheeran
- 17 is describing the purpose of the payment as being possibly to smooth your path
- 18 in relation to tax incentives and zoning etc. Now, isn't that what we have
- 19 been speaking about all along? Your need for designation, tax incentives?
- 12:23:51 20 A. No. The zoning of Quarryvale was supposed to take place under the review of
- 21 the Dublin plan back in 1988, starting in 1988 and the three western towns were
- 22 No. 1 priority.
- 23 Q. 372 And it hadn't take --
- 24 A. And it hadn't taken place. And incidentally your client had hired Liam Lawlor,
- 12:24:16 25 Dunlop and company to make sure it didn't take place.
- 26 Q. 373 And that's the point, isn't it?
- 27 A. That is the point.
- 28 Q. 374 That you had expected rezoning to take place much earlier and it hadn't taken
- 29 place and now you are having, getting difficulty getting in financial investors
- 12:24:32 30 as a result?

12:24:33 1 A. I - the financial investors didn't want involvement in planning and zoning and
2 that kind of thing. They put the money on the table and told me if I put the
3 scheme together they would fund it but they didn't want planning and zoning, so
4 actually the, to bring in the major investors this is what I set about. Put
12:24:59 5 the scheme together at substantial cost to me, put the brochures together, had
6 various meetings in London and elsewhere with various major investors and
7 managed to persuade them. They thought it was a joke first, to invest in
8 Ireland, it was a joke to them, to have anything to do, Ireland was on rock
9 bottom at the time, queues down at the American Embassy etc, so they pointed
10 all this out to me.

11
12 But I managed to persuade them that because of that, and when Ireland joined
13 the Euro it would open up a different market altogether, because we had been
14 under the yoke of England in terms of economic, until we got into Europe.

12:25:49 15 Q. 375 Stick to the truth, Mr. Gilmartin. None of the investors put their money on
16 the table, we have established that already, why do you say to the Tribunal
17 they put their money on the table?

18 A. They put their money on the table when the conditions were right, they were
19 quite happy to because they considered that site an absolutely excellent site.

12:26:09 20 Q. 376 You needed zoning before any financial investor would agree could to get
21 involved?

22 A. That's correct.

23 Q. 377 Your zoning was not coming on stream as fast as you intended?

24 A. That's correct.

12:26:20 25 Q. 378 You wanted tax designation?

26 A. No, I didn't want tax designation, I made that clear. Actually the whole
27 County Council, or most of them, were in the Berkley Court Hotel when I made
28 the presentation and I made that statement, not only to them, but also to
29 various Ministers that if a site needed designation it wasn't worth building
12:26:46 30 on.

- 12:26:46 1 Q. 379 You made it very clear to your friend Paul Sheeran didn't you, that the purpose
2 of the payment was to smooth your path in relation to --
- 3 A. No, that's his --
- 4 Q. 380 In relation to tax incentives and zoning?
- 12:26:57 5 A. That's his words.
- 6 Q. 381 Where would he get it except from you?
- 7 A. He knew what was going on, he was well aware and he knew of the demand for five
8 million in the Dail because I had told him at the time.
- 9 Q. 382 Exactly.
- 12:27:09 10 A. He knew of the demands, he knew what was happening to me.
- 11 Q. 383 Any information he had he got from you and the information that the purpose of
12 the payment was to possibly smooth your path re tax incentives and zoning was
13 information he got from you?
- 14 A. They are his words, not mine.
- 12:27:26 15 Q. 384 And they are two prizes that you badly needed at that stage, tax designation
16 and zoning, at the time that 50,000 was paid?
- 17 A. We did not need tax designation. It was actually irrelevant to the value of
18 that site and you know that, Mr. Sreenan.
- 19 Q. 385 And he was asked --
- 12:27:43 20 A. I assume that you have some experience of how things are funded, particularly
21 shopping centres.
- 22 Q. 386 What I'm interested in is your experience of why you paid 50,000 pounds in June
23 of 1989 at a time when you needed tax designation, zoning, access to roads,
24 Lawlor and Redmond off your back and the person who could deliver all of those
25 to you was Mr. Flynn?
- 12:28:09 26 A. I did not give Mr. Flynn a penny. I did not buy a favour from anybody, I gave
27 the party a donation and the least I expected that the government of this
28 country would not be totally corrupt and sort out the people who were playing
29 the games at the expense of people who were investigating in this country.
- 12:28:44 30 They to be paid first, they had no heed on the people that elected them. They

12:28:45 1 were referred to as mad dogs and bandits by the very people who they voted for
2 and elected in the hope that that person would help them and provide them with
3 a decent living.

4 Q. 387 Mr. Sheeran was asked at question 20 on page 5 "Can you tell the Tribunal what
12:29:06 5 Mr. Gilmartin said to you in the context of the payment of this cheque? Why it
6 was paid, to whom it was paid etc? Answer: well, Mr. Flynn was one of his
7 lines of communication with the government, I suppose. He was having an
8 enormous amount of difficulty, as is already outlined in demands for money from
9 various parties. He also felt he was being obstructed and I think he had been
10 led to believe that if he made a donation to Fianna Fail that the senior
11 government Ministers in Fianna Fail would be able to put these people, sort
12 them out, this would disappear, the obstacles that were appearing for him, the
13 demands for money that were being made."
14

12:29:54 15 So that was the favour you were getting as far as Mr. Sheeran was concerned,
16 isn't it, on the basis of what you told him?

17 A. He spelled it out there exactly. He spell it out there exactly.

18 Q. 388 But he didn't say that this is being paid to Mr. Flynn because of the fact that
19 he was treasurer of the Fianna Fail Party?

12:30:10 20 A. I never paid anything to Mr. Flynn for the millionth time, Mr. Sreenan, I gave
21 the party a donation.

22 Q. 389 Well, if we went back to question --

23 A. Which I told the chief organiser of the party just shortly after I paid it,
24 told Mr. Sheeran before I paid it, I told Mr. McClune before I paid that I was
12:30:32 25 giving the party a donation.

26 Q. 390 And --

27 A. In the vain hope that I might get a level playing field.

28 Q. 391 Mr. Sheeran went on to answer the question by saying "He," that's you, "would
29 have been under the impression that certain people were working against him for
12:30:48 30 their own pecuniary benefits, despite the fact that they may have been employed

12:30:52 1 by Dublin Corporation or elected representatives of the County Council whom he
2 wouldn't pay, but instead of now assisting him they were working against him.
3 And he was under the impression that I think he felt that if he subscribed to
4 the party funds that the government members, senior government members would
12:31:08 5 assist him to eliminate this."

6 A. A reasonable expectation.

7 Q. 392 Is that why you paid the money?

8 A. I paid the money, I paid the donation to the party, in my own words, which I
9 freely admit, in the hope that I might get a level playing field, to deliver
12:31:28 10 what was promised to me and what I was asked to put there in the first place,
11 both by the government and by the Dublin Corporation.

12 Q. 393 So if it was in part a payment for delivery on promises made?

13 A. It was not a payment for any such thing, it was a payment, in my opinion, that
14 if I gave a donation to the party that the government of this country at least
12:31:55 15 would sort out the people who were acting in their name wrongly.

16 Q. 394 And at question 22 Mr. Sheeran was asked "Now is it your understanding that
17 Mr. Gilmartin believed that if this money was paid to party funds that
18 Ministers would exercise influence or take steps to ensure that whatever
19 difficulties he was experiencing, real or imagined, would be dealt with?" And
12:32:24 20 his answer was: "yes". He then went on to explain that, but that I must put to
21 you, was the favour that you were getting for the money?

22

23 CHAIRMAN: I think in fairness the --

24 A. Like I said earlier --

12:32:41 25

26 CHAIRMAN: I think the full answer should be given.

27 Q. 395 Yes, I certainly will, Chairman "He was under the impression that these corrupt
28 demands would cease. I think, and I'm - his mind may also have been influenced
29 by his experience with Arlington Properties. I think Mr. Dadley gave evidence
12:32:57 30 here, where he passed a comment that when they refused to make a donation to

12:33:01 1 Fianna Fail that he suddenly found the lines of communication to government
2 were not as open as they were previously".

3
4 Now doesn't Mr. Sheeran suggest there that as far as you were concerned the
12:33:12 5 refusal to make the donation to Fianna Fail preceded the payment by you of
6 50,000 pounds to Pdraig Flynn, because it influenced your mind that because
7 Arlington had refused to make that donation that their path had been
8 obstructed?

9 A. You can say that again, their path was obstructed. And the very man that they
12:33:40 10 took on as I seen, as a consultant, who blackmailed them into taking him on
11 incidentally, was around the sites of Dublin looking for more money from the
12 people, the vendors who were selling the sites so as to, giving them advice,
13 how much they could screw out of Arlington.

14 Q. 396 But if all of that is true, Mr. Gilmartin, you were the person paying the
12:34:10 15 blackmail money, three and a half thousand pounds per month, leaving the payee
16 blank to conceal it?

17 A. Arlington paid the blackmail money, I didn't.

18 Q. 397 No, you were the person who was paying the blackmail money, three and a half
19 thousand pounds a month by way of a cheque from your own account leaving the
12:34:25 20 payee blank in order to conceal it?

21 A. I was hired by Arlington to do a job and I done the job on their instructions.

22 Q. 398 Were you simply a messenger boy to pay over the blackmail money?

23 A. I was the manager on the job at the time.

24 Q. 399 Were you what would be regarded as the bag man in respect of the payments?

12:34:45 25 A. No, Sir.

26 Q. 400 But you now regard those payments as blackmail?

27 A. In my opinion it was blackmail. Arlington wasn't aware, not fully aware of who
28 this gentleman was, but I had a fair idea.

29 Q. 401 Can we take it now from Mr. Sheeran's evidence that at the time you made the
12:35:11 30 50,000 pounds payment you say to Fianna Fail, you were aware of the fact that

- 12:35:18 1 Arlington had great difficulties when they refused to make a donation to Fianna
2 Fail?
- 3 A. Correct.
- 4 Q. 402 And your mind as Mr. Sheeran says, would have been influenced by that, is that
12:35:37 5 correct?
- 6 A. That's correct.
- 7 Q. 403 And Mr. Sheeran went on to say in the answer to the next question "I think
8 Mr. Mold also mentioned that one of the reasons they made the payments to
9 Mr. Lawlor was to have access to the corridors of power, or words to that
12:35:52 10 effect, and I am quite sure Mr. Gilmartin had that in his mind as well." Is
11 that correct?
- 12 A. That's Mr. Sheeran's words.
- 13 Q. 404 Yes, but is that correct what he says?
- 14 A. No, I advised Arlington to have nothing do with him incidentally and they
12:36:07 15 themselves have given that evidence here to this Tribunal, that he was a
16 hustler. So I advised them not to have anything to do with him.
- 17 Q. 405 Can I have document --
- 18 A. But they felt if there is a probability of what he was telling them and since
19 there were in for substantial sums of money in bringing investment into
12:36:27 20 Ireland, they were taking the risk, they felt that if half of what he was
21 telling them was true, that they felt they had to take him on as a consultant.
- 22 Q. 406 Can I have document 1575 --
- 23 A. But they didn't comply with his demands of a 20 percent stake and £100,000,
24 which was the norm.
- 12:36:52 25 Q. 407 15759. This is a memorandum of a telephone conversation you had with
26 Mr. Gallagher, Senior Counsel for the Tribunal on 29 February 1998, and it
27 seems to be the third telephone conversation you had with the Tribunal. And
28 there you refer at paragraphs eight and nine to the sum of 50,000 pounds,
29 that's the first time when you refer to it to the Tribunal, isn't that correct?
- 12:37:32 30 A. I'm not quite sure. I think that I would have told the Tribunal at the earlier

12:37:41 1 meetings in Luton, I'm reasonably certain I would have.

2 Q. 408 And in that document at paragraph eight, you first deal with the demands for
3 money in London when the directors of Arlington were present and in the next
4 paragraph you refer to your own payment to Padraig Flynn as a contribution
12:38:08 5 towards the Fianna Fail Party. Again that's the order in which you put them,
6 the Arlington demands comes first and your payment to the Fianna Fail party
7 subsequently?

8 A. The, if you are referring, there was a demand made in my presence and I'm not
9 quite sure whether it was aimed at me or Mr. Dadley at a meeting with
12:38:32 10 Mr. Flynn, for a donation some time early on. If you are referring to the
11 London meeting that took place after, long after I had given the donation, as
12 far as I believe.

13 Q. 409 So there were two demands you believe made of Mr. Dadley by Mr. Flynn?

14 A. Correct.

12:38:56 15 Q. 410 For money?

16 A. No, of Arlington.

17 Q. 411 For money?

18 A. Yeah.

19 Q. 412 Can I have document 15765?

12:39:04 20 A. And it was for a donation to the party, substantial donation.

21 Q. 413 On document 15765, paragraph 11, this is a telephone conversation you had with
22 Counsel for the Tribunal on the 26th February 1998, sorry, it's a meeting that
23 you had on the 25th, 26th February 1998. This would have been your first
24 meeting in Luton, you say halfway down that paragraph or the record records
12:39:36 25 that you confirmed that you paid 50,000 pounds to Padraig Flynn. I just want
26 to stop there, your description on this occasion when you had your first
27 meeting with the Tribunal in London, is that the money was paid to Padraig
28 Flynn.

29

12:40:01 30 Now you have been very careful to argue with me whenever I used that

12:40:01 1 formulation in the course of cross-examination, this is your own description,
2 the first time you mentioned it?

3 A. I gave a donation to the party.

4 Q. 414 But you described it then, the first time, before you realised the implications
12:40:11 5 or before somebody gave you advice that there was nothing illegal about it if
6 you gave it to the party, you described it as a payment to Pdraig Flynn.

7
8 MR. QUINN: Just in relation to that point, in fairness to Mr. Gilmartin,
9 Mr. Sreenan is reading from a document prepared by counsel to the Tribunal
12:40:28 10 following on his conversation with Mr. Gilmartin. Mr. Gilmartin hasn't
11 approved this note and I think it's unfair to suggest that --

12

13 CHAIRMAN: It's not a verbatim account.

14

12:40:40 15 MR. QUINN: Yes. Just to clarify that.

16

17 CHAIRMAN: But he -- well, he is entitled to put it to him that this is the
18 note recorded by the Tribunal counsel and Mr. Gilmartin is well able then to
19 deal with that.

12:40:55 20 Q. 415 You are aware, Mr. Gilmartin, that this is the note recorded by Tribunal
21 counsel of your first meeting over in Luton?

22 A. Yes.

23 Q. 416 And this is what Tribunal counsel records?

24 A. Well, I'm not responsible for what any note taken by the Tribunal.

12:41:11 25 Q. 417 Well, if you are saying that the note by Tribunal counsel is wrong, please say
26 it and we'll have Tribunal counsel clarify that in due course?

27 A. Yeah.

28 Q. 418 Are you saying that you didn't say to Tribunal counsel that you had paid 50,000
29 pounds to Pdraig Flynn?

12:41:26 30 A. I never gave 50,000 pounds to Pdraig Flynn so I couldn't say it, because I

- 12:41:31 1 gave it to the party.
- 2 Q. 419 Did you say that --
- 3 A. And the people who, you can, you will be coming here as witnesses like
- 4 Mr. Sheeran and all that, will confirm that before I gave it to the party, and
- 12:41:44 5 Mr. McClune who actually advised me not to give it to them.
- 6 Q. 420 And did you say to Counsel for the Tribunal that you gave it to Padraig Flynn
- 7 in the Park Lane Hotel or in a hotel in Park Lane?
- 8 A. No, I did not, to anybody.
- 9 Q. 421 So counsel is wrong again in recording that?
- 12:42:02 10 A. Yes. They are definitely wrong there.
- 11 Q. 422 At your very first meeting?
- 12 A. They mixed it up, they were listening to a long convoluted story and they have
- 13 mixed two different things up, as they did Mr. O'Callaghan being in the Dail on
- 14 the 1st February when the demand was made of me. I never said that to anybody,
- 12:42:25 15 so there is a number of inaccurate notes.
- 16 Q. 423 And when they say that you told them that this payment was in 1987 or 1988
- 17 approximately, did you say that?
- 18 A. I might have said, I get mixed up with dates.
- 19 Q. 424 And did you say that the cheque was drawn on your own account in Blanchardstown
- 12:42:47 20 and the name of the payee was left blank on the cheque?
- 21 A. That's correct, I would have said that, yes.
- 22 Q. 425 And that it was at the time when you were endeavouring to have the development
- 23 at Bachelor's Walk and Quarryvale get off the ground?
- 24 A. That's correct. Well, I may have made that statement to the Tribunal, I'm not
- 12:43:08 25 quite sure, but there is a number of inaccuracies in notes taken by the
- 26 Tribunal because -- I don't blame them, because number one, they took evidence
- 27 from me early on and then I pulled out of the Tribunal, and later on they came
- 28 back and I had, they had to ask me to run by various things that I had
- 29 previously said.
- 12:43:36 30 Q. 426 And you --

- 12:43:37 1 A. So it's quite possible and reasonable to believe that the complication and the
2 convoluted length of the story, that they would have made mistakes, because
3 they had to come back and ask me, I think you'll see reference to that, where
4 they had to ask me to repeat something I had said to them previously.
- 12:44:02 5 Q. 427 And you have had these notes now for many years, as a result of the litigation,
6 and you haven't either yourself or through your solicitors written in to
7 correct any of this?
- 8 A. No.
- 9 Q. 428 Mr. Smyth --
- 12:44:19 10 A. It's not for me to correct any mistake made by the Tribunal, it's not for me
11 correct it, but there has been a number of inaccurate notes, notes in some of
12 the statements.
- 13 Q. 429 But if the Tribunal was ultimately to accept that these notes taken down by
14 Tribunal council were carefully and accurately compiled, and that you did in
15 fact say the things that are attributed to you, then has implications in terms
16 of your memory at least, Mr. Gilmartin?
- 17 A. No it hasn't. At no time did I say anybody that Mr. O'Callaghan was talking to
18 Mr. Reynolds in an alcove in the Dail on the 1st February, the day the demand
19 was for five million pounds of me. I never said that statement to anybody, but
12:45:16 20 it is recorded in notes by the Tribunal, they mixed up two different dates,
21 which were nearly two years apart.
- 22 Q. 430 No, Mr. Gilmartin, you said it to Tribunal counsel who carefully recorded it
23 and you mixed up different dates?
- 24 A. No, no. I did not say it to counsel. That happened on the, around the middle
12:45:37 25 of September 1991, the visit to the Dail took place in February '89.
- 26 Q. 431 Only two --
- 27 A. There were two different, two different stories and it's reasonable to believe
28 that in the confusion of retelling the story, that the Tribunal made a mistake
29 in pencilling in the wrong date, the wrong meeting.
- 12:46:06 30 Q. 432 Only two years before this meeting with Tribunal counsel, you were involved in

- 12:46:11 1 litigation or threatened litigation with Mr. O'Callaghan and Allied Irish
2 Banks?
- 3 A. I - at the time, '96.
- 4 Q. 433 Yes, isn't that correct?
- 12:46:27 5 A. That's correct.
- 6 Q. 434 And Mr. Smyth had been retained by you to sue them both?
- 7 A. No, not to sue them, to get my money back.
- 8 Q. 435 If that involved --
- 9 A. That was the only request. I wanted my money, I was not going to allow my
12:46:40 10 money prop up a gentleman who had robbed me of what I had set up and put the
11 effort in on behalf of the Corporation, to put there, and hired Frank Dunlop,
12 Liam Lawlor, John Gilbride, McGrath and all the others to make certain that he
13 achieved his aims of stealing that site from me.
- 14 Q. 436 And you were seeking to recover six or seven million pounds in that process?
- 12:47:12 15 A. That's what I had spent. I spent more than that actually because I didn't take
16 into account the efforts I put in in England to bring the investment in in the
17 first place.
- 18 Q. 437 Were you dissatisfied with the settlement when you look back on it?
- 19 A. I was quite happy to take me money, like I said earlier, and get out of Dublin.
- 12:47:33 20 Q. 438 Did you think you got enough money or do you think you deserved more?
- 21 A. I would have deserved my, what was my rights in a normal country.
- 22 Q. 439 Do you think you deserved more money than you got in the settlement through Mr.
23 Smyth?
- 24 A. I am certain Mr. O'Callaghan didn't deserve my assets.
- 12:47:55 25 Q. 440 Will you answer the question now, Mr. Gilmartin?
- 26 A. I'm answering it, Mr. Sreenan.
- 27 Q. 441 Did you think you deserved more money than Mr. Smyth got for you?
- 28 A. I'd imagine that I would have made some profit out of my efforts in Dublin.
- 29 Q. 442 Mr. Smyth was instructed --
- 12:48:15 30 A. I was invited to bring in the investment, I done that.

- 12:48:19 1 Q. 443 Mr. Smyth's instructions --
- 2 A. And I honoured my commitment, Mr. Sreenan.
- 3 Q. 444 Mr. Smyth's instructions may well have involved you litigating, isn't that
- 4 correct?
- 12:48:29 5 A. Mr. Smyth took it upon himself because, in his words, everybody in Dublin knew
- 6 I was screwed, that was his words.
- 7 Q. 445 And you had to give him detailed instructions to enable him to go off and
- 8 prepare proceedings?
- 9 A. No, I left it to him, all I wanted was my money back.
- 12:48:47 10 Q. 446 But you had to give him the information, he couldn't make up the facts himself,
- 11 isn't that correct?
- 12 A. He knew what was going on.
- 13 Q. 447 But you had to give him information so that he could instruct counsel for
- 14 example?
- 12:49:00 15 A. Well, I was talking to my solicitor, so I gave him whatever information he
- 16 asked me for.
- 17 Q. 448 O.k. You gave him whatever information he asked for?
- 18 A. Yeah, whatever information he asked of me.
- 19 Q. 449 And you knew that he was briefing counsel on your behalf?
- 12:49:14 20 A. Yes, he made me aware of that.
- 21 Q. 450 And it was extremely important that counsel be accurately briefed, because
- 22 pleadings may well be drafted or an opinion given on foot of information
- 23 provided to counsel?
- 24 A. That's correct. I presume so.
- 12:49:31 25 Q. 451 And that information would have come from you, isn't that so?
- 26 A. Well, whatever information he asked me for I gave it to him.
- 27 Q. 452 And if we can have document 12195, this is the brief that Mr. Smyth sent to
- 28 counsel recording the information that you told him about in 1996. And if we
- 29 go to paragraph 1.8 of that brief it says:
- 12:50:03 30

12:50:03 1 "The Querist," that's you, "you will state that in the intervening period
2 immense pressure was brought upon you to take on O'Callaghan as your partner as
3 he was the bank's preferred option for the development of the property in
4 question. During this time, that you will also say that while the rezoning was
12:50:24 5 postponed on several occasions you were under duress to pay contributions to
6 TDs, councillors and members of the then Fianna Fail government, and that you
7 were openly threatened that in the event of you failing to do so, then your
8 rezoning would not take place."
9

12:50:46 10 Now, I am just going to pause there. That's what you told your own solicitor,
11 Mr. Smyth in 1996, that's what your own solicitor told counsel on foot of which
12 he was going to give an opinion, and draft proceedings which could have very
13 serious consequences for people, was that true?

14 A. In my mind it's pretty accurate.

12:51:12 15 Q. 453 Was it true that you were openly threatened that in the event of you failing to
16 pay the monies that the rezoning would not take place?

17 A. That's correct.

18 Q. 454 And the statement went on "In most instances he resisted these claims but on a
19 number of occasions, believing that it would significantly help the process,
12:51:33 20 agreed to make financial contributions to the party, which in one case a sum of
21 50,000 pounds, it was retained by the individual Minister himself."
22

23 Now, those words, the "In most instances that you resisted these claims," these
24 were claims for money in circumstances where you were being openly threatened
12:51:58 25 that if you didn't pay it that the rezoning would not take place. In most of
26 those instances you resisted those claims, but one of those in which you didn't
27 resist is identified as the payment of 50,000 pounds to the person we now know
28 as Mr. Flynn?

29 A. No, you said there, it said there to the party.

12:52:18 30 Q. 455 Do you recall it --

- 12:52:20 1 A. You can try and twist it around how you like Mr. Flynn, or Mr. Sreenan, it's
2 stated there quite clearly, if you are talking about my instructions to Mr.
3 Smyth at the time, the donation was made to the party.
- 4 Q. 456 Fine. Let's say to the party. The payment, let's say for the purposes of the
12:52:42 5 argument to the party, the payment of 50,000 pounds to the party was one of the
6 occasions when you didn't resist the demands for money which were accompanied
7 by threats that if you didn't pay your rezoning would not take place?
- 8 A. I did resist in the demands. I would not pay at any time, so I gave the party
9 a donation because it was not illegal.
- 12:53:08 10 Q. 457 But that's not what you told your solicitor, because what you told your
11 solicitor was that in most instances, not all instances, in most instances you
12 resisted those claims, but that on a number of occasions, believing that it
13 would significantly help the process, you did agree to make the payment to the
14 party, that payment being 50,000 pounds. So that's one of the occasions when
12:53:31 15 you didn't resist the demands for money, which were associated with threats
16 that you have to pay to get your rezoning?
- 17 A. I gave the party, which was not illegal, it was quite legal, I would not pay
18 any illegal money to anybody. So if a donation to the party is illegal then
19 most of the people and developers etc. in this country should be in court, at
12:54:06 20 least in court if not in jail.
- 21 Q. 458 Not to have resisted those demands and to have paid 50,000 pounds to the party
22 in circumstances where you were threatened that rezoning would not take place
23 if you didn't pay the money, that was a bribe, wasn't it?
- 24 A. Well, you put whatever interpretation you want on it, I paid the party a
12:54:30 25 donation which was not illegal. I done nothing absolutely illegal, I stayed
26 within the law at all times, more than I can say for the people I was dealing
27 with.
- 28 Q. 459 What were the other occasions on which you gave in to those demands accompanied
29 by those threats and paid money?
- 12:54:50 30 A. I didn't give in to any demands, they are Mr. Smyth's words not my words, but I

- 12:54:55 1 did not give in to demands, to anybody. I categorically refused.
- 2 Q. 460 This is what Mr. Smyth records your instructions as being, that on a number of
- 3 occasions --
- 4 A. They are Mr -- he worded the thing.
- 12:55:11 5 Q. 461 Now, Mr. Smyth as we know is an extremely careful solicitor and this was an
- 6 extremely important task to record this particular allegation for the purposes
- 7 of instructing counsel, so don't suggest that Mr. Smyth was anything other than
- 8 meticulous.
- 9 A. I did not at any time give a penny to anybody, despite the demands made of me.
- 12:55:35 10 Q. 462 Now don't suggest, Mr. Gilmartin, that Mr. Smyth was anything other than
- 11 meticulous in recording your instructions, that on a number of occasions you
- 12 gave in to those demands. What were the other occasions?
- 13 A. Where is that? Read it again, Mr. Sreenan, where does it say on a number of
- 14 occasions I gave in to any demands?
- 12:55:54 15 Q. 463 Last sentence "In most instances he resisted these claims but on a number of
- 16 occasions", do you see that? "Believing that it would significantly help the
- 17 process, agreed to make financial contributions to the party."
- 18 A. Yeah, one.
- 19 Q. 464 It says a number of occasions and Mr. Smyth as we know would have meticulously
- 12:56:21 20 recorded your instructions on this important point, what are the other payments
- 21 that you made that you won't tell us about now?
- 22 A. There was no other payment.
- 23 Q. 465 Are you concealing other payments now?
- 24 A. The Tribunal has all my bank accounts, there was no other payment whatsoever to
- 12:56:30 25 any other, to any person who demanded money of me.
- 26 Q. 466 Having told Mr. Smyth that there were a number of occasions, what were the
- 27 other occasions?
- 28 A. There was no other occasion.
- 29 Q. 467 So why did you tell that to Mr. Smyth?
- 12:56:45 30 A. They are not my words.

- 12:56:47 1 Q. 468 Why did you tell that to Mr. Smyth?
- 2 A. They are not my words. He might have been referring to the payments by
- 3 Arlington to Lawlor.
- 4 Q. 469 Like Mr. Hanratty, and Mr. Gallagher, counsel to the Tribunal, Mr. Smyth your
- 12:57:00 5 own solicitor records it wrongly as well, is that it?
- 6 A. He may be referring there to what I told him about Arlington paying Mr. Lawlor.
- 7 Q. 470 Could I have the transcript for day 733? If we go to page nine, question 38,
- 8 you are being questioned there about a note that Mr. Flynn made of a telephone
- 9 conversation with you and the question is "I complained once to Sean Haughey
- 10 and he gave to Fraud Squad, I gave a donation to Fianna Fail Party, I never had
- 11 any complaints against planners, I was held to ransom all the way, I made it
- 12 abundantly clear, I said no complaint against you. I told them Flynn was
- 13 straight".
- 14
- 12:58:07 15 Did you tell the Tribunal or did you tell Mr. Flynn that you had said that at
- 16 the time, perhaps it could be highlighted? And the answer was, "yes please
- 17 it's correct. I never had a complaint against planners, I never applied for
- 18 planning permission, and I had only one brief meeting with Mr. McCarron on the
- 19 planning which I showed him the brochure, so that is a true statement, I had no
- 12:58:30 20 complaint whatsoever against the planners because I had no reason to do that.
- 21 Question. Now you say Lawlor is a right bastard and he, and the Chairman said
- 22 wait now. And your answer, I had no real complaints against Mr. Flynn either.
- 23 Mr. Quinn says, apologies I interrupted you. You say again I had no real
- 24 complaints against Mr. Flynn."
- 12:58:53 25
- 26 Do you remember giving that evidence?
- 27 A. Yes.
- 28 Q. 471 Can I go to page 36 of that transcript? Question 171, Mr. Quinn asked you "And
- 29 if, are you making any allegations against Mr. Flynn, Mr. Gilmartin?" and your
- 12:59:10 30 answer "No, Mr. Flynn, I've no allegation to make against Mr. Flynn of

12:59:14 1 wrongdoing because I didn't really know the gentleman that well, other than
2 through his role as Minister for the Environment, and we had numerous
3 discussions with regard to the developments including Bachelor's Walk and
4 Quarryvale". Again, do you remember giving that evidence?

12:59:29 5 A. Yeah, it's possibly correct, yes.

6 Q. 472 And page 64 of the same transcript you were asked "Did you say to Mr. Flynn I
7 never made a complaint against Flynn," and your answer was, "I would have said
8 that I'm reasonably sure I would have said that because I hadn't made any
9 complaint, I had no reason to make any complaints against Mr. Flynn". Do you
10 remember saying that?

11 A. I do, yes.

12 Q. 473 Well, all of that evidence you gave on oath, Mr. Gilmartin, can only be true if
13 you gave him the money for himself, because if you gave him the money for
14 Fianna Fail and he pocketed it as you now claim, you'd have very good reason
15 for complaint against Mr. Flynn, wouldn't you?

16 A. That's Mr. Sherwin's word back in 1990, that he pocketed the money.

17 Q. 474 Are you saying --

18 A. Back in 1990 that's Mr. Sherwin's word, and he gave that evidence here, that's
19 not my words, it's Mr. Sherwin's words, that he must have pocketed the money.

13:00:27 20 Q. 475 Are you saying that you have no complaint against Mr. Flynn, despite the
21 evidence that that 50,000 pounds was not passed on to the Fianna Fail Party?

22 A. I had no reason to make a complaint against Mr. Flynn, that I know of, the
23 fact, if he took party money, that's a matter for him and the party, but I had
24 no complaint.

13:00:53 25 Q. 476 This is money that if you are telling the truth, Mr. Gilmartin, and of course
26 there is a question mark over that, if you are telling the truth you claim that
27 this was money you gave to the treasurer of Fianna Fail for the Fianna Fail
28 party, 50,000 pounds, a very large sum of money at the time, that we now know
29 he did not pass onto the party. He claims it was a payment to himself, and you
13:01:17 30 say you have no complaints against him. I'm putting to you, Mr. Gilmartin,

13:01:21 1 that it can only be so that you have no complaint against Mr. Flynn if the
2 truth is that you gave the money to Mr. Flynn in the first place for his own
3 use?

4 A. No. I did not, Mr. Sreenan, give it to Mr. Flynn. I gave a donation to Fianna
13:01:44 5 Fail Party. Now, I told Mr. Ahern I had given a donation to Fianna Fail party.
6 Now, he was the Minister of Finance and he was the Taoiseach and he never
7 bothered asking Mr. Flynn about it, so why would I bother or why would I
8 consider it to be a problem when the party didn't bother looking for the money.
9

13:01:59 10 CHAIRMAN: All right. It's one o'clock, we'll break until 10 o'clock tomorrow.
11 All right? Thank you.
12

13 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**
14

13:02:20 15
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THE TRIBUNAL RESUMED AS FOLLOWS AT 2 PM:

13:02:20 1
2
3 MR MILLAR: Chairman, Hugh Millar on behalf of Celia Larkin I have an
4 application to make with respect to Ms. Larkin's evidence, I understand you are
14:07:34 5 on notice of the application.
6
7 This module of the inquiry apart from the evidence of Mr. Gilmartin has today
8 concentrated on the evidence from witnesses from AIB. The context in which
9 this evidence has been led is principally the lodgements to AIB three of which
14:07:52 10 involve Ms. Larkin directly. She also opened the three accounts which have
11 been mentioned in this context.
12
13 Ms. Larkin is a witness and not under enquiry herself, however, unlike other
14 witnesses in this module she had a unique personal and working relationship
14:08:06 15 with Mr. Ahern at the time in question.
16
17 That puts her in a unique position in the public eye and there has been
18 extensive media comment, much of it unfavourable.
19
14:08:17 20 Ms. Larkin is a private citizen and issues inevitably will arise touching on
21 her credibility and good name as a consequence of her involvement here with
22 respect of events which happened 12 and 13 years ago. That was a different
23 life and a different time for her.
24
14:08:31 25 In that context the evidence AIB officials which is being led by the Tribunal
26 team in a manner which suggests or implies that her recollection of events in
27 '94/'95 is suspect or simply wrong has the potential to adversely impact on
28 Ms. Larkin's good name and reputation. As a matter of fair procedures and to
29 be to treat her in a reasonable and fair manner I respectfully suggest of the
14:08:52 30 AIB officials should be completed in full before Ms. Larkin is asked to take

14:08:55 1 the witness stand at all.
2
3 On the 15th June I was advised in writing that Ms. Larkin would be required to
4 give evidence with respect to evidence being led from AIB officials in respect
14:09:05 5 of foreign currency exchange transactions which took place in AIB in '94/'95,
6 she is happy to do that. However, all of that evidence has not been led and
7 will not be led in full until the last of the AIB witnesses concludes his or
8 her evidence on this specific issue. Consequentially, the issues identified
9 the Tribunal itself in correspondence with me as constituting the matters upon
14:09:26 10 which Ms. Larkin will be examined will not have been aired in full until the
11 AIB witnesses conclude their evidence, which I presume will be this week.
12
13 If the Tribunal intends to examine my client in respect of matters which have
14 not as yet been the subject of all evidence before them on this issue I submit
14:09:43 15 that situation will be unsatisfactory and also, I would think, unnecessary. I
16 emphasise Ms. Larkin has at all times been ready and willing to attend here to
17 give evidence. It is not as if she won't be available in September, she
18 definitely will.
19
14:09:55 20 Taking Ms. Larkin's evidence before the evidence of AIB has finished makes no
21 sense in my view and does not progress the specific issues under inquiry in a
22 manner which is beneficial to any party before the Tribunal.
23
24 I think more importantly deferring the evidence, the taking of that evidence
14:10:08 25 does not cause any prejudice to any party or hinder or delay the work of the
26 Tribunal.
27
28 The prejudice if any, that might arise from this proposed course of action will
29 arise only to my client and the Tribunal has in my view, a duty to avoid that
14:10:22 30 prejudice if it can be avoided and in my view it can.

14:10:26 1
2 The other two principle witnesses on this specific discreet issue who will be
3 affected by it are Mr. Ahern and Mr. Wall, both of whom will have had the
4 opportunity before they give evidence to hear in full what AIB have to say.
14:10:38 5 And I submit that that same facility and courtesy should be afforded to
6 Ms. Larkin. There are differing interests to be considered here and in the
7 absence of a compelling reason to take Ms. Larkin's evidence before the
8 conclusion of the AIB evidence and out of context or out of sequence, I
9 respectfully submit that the Tribunal should vindicate and respect her
14:10:56 10 entitlement to hear all of the evidence which is being led in this area and
11 which has the potential to damage her credibility and good name.
12
13 I am not aware of any compelling reason why that facility should not be
14 afforded to her, and I therefore request that her evidence should be scheduled
14:11:11 15 for the conclusion, for after the conclusion of the evidence from the AIB
16 witnesses which would appear to me to be sometime around the 11th September,
17 and I emphasise once against, Ms. Larkin's willingness of course to attend at
18 that time.
19
14:11:23 20 So my application, Mr. Chairman, is to allow this segment of the evidence from
21 AIB could be concluded, it would seem to me that would be best use of time
22 between now and Friday. And at the conclusion that have evidence I suggest
23 Ms. Larkin should have a reasonable opportunity to consider that evidence
24 before she is called to the stand herself.
14:11:40 25
26 Thank you.
27
28 CHAIRMAN: Thank you. Without expressing any particular view or any absolute
29 view in relation to the reasons you give for the adjournment, your last comment
14:11:54 30 the effect that the best use of time would be, over the remaining couple of

14:11:59 1 days would be, might be used in concluding the evidence from the various bank
2 witnesses, we'll accede to the application and Ms. Larkin's appearance will be
3 therefore put back to a date in September, the actual date we can't be certain
4 about at the moment, but there will be communication with you from the Tribunal
14:12:22 5 in that respect.

6

7

MR MILLAR: I'm obliged, Mr. Chairman.

8

9

CHAIRMAN: All right.

14:12:28 10

11

MR. O'NEILL: Mr. Jim McNamara, please.

12

13

MR. NESBITT: Chairman, while Mr. McNamara is taking the stand I assume we just
14 bring all our witnesses forward to fill the afternoons?

14

14:12:40 15

16

MR. O'NEILL: I anticipate, yes, that the witnesses who are scheduled to appear
17 will follow in sequence allowing for the falling out of Ms. Larkin.

17

18

19

CHAIRMAN: All right.

14:12:52 20

21

MR. NESBITT: Very good.

22

23

JIM MCNAMARA QUESTIONED BY MR. O'NEILL.

24

14:12:57 25

Q. 477 Good afternoon Mr. McNamara, in the course of yesterday's evidence we were
26 dealing with the situation which pertained in and around the early part of
27 March 19, sorry 2007, in relation to the specific enquiry which was being made
28 by the Tribunal of AIB in relation to foreign exchange transactions which fell
29 within particular limits on specific dates, isn't that right?

29

14:13:25 30

A. Yes.

14:13:25 1 Q. 478 And in the course of that we considered some correspondence which had passed,
2 both from AIB to the Tribunal and vice versa, and more particularly if we just
3 look for a moment at page 19588.
4 A. Sorry, may I interrupt for a moment, please?

14:13:43 5 Q. 479 Of course you may.
6 A. There were one or two issues in yesterday's session that I would like to
7 revisit at this point in time, if I may?
8 Q. 480 Well, I am sure that can be done by your counsel in cross-examination or in
9 examination of you after my examination has taken place, but certainly if you
10 do wish to clarify any matters in which you feel that your evidence was either
11 incomplete or whatever we can deal with that now if you wish?
12 A. Yes, I would like to clarify.

13 Q. 481 Yes
14 A. O.k.

14:14:14 15
16 There were, I believe the, early on in the interview we discussed the situation
17 of Mr. Ahern and myself not meeting or dealing with each other during the
18 course I think of that statement, question, reference was made, I believe, by
19 yourself to say Mr. Ahern dealt exclusively with Phillip Murphy and that
14:14:33 20 Ms. Larkin dealt exclusively with myself. I believe from memory that that was
21 the nature of the question, I may have answered yes, but I would like to
22 correct that, because did I not deal exclusively with either party.
23 Q. 482 Right.
24 A. First of all.

14:14:49 25 Q. 483 Is that the clarification you wish to make?
26 A. Sorry?
27 Q. 484 Is that the clarification you wish to make?
28 A. That's --
29 Q. 485 Or is there another one?
14:14:56 30 A. There is another one as well.

14:14:57 1
2 In relation to the, what would I call, the mail you produced in relation to
3 seeking copy docs from the retrievals unit, you had a date of April 20th I
4 believe, you were saying on April 20th I sought copy docs from our retrievals
14:15:15 5 unit?
6 Q. 486 I think, are we talking about firstly now about a bank document which records
7 an exchange between you and the retrievals section of the bank?
8 A. Yes, that was it.
9 Q. 487 I will find that document for you and it may assist you in relation to it.
14:15:35 10
11 CHAIRMAN: 22715.
12
13 JUDGE FAHERTY: I think it was 22715 Mr. O'Neill.
14 Q. 488 Yes. Yes, you'll see that document on screen now, Mr. McNamara. That's the
14:15:51 15 document which I have referring to yesterday which deals with the specific
16 transactions which are set out within it, the first four of which were under
17 enquiry?
18 A. Right. Yes. Sorry, my thought was that there was a date of the 20th April on
19 it.
14:16:19 20 Q. 489 On the very top it's the 2nd April.
21 A. I see that, and I actually have a printout of the original as well which is the
22 2nd April, my apologise, I thought the 20th was somewhere on the report.
23 Q. 490 I see.
24 A. But it's not obviously.
14:16:24 25 Q. 491 Right. Is there any other clarification?
26 A. No, no, that's it.
27 Q. 492 No. Just to deal with the first point there, in relation to your dealings with
28 customers, Mr. Ahern and Ms. Larkin, I think the position was that could you
29 positively state that you never had any face-to-face dealings with Mr. Ahern in
14:16:47 30 1994 and 1995, you'd only seen him once at a social event at the bank, isn't

14:16:52 1 that right?

2 A. That is right, yes.

3 Q. 493 With regard to Ms. Larkin, I think she had had a much longer banking

4 relationship with O'Connell Street, it had gone back I think till 1986/'87,

14:17:06 5 isn't that so?

6 A. Yes, I believe she had her account some time back from that time back, yes.

7 Q. 494 You may well have had dealings with her over time in relation to those banking

8 matters, but specifically in relation to the matters which you were being asked

9 about, and that is these four foreign exchange transactions, two of which

14:17:29 10 involved her. Your evidence is you have no recollection of dealing with

11 Ms. Larkin in relation to those matters, isn't that right?

12 A. Yes, I believe from my interviews with yourself at the time.

13 Q. 495 But I mean, from your recollection of your dealings with her rather than what

14 you might have told the Tribunal, it is the fact that you do not recollect

14:17:52 15 having had dealings with Ms. Larkin in relation to either the lodgement which

16 took place on the 15th June 1995 in the sum of 11,743.47, isn't that so?

17 A. That's the lodgement whereby 9,700 odd and 2,000 odd.

18 Q. 496 Yes.

19 A. My writing obviously is on the dockets so I did have some involvement in the --

14:18:20 20 Q. 497 I am asking you whether you had a recollection of having any involvement with

21 her?

22 A. I have no recollection of the actual transaction or the actual, you know,

23 meeting the client at the time, but as I said my writing is on the docket.

24 Q. 498 Exactly. That you had an involvement in the transaction?

14:18:37 25 A. Yes.

26 Q. 499 Which can be established from the face of the document itself insofar as your

27 writing appears to some, in some part on the docket itself, isn't that right?

28 A. That's right. Going back to the original as I understood it, comment or

29 question, it appeared to me thinking back that my colleague Phillip Murphy

14:18:57 30 dealt exclusively with Mr. Ahern, and I dealt exclusively with Ms. Larkin which

- 14:19:02 1 is not correct.
- 2 Q. 500 No, that certainly isn't the case nor is it the evidence.
- 3 A. O.k.
- 4 Q. 501 The evidence so far has been that Mr. Murphy dealt with both parties and that
- 14:19:12 5 you are positive in not having dealt with Mr. Ahern but you may well have dealt
- 6 with Ms. Larkin, in fact you didn't have a specific recollection of these
- 7 transactions but you believed you could well have dealt with her, isn't that
- 8 the position?
- 9 A. Correct.
- 14:19:28 10 Q. 502 Yes. Now, if we can look perhaps to the document on screen at page 19588, this
- 11 is a document we considered yesterday, Mr. McNamara, it's one in which the bank
- 12 to an extent had addressed the question of whether or not the particular
- 13 lodgements we see here of 24,838, 11,743.74 and on the following page 19589,
- 14 19,142.92, whether those particular lodgements were foreign exchange
- 14:20:19 15 lodgements. And the bank was putting forward the position which I think was
- 16 the culmination of your work on that issue, to that point, and saying that
- 17 whilst these transactions have been identified and returned as coming within
- 18 the terms of the order in each instance, because of the amount, they were also
- 19 discovered as being foreign exchange transactions within the meaning of the
- 14:20:48 20 order, because it appeared that there was a foreign exchange stamp on the
- 21 documents, isn't that right?
- 22 A. Right, to the point that there is foreign exchange stamp on it but not right to
- 23 the point that this research and work was solely of my own doing.
- 24 Q. 503 Right. Well, do you think that anybody else had advanced the matter any
- 14:21:06 25 further than your own enquiries into the matter at this point in time?
- 26 A. Advanced to what stage?
- 27 Q. 504 Advanced to the point of establishing what evidence there was to show that
- 28 these were foreign exchange transactions. Do you think that somebody other
- 29 than yourself had carried out a more detailed enquiry than you had for example?
- 14:21:28 30 A. The enquiry as I understand it was that we, as I said, had looked for the

- 14:21:34 1 documentation in relation to the various transactions.
- 2 Q. 505 Yes.
- 3 A. And that documentation started with what is termed the All Items Report and
- 4 from there to get copies of the actual divisional dockets themselves.
- 14:21:47 5 Q. 506 What I am asking you about, Mr. McNamara, is the fact there is a positive
- 6 statement in this letter that the solicitor to the bank, having taken
- 7 instructions from his client, which is presumably somebody in authority in the
- 8 bank who had carried out the work necessary to comply with the order for
- 9 discovery, was indicating to the Tribunal that the only connection between
- 14:22:09 10 these particular figures and the foreign exchanges possibility was the fact
- 11 that there was a stamp on the document which showed foreign exchange, isn't
- 12 that so?
- 13 A. That's correct.
- 14 Q. 507 That's so, yes. And that must then, of necessity mean that that was the limit
- 14:22:29 15 of the bank's knowledge at that time about these particular transactions having
- 16 a foreign exchange involvement, doesn't that follow?
- 17 A. Yes, that follows.
- 18 Q. 508 Yes. Now we looked also at page 19590 and more, which was a letter from the
- 19 Tribunal which was expressing its concern at the fact that the bank appeared to
- 14:22:55 20 be indicating that it had drawn its conclusion based solely on the fact that
- 21 there was a foreign exchange stamp. We considered this yesterday in some
- 22 detail, I just want to refresh your mind to the issue we are now dealing with,
- 23 but you know that that letter and its content, isn't that so?
- 24 A. Yes.
- 14:23:12 25 Q. 509 And if we look to the next page at 19591, that is where the detail of the
- 26 Tribunal's own investigations carried out based upon the information provided
- 27 by the bank had reached certain initial conclusions, isn't that right?
- 28 A. That is correct.
- 29 Q. 510 Right. And that certainly had advanced matters somewhat from the knowledge
- 14:23:39 30 that you had at that particular time as to what might be referable to these

- 14:23:44 1 being foreign exchange transactions, is that right?
- 2 A. Yes, it made reference to sterling amounts.
- 3 Q. 511 Not only did it make reference to sterling amounts but it made reference to
- 4 AIB's rates of exchange for foreign currency on each one of the days upon which
- 14:24:03 5 these lodgements were being queried, isn't that right?
- 6 A. Correct.
- 7 Q. 512 And it carried out an exercise of showing that in respect of each one of these
- 8 transactions that if one applied certain of the rates, and I'm not for the
- 9 moment suggesting that they are necessarily the appropriate rates, but if
- 14:24:20 10 certain of the published rates were applied to the transactions they would
- 11 total or equal precisely the amounts that were being under investigation, both
- 12 by yourself and by the Tribunal, isn't that right?
- 13 A. That is correct.
- 14 Q. 513 Right. To that extent can we take it that whilst your view had been that it
- 14:24:44 15 was a possibility that these were foreign exchange transactions, based upon the
- 16 fact that there was a foreign exchange stamp, did that situation change for you
- 17 having read this document and considered its content and checked it, if you
- 18 did? Did you form any further view as to whether or not it remained merely a
- 19 possibility that these payments, or these lodgements rather, were foreign
- 14:25:11 20 exchange transactions?
- 21 A. It did change the picture slightly in the sense that you have made reference in
- 22 your letter, or you had made reference in your letter, of sterling amounts but
- 23 in the course of the researching we are still and were still unable to find any
- 24 documentation that would confirm or deny the information contained therein.
- 14:25:39 25 Q. 514 Right. Do you think, Mr. McNamara, that the matter had moved, given the
- 26 content of this document, had it moved in your mind from being a possibility to
- 27 being a probability?
- 28 A. It had moved to the situation whereby someone somewhere was making reference to
- 29 sterling transactions, sterling amounts, so there was probability, possibility.
- 14:26:11 30 Q. 515 Well, there is a pretty large distinction I take it between possibility on the

14:26:20 1 one hand, probability on the other hand and certainty further on, in the scale
2 of things, isn't that right?

3 A. Certainty, that is a definite fact. In the sense that --

4 Q. 516 Yes.

14:26:31 5 A. You know, if we can categorically prove that there is a transaction there that
6 involved sterling we would have found it.

7 Q. 517 Yes. Is it the case that your position, having considered these documents,
8 this particular time, remained that this was a possibility only and not a
9 probability?

14:26:56 10 A. I cannot say as to what I was thinking in the sense of probability or
11 possibility. I mean the figures stacked up, the figures when you converted
12 them at the rates quoted on the letter, they equal the amounts of the
13 lodgements, so it did put a different slant on the information available.

14 Q. 518 Could I suggest to you that perhaps to establish what your frame of mind was or
14:27:21 15 what your understanding or appreciation of this information was, we might look
16 to an interview which was conducted with you and Members of the Tribunal legal
17 team on the 24th April 2007.
18
19 And on that occasion the Tribunal legal team was querying from you whether or
14:27:41 20 not it was the case, given the information that the Tribunal had here, that in
21 fact these were foreign exchange transactions, you might remember an interview
22 directed towards establishing that, do you?

23 A. I remember the interview, I don't recall the details --

24 Q. 519 The detail?

14:27:59 25 A. I'd need to consult my notes or my, the extract to get the exact figure.

26 Q. 520 O.k. We can look at the transcript because I am going to suggest to you that
27 at that interview and indeed thereafter, it remained your view that this was
28 but a possibility and you were reluctant to conclude that in fact the evidence
29 that was available to you, which is encapsulated in this document on screen
14:28:29 30 here, was sufficient to allow you to have concluded in respect of the last of

14:28:35 1 the payments, that is the 19,142.92, that that was in fact a foreign exchange
2 transaction for 20,000 pounds. I am suggesting to you that any objective
3 evaluation of the information which you had available to you at that time would
4 have confirmed that as a matter of probability. And that in relation to the
14:29:03 5 payment of 11,743.74 that the element of that that comprised 9,743.74 was again
6 as a matter of probability 10,000 pounds sterling. And those were objective,
7 and any objective evaluation of the information there would lead to that
8 conclusion, would you accept that?

9 A. I'll accept that, yes.

14:29:31 10 Q. 521 Yes. But that is something which I'm suggesting to you, you didn't accept when
11 these matters were being put to you in April of 2007 earlier this year. To
12 assist you I'll go through some of the content of the interview.

13 A. O.k.

14 Q. 522 If we look to page 2072 please - sorry, 20720 please.

14:30:13 15
16 At question 112 here you are being asked in relation to the 24,838.49 and the
17 possibility that it was 25,000 pounds sterling allowing for the deduction of
18 the five pound charge, you will see just at the top of the page there,
19 Question: "Now can that be independent of the fact that 25,000 pounds sterling
14:30:39 20 at a bank rate on the day, deducting a fiver charge gives you that precise
21 figure". Again I mentioned the figure a little earlier, "Can that happen
22 Answer: sorry, say that again please? Question: we know that on the figure,
23 that on the calculations, that if you convert 25,000 pounds at this rate,
24 1.0063 and we take off £5 for a bank charge, we get a sum of 24,838.49. So we
14:31:08 25 know that the odd 24 figure goes back to 25 sterling. Is it possible that
26 somebody, a customer, could come into the O'Connell Street branch on the 11th
27 October 1994 and as a matter of coincidence lodge the same sum? Answer: it is
28 possible. Question: likely? Answer: I can't say, but working on the figures,
29 I mean obviously the figures calculate going back that way, is that the rate
14:31:37 30 just an ordinary rate or is it a rate set by the dealers?" And you go on and

14:31:41 1 the questioners deal here with the question of whether this was the over 10,000
2 rate or the under 10,000 rate.
3
4 But just focusing on that for a moment, you were acknowledging that it was
14:31:53 5 possible. It was put to you that it was likely given that 25,000 sterling
6 equated exactly to this amount, that it was a likely result and you weren't
7 prepared to make that concession at that time, isn't that right?
8 A. That's how it reads now, yes.
9 Q. 523 Yes. If we go to page 20721 --
14:32:18 10
11 MR. O'HOISIN: Chairman, I think it's necessary to intervene in this, because
12 what happened is that Mr. O'Neill started off talking about transactions three
13 and four and then very cleverly switched to transcript to talk about
14 transaction one. Having asked the witness about whether or not he thought it
14:32:31 15 was probable in relation to transactions three and four, and referred him to
16 the fact that he had only stated it was possible during the private interviews,
17 he then switched, without indicating to the witness, to transaction No. 1, to a
18 situation where it was put to the witness during the private interview, whether
19 that equated to 25,000 sterling and the witness said it was possible.
14:32:57 20
21 And it was pushed by the Tribunal at the time that it was probable and the
22 witness didn't take that up.
23
24 Now, if Mr. O'Neill is trying at this stage to try and get the witness to say
14:33:09 25 whether it was probable that that was 25,000 sterling, he should make his
26 position very clear on that. He should put all of the evidence to this
27 witness.
28
29 Of course irrespective of that it would seem to me to be a matter for the
14:33:31 30 Tribunal ultimately, not for a witness to decide whether something is probable

14:33:31 1 or possible. But there is, one has to be very careful here, there is a very
2 subtle way in which Mr. O'Neill has switched from transaction three and four to
3 transaction one, and all of the evidence should be put to this witness if that
4 is what is being done.

14:33:41 5
6 MR. O'NEILL: There is no subtlety involved this. This is the first of three
7 payments in time, it dates from the 11th October, the other payments are on the
8 15th June and the 1st December, I am dealing with them in a chronological
9 sequence as will be established from the interview. No different
10 considerations were applied by this witness as to whether or not one, things
11 were more probable or less probable in respect of any one of the transactions,
12 his response was the same to all, namely it was a possibility and he did not
13 distinguish between them as to whether one was more probable or not. And what
14 I am seeking to establish with the witness is what his frame of mind was at the
15 time in April of this year, when he was being asked by the Tribunal to assist
16 the Tribunal in whether or not these were foreign exchange transactions or
17 otherwise, and there is no sub plot here, it is perfectly straightforward and
18 it's not something which the witness to whom these questions have been put has
19 found any difficulty in responding to. So I'd like to continue if I may.

14:34:27 20
21 CHAIRMAN: Well, just on that, it's my understanding that Mr. O'Neill is
22 bringing this witness through each particular lodgement and bringing him
23 through the interview with the, with the Tribunal dealing with each lodgement
24 separately.

14:35:12 25
26 MR. O'HOISIN: There is a considerable difference, Chairman, between a position
27 in relation to the lodgements three and four where it's common case that those
28 were foreign currency for the amounts involved. Transaction one is different
29 to the others and it is important as well if that witness is being brought
14:35:28 30 through that, he said during the private interview when he was asked whether

14:35:32 1 that, the 24838 at question 114 "Well, it is the in-house rate, the AIB rate
2 for the day. Answer: yes but, is it the rate for 25,000 sterling, no it
3 appears not."
4

14:35:50 5 Now, it is very important that it is not put to this witness that, or he isn't
6 asked for his view as to whether something is possible or probable without it
7 being made absolutely clear to him what he is being asked and without all of
8 the evidence being put to him. But irrespective of that it's ultimately a
9 matter for the Tribunal and not for a witness to draw conclusions based on all
14:36:10 10 of this. We have already had it from the AIB witnesses that it is speculation
11 in the absence of tally roll as to what any particular transaction was. Now I
12 don't know whether Mr. O'Neill is trying to get around that by asking witnesses
13 for estimates as to whether something is possible or probable.
14

14:36:27 15 CHAIRMAN: But the process that we are now in, we are looking at the manner
16 which the bank and this particular witness dealt with the queries that were put
17 to the bank and to this witness by the Tribunal. My understanding is that
18 Mr. O'Neill is now bringing him through a series of questions and answers that
19 were put to him and given by him in the course of the private interview, and in
14:36:56 20 that way identifying what views he was expressing at the time in relation to
21 the particular lodgements. And one of the issues we have to decide is whether,
22 we have to decide -- we have to analyse the evidence, the replies that he gave
23 to ascertain whether they were in the circumstances given the information that
24 he had, whether they were appropriate replies.

14:37:25 25
26 MR. NESBITT: Mr. Chairman, perhaps on behalf of the witness I can intervene,
27 I have been sitting quietly for the past day and now wondering what the purpose
28 of much of the questioning was, and you seem to indicate that you think that is
29 something to do with how the bank gave information, in circumstances where it's
14:37:44 30 accepted that the bank gave all the information, and I don't understand that

14:37:47 1 that has anything to do with your Terms of Reference.

2

3 I do understand you are trying to enquire into certain transactions and what

4 they mean within your Terms of Reference, and I just don't understand why this

14:37:58 5 witness is being treated in this way.

6

7 CHAIRMAN: He is not being treated --

8

9 MR. NESBITT: It is appropriate that he be told, he is doing his best. He is

14:38:04 10 being badgered about discovery, he has got all the discovery, you have it

11 there, Mr. O'Neill has got it all. If he got on with it we wouldn't be sitting

12 here day after day, we'd be dealing with a gravamen with what you have been

13 asked to enquire into. I'm sorry to have to say that, it's unclear, we seem to

14 be investigating something else.

14:38:24 15

16 CHAIRMAN: Yes. But we have to analyse the evidence from the bank witnesses of

17 the --

18

19 MR. NESBITT: Yes, ask him evidence and get on with it.

14:38:37 20

21 CHAIRMAN: Yes. But that's against a background where the bank witnesses or

22 some of them at least, the expert bank witnesses have suggested that the bank's

23 own records are possibly incorrect.

24

14:38:42 25 MR. NESBITT: Yes. And deal with that.

26

27 CHAIRMAN: Sorry?

28

29 MR. NESBITT: That can be dealt with if that's a view the Tribunal have. We

14:38:49 30 have done nothing but talk about the giving of documentation to allow the

14:38:53 1 Tribunal get on with it.
2
3 CHAIRMAN: No. But we have to look at the manner which the bank dealt with the
4 requests for information from the Tribunal.
14:38:59 5
6 MR. NESBITT: Why?
7
8 CHAIRMAN: To ascertain whether in fact all the information that the bank had
9 was forthcoming.
14:39:06 10
11 MR. NESBITT: Why doesn't someone just ask that question?
12
13 CHAIRMAN: In the opening, in the supplemental opening statement, my
14 recollection is that it was made quite clear that one of the tasks that the
14:39:20 15 Tribunal would undertake would be to, would be to look at the manner which the
16 bank dealt with the requests for information.
17
18 MR. NESBITT: Why?
19
14:39:29 20 CHAIRMAN: And that's --
21
22 MR. NESBITT: Where is that in your Terms of Reference?
23
24 CHAIRMAN: Sorry?
14:39:34 25
26 MR. NESBITT: Where is that in your Terms of Reference, you have got
27 information you have got it all.
28
29 CHAIRMAN: But we do that the whole time.
14:39:41 30

14:39:41 1 MR. NESBITT: I am wondering why it's being done?

2

3 CHAIRMAN: Mr. Nesbitt, I don't understand how it could be submitted to the

4 Tribunal that it cannot evaluate the quality of information that is supplied to

14:39:50 5 the Tribunal in the course of the Tribunal's inquiry.

6

7 MR. NESBITT: The information that the bank have to give is given by

8 individuals who work in the bank and come and answer questions. This witness

9 is doing his best, but he appears to be constantly brought back to information

14:40:05 10 being given --

11

12 CHAIRMAN: But the Tribunal is entitled to probe that evidence and the quality

13 of information that came from the bank, in the same way as it does frequently

14 with witnesses who give evidence on other topics.

14:40:17 15

16 MR. NESBITT: But why?

17

18 CHAIRMAN: Well it's to, to analyse that information.

19

14:40:22 20 MR. NESBITT: For what end?

21

22 CHAIRMAN: To ascertain whether or not information was given, full information

23 was at all times given to the Tribunal. That's part and parcel of the inquiry

24 process, because the alternative --

14:40:38 25

26 MR. NESBITT: I am sitting here representing the bank and witnesses I am

27 surprising to hear you at this point suggesting there is an investigation that

28 the bank hasn't given all the information that should be given. I have never

29 heard that said before and I don't understand that to be your Terms of

14:40:52 30 Reference.

14:40:52 1
2 CHAIRMAN: But we don't know that.
3
4 MR. NESBITT: I'm not sure why you're asking, I should know if that's being
14:40:57 5 suggested.
6
7 CHAIRMAN: We will be wiser at the conclusion of the inquiry it, it may well be
8 that the bank witnesses did all they could and the bank did all it could to
9 provide the information requested of it from the Tribunal. But it can't ever
10 be suggested that any particular witness that what he says or what he doesn't
11 say should be taken as fact with, without any enquiry or without any analysis.
12
13 MR. NESBITT: Would I like to understand now whether it's being alleged by the
14 Tribunal team that the bank has not disclosed all the document?
15
16 CHAIRMAN: First of all nothing is being alleged, nothing is being alleged,
17 it's --
18
19 MR. NESBITT: Good. Can we pass from that then?
20
21 CHAIRMAN: No no, nothing is being alleged, it's being inquired into. We don't
22 have to have an allegation to warrant our, to justify an enquiry.
23
24 MR. NESBITT: Well, I think if you are having it suggested and indulging the
14:41:53 25 time the Tribunal has to investigate into matters set out clearly in the Terms
26 of Reference, the bank should at least have had some indication that they
27 should be here to try and deal with that issue as opposed to simply shepherding
28 the witnesses of fact here --
29
14:42:08 30 CHAIRMAN: But the alternative, Mr. Nesbitt, is that you and the bank have

14:42:12 1 assumed that there would be no questioning of the witnesses other than simply
2 for the purposes of extracting information based on information supplied to the
3 Tribunal.

14:42:24 5 MR. NESBITT: We have assumed that the Terms of Reference would be adhered to.

7 CHAIRMAN: Well, the Terms of Reference allow us conduct this type of inquiry,
8 we have no doubt about that.

14:42:36 10 MR. NESBITT: I have to respectfully submit I can't read them as doing that in
11 the circumstances.

13 MR. O'NEILL: If that issue is resolved I will now proceed with the questioning
14 of the witness?

14:42:49 15
16 Mr. McNamara, if we look on the screen, page 20721? The questioner,
17 Mr. Murphy, I think was putting a question to you at question 123 "Did you see
18 anything strange about this in relation to the credit docket for 24,838.49 and
19 just what I have outlined to you that on the customer's account, the account
14:43:12 20 equal", I think it should be "Amount equal to an Irish sum plus eight thousand
21 sterling and if you work out what is left having taken the Irish amount out it
22 have and you convert it back into sterling, you get an eight thousand odd
23 figure that includes pence."

14:43:29 25 Then the next page 20722, "If you that on the one hand and you take the fact
26 that the 25,000 sterling on the day, at the lower rate, works out at that
27 figure, would that suggest to you that that must be a 25,000 pounds sterling
28 transaction? Answer: it doesn't suggest that it has to be that transaction of
29 the I mean if - confirms this, that Irish by the 2,500 rate equates to 25,000
14:44:02 30 sterling well, it doesn't actually mean to me that the actual transaction is

14:44:05 1 one and the same. Question: it could actually be a coincidence of a sum, that
2 in fact is a sum that could derive from a 25,000 pounds sterling lodgement?
3 Answer: it is coincidental as you said. The figures are working out so one has
4 to go on different calculations, so based on that it is a possibility.

14:44:29 5 Question: which is? Answer: that either the transaction itself is one and the
6 same or that it could have happened on the day."
7

8 I think, in effect, what that mean sincere that you are saying it's an equal
9 possibility that it is one, it could be 25,000 or it might not be, isn't that
14:44:45 10 right?

11 A. Basically what I am saying at the end of the day is I do not have any
12 documentary proof or, to support that the actual transaction itself is sterling
13 or a foreign currency or whatever. All I have is the actual lodgement docket
14 and I do not have anything else that shows me, other than a stamp on the actual
14:45:10 15 docket that there is a foreign exchange connection. I don't have a tally roll,
16 I don't have a cashiers book, I don't have anything else unfortunately.

17 Q. 524 You have on the other hand your experience as a banker, your intimate knowledge
18 of the accounting systems in the bank and I suggest common sense, which
19 indicates to you that if you are talking about an uneven figure of 24,838.49
14:45:39 20 being lodged in cash to a bank account, that the probabilities are that if that
21 has a foreign exchange stamp on it, it represents the proceeds of a foreign
22 exchange transaction. Would you go that far with me? Those are the
23 probabilities in that situation?

24 A. Probabilities, if that's, yeah, if that's what you want to it call it. I want
14:46:04 25 to work on certainties and I don't have anything certain that I can produce, I
26 could produce to you that would back-up or confirm the lodgement or lodgements.

27 Q. 525 Yes. Well, certainty can be gained by having participated in the transaction
28 itself on the one hand, that's the only absolute certainty, isn't that right?

29 A. In this case, where there is no, it's not a cheque that was lodged so in that
14:46:30 30 case, in this case, yes, the only certainty is the actual person themselves.

14:46:34 1 Q. 526 Yes, or the alternative certainty can be gained or a degree of certainty can be
2 gained by having an original document which appears to show the thing having
3 taken place in a certain way, isn't that right?
4 A. If the document showed something that indicated to us.

14:46:50 5 Q. 527 But would you agree also that in principle the circumstantial evidence around a
6 particular transaction can be of a degree that leads you to conclude, given
7 your experience and common sense, that it in fact is a particular type of
8 transaction, isn't that right?
9 A. A particular type of transaction, yes.

14:47:11 10 Q. 528 Yes. A particular type of transaction, including I suggest, a sterling
11 lodgement?
12 A. Including a sterling lodgement.

13 Q. 529 Yes. You don't need the docket saying 25,000 pounds sterling converted to
14 Irish pounds equals 24,838.49 stamped on that day to be sure that that
14:47:38 15 transaction took place, if there is other evidence to back it up, isn't that
16 right?
17
18 MR. O'HOISIN: Chairman, this comes back, Mr. O'Neill didn't taken any notice of
19 the intervention that was made earlier on, Chairman. He doesn't seem, appear
14:47:52 20 to have taken any notice whatsoever.
21
22 MR. O'NEILL: I dismissed it for what it is.
23
24 CHAIRMAN: Any concern that you have can be addressed when you have your
14:48:02 25 opportunity to cross-examine.
26
27 MR. O'HOISIN: Questions are being put on an unfair base with a view to pushing
28 an agenda.
29
14:48:11 30 CHAIRMAN: They are not being put, first of all there is no agenda, the only

14:48:14 1 agenda the Tribunal has is to ascertain the truth of the issues that we are
2 dealing with. There is no agenda. You keep repeating that.

3
4 MR. O'HOISIN: I am referring to the manner in which the questions are being
14:48:31 5 asked. The reality, Chairman if you let me finish the submission.

6
7 CHAIRMAN: Mr. O'hOisin, there is no agenda. If questions, I mean the only way
8 we can conduct the business of the Tribunal is to allow whoever is asking the
9 questions at the time to conduct their examination or their cross-examination
14:48:47 10 of a witness, there is a full entitlement to you and to Mr. Nesbitt --

11
12 MR. O'HOISIN: I am entitled to object, Chairman, if questions are put on an
13 unfair and improper basis. Will you let me finish my submission, Chairman?

14
15 CHAIRMAN: We have made it clear we do not accept your argument that they are
16 being put --

17
18 MR. O'HOISIN: You haven't even heard my submission.

19
20 CHAIRMAN: It's the same argument you made a few minutes ago.

21
22 MR. O'HOISIN: A different question is put by Mr. O'Neill now, in which without
23 referring the witness to the fact that it is a common case that there was an
24 element of sterling in this lodgement, that is common case and that has not
14:49:26 25 being put to the witness at all. He has moved to a situation where he is
26 asking the witness as was done during the private interview by Mr. Murphy,
27 trying to get the witness to express a view as to probability or otherwise, of
28 the lodgement being 25,000 sterling without referring to the other evidence
29 which is common case, there is no issue being taken that there was some
14:49:52 30 sterling in this lodgement, that part of it was sterling, and the other part

14:49:56 1 was Irish pounds.

2

3 Now, that is being done, in my respectful submission, in a way which is unfair

4 and is being done in a subtle way to get the witness to give an answer which

14:50:11 5 isn't based on a full appreciation of what is being asked by Mr. O'Neill.

6

7 MR. O'NEILL: Mr. O'hOisin is obviously not listening to the evidence being

8 adduced or the questions which are being put to the witness. He makes his case

9 on the premise is that there was no mention to this witness that there was a

14:50:33 10 sterling element in it.

11

12 If he looks to the question itself, which was put to the witness, it expressly

13 refers to the fact that there was 8,000 pounds sterling involved in this

14 transaction and goes on to ask the question putting that against the 25,000

14:50:51 15 lodgement, so there is simply no foundation for this interruption. And I would

16 ask Mr. O'hOisin to reserve his cross-examination of the witness to its

17 appropriate place and before he intervenes with my examination of the witness,

18 that he should check the facts.

19

14:51:07 20 I will now read the question again which will amply demonstrate that he is

21 fundamentally in error in making the interposition that he did. The question I

22 read was question 123" do you see anything strange about this in relation to

23 the credit docket for 24,838.49 and just what I have outlined to you that on

24 the customer's account, the account equal to an Irish sum plus eight thousand

14:51:34 25 sterling, and if you work out what is left, having taken the Irish amount out

26 of it, and you convert that back into sterling you get an eight thousand odd

27 figure, that includes pence. If you take that on the one hand" page 20722,

28 "And you take the fact that 25,000 sterling on the day, at the lower rate,

29 works out at that figure, would that suggest to you that it must be a 25,000

14:52:01 30 pounds sterling transaction? Answer: it doesn't suggest that it has to be that

14:52:07 1 transaction. I mean it confirm this is, that Irish by the 2,500 rate equals
2 25,000 sterling."

3
4 Now it is abundantly clear from that that the connection with there being a
14:52:18 5 sterling amount in this has been made perfectly clear to the witness.

6
7 Now the allegation is that the question was in some way unfair, that it was in
8 some way slanted, it is not. It is exploring exactly what was put to the
9 witness at the interview.

14:52:37 10
11 MR. O'HOISIN: I wish to respond to that. Firstly, let's look where we are
12 coming from, we're coming from a situation where Mr. O'Neill was questioning
13 this witness about whether he should have appreciated at the time back in April
14 as to whether or not three different transactions were foreign exchange or not,
14:52:55 15 that was the, where we started from. And the witness had said it was possible,
16 and Mr. O'Neill was then questioning him about his private interview where he
17 also said it was possible.

18
19 Mr. O'Neill was, it would appear, seeking to demonstrate that the witness
14:53:12 20 should have been taking the view that it was probable that these transactions
21 were all foreign exchange transactions.

22
23 Now, that is all very well in itself, the first lodgement, the one for 24,838
24 is a foreign exchange, partly a foreign exchange lodgement and partly an Irish
14:53:30 25 pound lodgement.

26
27 Now, what we have done is to move subtly from that position where we started
28 from to a situation where now Mr. O'Neill, without explaining it to the
29 witness, is trying to get the witness to express a view as to the probability
14:53:46 30 as to whether or not the lodgement, not as to whether or not the lodgement is

14:53:51 1 either 25,000 sterling on its own, or is a portion of sterling and a portion of
2 Irish pounds. We have moved away from the question of whether or not it's
3 foreign exchange or non foreign exchange, and what I'm trying to indicate to
4 the Tribunal is that is being done in a very unclear way, and in a subtle way,
14:54:16 5 with a view to eliciting an answer from this witness which is not being given
6 with an understanding or is likely not to be given with an understanding of
7 what the nature of what the question is.

8
9 Mr. O'Neill did not attempt to deal with that in his response, he simply
14:54:32 10 started to quote from the private interview where Mr. Murphy was questioning, a
11 different type of question Mr. Murphy was putting, different to the position
12 where Mr. O'Neill started from, and I have indicated where he started from.

13
14 CHAIRMAN: Well, I understood Mr. O'Neill was following the line of the private
14:54:50 15 interview as it's coming up on the screen.

16
17 MR. O'HOISIN: That's not where he started from, Chairman.

18
19 JUDGE FAHERTY: Mr. O'hOisin, I understand from the, when Mr. O'Neill questioned
14:55:04 20 a little while ago, Mr. McNamara, he was asking him to conclude in relation to
21 the 19,142.92 transaction and the 11,743.74, I think they are three and four.
22 That these were a matter of probability because there was objective factors
23 that would indicate that they were foreign exchange transactions. And I think
24 in fairness to Mr. McNamara he said, "I accept that, yes."

14:55:29 25
26 Mr. O'Neill then went to the private interview and what you are saying is that
27 he starts effectively with one, but I understand from Mr. O'Neill, that he is
28 coming to three and four, but that is the context.

29
14:55:46 30 MR. O'HOISIN: Judge Faherty, the position is that --

14:55:51 1
2 JUDGE FAHERTY: Your point is that he put a particular question regarding
3 lodgements three and four.

14:55:56 5 MR. O'HOISIN: No, he started in relation to the three lodgements referred to
6 in that letter, lodgement number one, lodgement number three and lodgement
7 number four. And the basic, basis for those questions was, rather than simply
8 say it was possible they were foreign exchange transactions, you should have
9 been expressing a view that it was probable that they were foreign exchange as
10 opposed to non foreign exchange.

11
12 JUDGE FAHERTY: Maybe I am mistaken as to what he said, it's only my own note I
13 am going on, that the context of where the probability, before we went onto the
14 private interview, that he was looking at the 19,142.92 and the 11,743.74 and
14:56:36 15 Mr. McNamara had responded that he would accept as a matter of probability that
16 they were foreign exchange transactions, given the indicators if you like.

17
18 MR. O'HOISIN: That's correct, Judge, but when you then go to a situation,
19 sorry, he then went to the private interview for the purpose of demonstrating
14:56:56 20 that back in April he was also saying that it was possible that these were
21 foreign exchange transactions and I'm implying into the base of his questions
22 that he was suggesting to the witness that he should have been taking the view
23 that it was probable. Now that was the issue, but we have suddenly and
24 imperceptibly moved from that situation to a situation where now Mr. O'Neill is
14:57:20 25 getting the witness, without stating it clearly, to try and express a view as
26 to whether or not it is probable that the lodgement number one, not that it was
27 foreign exchange or non foreign exchange, but that it was a particular type of
28 foreign exchange, i.e. 25,000 sterling as opposed to an amount of sterling and
29 an amount of Irish pounds. That's an important distinction, it's one that has
14:57:47 30 been done imperceptibly and not one that has been made clear at all.

14:57:52 1
2 The other objection, which I don't think the chair, was dealt with by the
3 Chairman earlier when I mentioned it, the question of probability ultimately in
4 relation to these matters, the question of the weight to be attached and the
14:58:07 5 conclusion is ultimately a matter for this Tribunal.

6
7 CHAIRMAN: Absolutely.

8
9 MR. O'HOISIN: But irrespective of that if a question is going to be and if the
14:58:18 10 Chairman is going allow this question, it should be done on a clear basis to
11 the witness, not where its coming from here. I just do not accept, I know
12 Mr. O'Neill will come back and say I am operating on fundamentally in error, I
13 am not fundamentally in error, if he listened to the argument I made it would
14 be clear.

14:58:35 15
16 CHAIRMAN: Can I just say one thing in relation to -- if a witness, forget
17 about this witness, if a witness says in answer to a question from Counsel for
18 the Tribunal, or any other counsel for any other party that a particular thing
19 is possible, there is nothing wrong in the Counsel for the Tribunal or another
14:58:53 20 counsel who is cross-examining that witness saying to that witness, is it not
21 probable? Even though ultimately the decision as to whether it is possible or
22 probable is a matter for the Tribunal.

23
24 But there is nothing to stop a witness being probed as to a description he
14:59:17 25 gives, or weight he attaches to particular evidence.

26
27 MR. O'HOISIN: I accept that, Chairman that somebody based on their banking
28 experience, however --

29
14:59:26 30 CHAIRMAN: Wait now, so the fact that Mr. O'Neill might suggest to a witness is

14:59:29 1 it not probable rather than possible, he is not usurping the functions of the
2 Members of the Tribunal in suggesting that to the witness. Ultimately we will
3 have to decide and we will at that stage have had the benefit not only of
4 answers to Mr. O'Neill but also answers given in response to cross-examination
14:59:54 5 from other legal teams.

6
7 MR. O'HOISIN: I accept that a witness can be asked based on his banking
8 experience whether something is possible or probable.

9
15:00:03 10 MR. O'NEILL: Mr. McNamara, we started out this exercise by my asking you
11 whether or not you had changed your mind as to whether or not the foreign
12 exchange, the fact that these were foreign exchange transactions moved from
13 being a possibility to a probability, you understand that?

14 A. Yes.

15:00:22 15 Q. 530 You indicated to me that when you look now to the 19 thousand transaction, I am
16 not going to go through all the figures, you know which the 19 thousand is in
17 relation to 19,142.92. I don't think we add anything by reciting all the
18 figures?

19 A. Yes, 19,142.

15:00:46 20 Q. 531 Yes. The 19 thousand figure, is one which you accept in all probability was a
21 foreign exchange transaction, isn't that so? From the information that you had
22 available to you from the Tribunal's letter of the 6th March?

23 A. Yes.

24 Q. 532 And similarly in relation to the 11,000 lodgement?

15:01:07 25 A. Yes.

26 Q. 533 You accepted that that in all probability was a sterling amount, isn't that
27 right?

28 A. Correct.

29 Q. 534 And I was revisiting with you your interview earlier this year to establish
15:01:18 30 whether or not at that point in time, as far as you believed, was that these

- 15:01:27 1 were possibilities and no more than possibilities, whereas you are now happy to
2 accept that they were indeed probabilities, isn't that so?
- 3 A. That's correct.
- 4 Q. 535 That's what this exercise was about, isn't that right?
- 15:01:41 5 A. Yes, I believe so.
- 6 Q. 536 And when you started that interview in April of this year, just to establish
7 this with you, you did not know that the 24,383 - sorry, 24,838.49 lodgement
8 had any sterling element in it whatsoever, isn't that so?
- 9 A. I think not.
- 15:02:07 10 Q. 537 Sorry?
- 11 A. Sorry, I think you are correct in saying that.
- 12 Q. 538 It's not what I think. I want to know what your knowledge was. Did you know
13 at the commencement of this interview that there was any sterling element
14 whatsoever in the 24,838.49 lodgement?
- 15:02:29 15 A. When did we get correspondence in relation to the various interviews with Mr.
16 Ahern? If it came in before or after that, at this point I can't recall.
- 17 Q. 539 O.k. Well, to simplify it then. If you did know it, was it because Mr. Ahern
18 had admitted it or acknowledged it, at an interview on the 5th April?
- 19 A. If I did know it it would have been based on that information, yes.
- 15:02:57 20 Q. 540 Right. So can we take it then that if we are talking about what your frame of
21 mind was in March when the Tribunal was enquiring as to whether these were
22 foreign exchange transactions or not, when it came to you addressing the
23 possibility that the 24,000 was in fact 25,000 sterling, you didn't know that
24 there was any sterling element in the transaction at that time, isn't that
15:03:29 25 right?
- 26 A. I believe that's correct.
- 27 Q. 541 Yes. Does it equally hold true that in March of this year you did not know
28 that any part of the 11,743.74 was sterling?
- 29 A. I believe that's correct as well.
- 15:03:50 30 Q. 542 Did you know that any part of the 19 thousand lodgement we have spoken about

- 15:03:56 1 was sterling?
- 2 A. Again I would take it to be the same as the previous two answers.
- 3 Q. 543 And does the same apply, though it wasn't being addressed in this
- 4 correspondence at this particular time, but is it the case that in March of
- 15:04:12 5 this year you were equally unaware of there being any foreign exchange
- 6 transaction preceding the lodgement of the 28,772.90 which was lodged to Mr.
- 7 Ahern's account?
- 8 A. Sorry, that lodgement was lodged to who's account?
- 9 Q. 544 It was lodged to - sorry, Ms. Larkin's account?
- 15:04:35 10 A. Ms. Larkin's account.
- 11 Q. 545 Yes. You were unaware that it contained any foreign exchange element, isn't
- 12 that so?
- 13 A. As in the lodgement did not contain any foreign exchange element? Yes, the
- 14 lodgement docket may have had a foreign exchange brand on it.
- 15:04:51 15 Q. 546 Of course. What I think you know I am asking you, Mr. McNamara, is whether you
- 16 had any knowledge that behind these obvious Irish pound lodgements there was a
- 17 foreign exchange element, either wholly or partly, in relation to any one of
- 18 the four lodgements that are the subject of the current inquiry?
- 19 A. Correct.
- 15:05:14 20 Q. 547 Did you know of any such sterling or other foreign exchange connection with any
- 21 one of those lodgements?
- 22 A. Not that I am aware of, unless as I say the correspondence that came through
- 23 from yourselves, but that came through I believe from what you said in April,
- 24 so in March I would not have been aware of it.
- 15:05:35 25 Q. 548 Right. Following from your last response, is it the case that insofar as you
- 26 came to know that these were foreign exchange lodgements, it was a process that
- 27 commenced with the Tribunal providing you with information which it had
- 28 obtained from yourselves, and later with information from Mr. Ahern, is that
- 29 right?
- 15:06:04 30 A. That's right.

15:06:05 1 Q. 549 Yes. So that as far as you are concerned your efforts in relation to
2 establishing the foreign exchange nature of these transactions had not produced
3 anything that would have allowed you to conclude as either, as anything
4 stronger than a possibility, that these were foreign exchange transactions,
15:06:29 5 isn't that right?
6 A. That's right.
7 Q. 550 It was the work of the Tribunal that led you to conclude, as a probability,
8 that they were foreign exchange transactions, is that right?
9 A. That's right.
15:06:39 10 Q. 551 And it was as a result of the Tribunal providing you with details of Mr.
11 Ahern's interview that it confirmed to you that these were foreign exchange
12 transactions, is that right?
13 A. That's right.
14 Q. 552 Right. For completeness I am going to deal with your responses in relation to
15:07:06 15 the proposition which was being advanced to you in relation to each of the
16 three transactions that were being considered at the interview in April of this
17 year, where it was put to you that these were transactions which, as a matter
18 of probability or indeed certainty in one instance, were foreign exchange
19 transactions and your response to it.
15:07:31 20
21 If we can look to page 20727, please? The very top of the page there, I should
22 say that here we are talking about the 19,142.92, it's put to you by Mr. Murphy
23 "Question 161: Now, Mr. McNamara, isn't this obviously a sterling transaction?
24 Answer: nothing indicates to me that it is obviously a sterling transaction.
15:08:03 25 Question: what about foreign exchange stamp? Answer: yes, I see the foreign
26 exchange brand on it, but that of itself does not tell me that it's a foreign
27 currency transaction. Question: Mr. Murphy says that if you see the stamp you
28 would at least think foreign exchange first? Answer: if you see the stamp you
29 would think foreign exchange first, yes, but it means that the transaction has
15:08:26 30 taken place at the foreign exchange teller as against any of the other tellers

15:08:30 1 who would not be dealing with foreign currency. Question: but would you not
2 agree with Mr. Murphy that when you see a foreign exchange stamp your first
3 thought would be that this is a foreign exchange? Answer: yes, your first
4 thought would be that it is o.k, it is coming through the foreign exchange area
15:08:50 5 so. Question: and I am suggesting to you that this is a foreign exchange, that
6 this is sterling, what do you say? Answer: what do I say? Question: yes.
7 Answer: o.k, there is nothing on it to tell me that it is sterling, that is all
8 I am saying to you. Question: but why when you see a foreign exchange stamp on
9 it don't you say to me, look I don't know but certainly that suggests sterling
15:09:16 10 so it may be sterling? Answer: oh, it may be sterling or foreign currency but
11 what I am saying is that there is nothing actually on it to say foreign
12 currency or sterling. Question: no, no, but what I am trying to say to you,
13 sorry, I am cutting across you, I don't mean to, but you are the banker, you
14 are the expert in all of this, as the person working in the bank and if you see
15:09:40 15 a foreign exchange, I mean I ask you, what is this and there is no mention of
16 it being sterling and I say to you" page 20728 "What about the foreign exchange
17 stamp, and I appreciate that that is not conclusive but it suggests sterling.
18 Answer: it suggests foreign currency.
19
15:10:00 20 Question: yes exactly. Now, when you see those odd figures, both of them
21 there, they are all monies to be going to an account, aren't they? Answer: yes
22 they are uneven amounts. Question: there is no notice to check or anything?
23 Answer: no, again there is nothing to tell me what that is."
24
15:10:21 25 So again in that instance, in relation to that you were of the view that it was
26 no more than a possibility, isn't that right?
27 A. My information at the time was that I was presented with a lodgement docket, I
28 was asked does it not tell you that it's sterling and the answer is no. It
29 does not tell me it's sterling, it just tells me it's a lodgement docket to an
15:10:49 30 account in an Irish pound amount with a reference or narrative on it and

- 15:10:54 1 bearing a foreign exchange stamp.
- 2 Q. 553 But you had more information than that, Mr. McNamara, the whole point was that
- 3 you had explained to you the connection that there was, firstly between the
- 4 fact that on the lodgement docket itself it showed two figures, isn't that
- 15:11:13 5 right?
- 6 A. Yes on that.
- 7 Q. 554 One was 19,002.79?
- 8 A. Correct.
- 9 Q. 555 A figure which equated exactly to the amount that 20,000 pounds sterling would
- 15:11:23 10 have been translated into had the lower rate of exchange, that is up to 2,500
- 11 pounds been applied to such a transaction. Isn't that right?
- 12 A. Yes.
- 13 Q. 556 That was on the face of the document which was put to you before this
- 14 questioning started, isn't that right?
- 15:11:42 15 A. On the face of the document, with just the Irish pounds amounts, the 19 --
- 16 Q. 557 I appreciate it was the Irish pound amount, but it was an Irish pound amount
- 17 that was exactly the amount which you would have received had you tendered
- 18 20,000 pounds sterling on that day at the up to 2,500 rate, isn't that right?
- 19 A. Yes, that's right.
- 15:12:02 20 Q. 558 And the other, that figure was struck out on the document and above it was
- 21 written 19,142.92 which again is a figure which relates to a sterling rate of
- 22 exchange in the bank on that day. In this instance it was the same calculation
- 23 carried out using the rate of exchange appropriate to a transaction up to a
- 24 value of 10,000 pounds, isn't that right?
- 15:12:28 25 A. Yes, I believe so.
- 26 Q. 559 In both instances deducting the £5 commission that would be chargeable upon
- 27 such a transaction, isn't that so?
- 28 A. Yes.
- 29 Q. 560 So it was against that background that the document was being put to you, isn't
- 15:12:42 30 that right? And you were being asked as to whether or not this was indicative

- 15:12:46 1 of the matter being sterling and you were saying that it was a possibility?
- 2 A. I was saying it was a possibility, there was nothing on the document to tell me
- 3 that this was a clear sterling transaction.
- 4 Q. 561 What you required, in other words, to make that concession was something that
- 15:13:08 5 was conclusive and short of having something conclusive you were not prepared
- 6 to acknowledge that it was in fact a foreign exchange transaction, is that the
- 7 position?
- 8 A. Well, as I see it, the position is that for me to categorically, one hundred
- 9 percent confirm that that transaction was backed up by sterling cash of
- 15:13:34 10 whatever figure was previously mentioned, I needed to see something to back it
- 11 up and I had, in the research, there is nothing there to show me that.
- 12 Q. 562 But sorry to cut across you, but you had something to back it up, you had the
- 13 document, the lodgement docket which showed a direct reference between what was
- 14 actually lodged in the bank on that day and two published rates of exchange in
- 15:13:57 15 the bank which applied to 20,000 pounds would produce those figures, and that
- 16 had been drawn specifically to your attention?
- 17 A. Yes.
- 18 Q. 563 Didn't it go beyond any possible range of coincidence that this was other than
- 19 a 20,000 pounds sterling lodgement?
- 15:14:14 20 A. Well, for me to be one hundred percent certain I had nothing else. I mean, the
- 21 figures when you calculate them against the rates, yes, they work out, but
- 22 there is no evidence, there was no document that could be found that would
- 23 confirm any of that for me.
- 24 Q. 564 Do we take it from that that you did not consider this to be sufficient
- 15:14:39 25 evidence to allow you to conclude that this was a 20,000 pounds sterling
- 26 transaction?
- 27 A. Well, for me to say then and now that --
- 28 Q. 565 Yes.
- 29 A. Yes. That it was 20,000 that went against that lodgement one hundred percent, I
- 15:14:52 30 cannot do that because I do not have evidence.

- 15:14:55 1 Q. 566 And if that is so could I suggest to you that the qualification that you would
2 have put on the questioning that took place in relation to it was, I cannot be
3 one hundred percent certain but I am 99.99 per cent certain, because it was
4 overwhelming I suggest, the evidence that indicated that this was a foreign
15:15:22 5 exchange transaction, would you agree with me?
6 A. Yes, the evidence does suggest.
7 Q. 567 Well, can I suggest it goes a lot more than suggest.
8 A. But I cannot a hundred percent guarantee or say to you here and now or back in
9 April that, yes, that the customer brought in 20,000 or whatever the figure was
15:15:32 10 in sterling and lodged it, I cannot say that to you.
11 Q. 568 Right. If you did say it you would be expressing your view on the available
12 documentation and it's meaning and effect, isn't that right?
13 A. If I was to confirm that I would need something to convince myself that it
14 actually was cash that was brought in, it was 20,000 and, yes, I took it in or
15:16:00 15 someone else took it in, I need confirmation, one hundred percent confirmation
16 of that.
17 Q. 569 O.k. In the absence then what is the tally roll you say you are in a position
18 that you couldn't confirm it, is that right?
19 A. Correct.
15:16:12 20 Q. 570 Now just if we can turn to page 20736, in this instance we are dealing with the
21 transaction of the 11,743. And here at the end of it ahead of question 235
22 Mr. Murphy is talking about 11,743 figure in tab three figure. This is
23 identified at question 235 "This is the sum going into Ms. Larkin's question
24 Answer: correct. Question: all right. Is that Irish money or is it foreign
15:16:52 25 exchange money. Answer: what I am look at on this page is it looks to be all
26 Irish". The page we are looking on as you probably know is the one where this
27 was being lodged to the RDC account, isn't that right?
28 A. This is the 9,700 lodged and 2,000 underneath that?
29 Q. 571 Exactly. Of which some writing on that page being your own indication that you
15:17:11 30 had some role to play?

- 15:17:11 1 A. Correct.
- 2 Q. 572 The exchange, the questions goes on at 237, "Foreign exchange stamp. Answer:
- 3 Correct." Page 20737, "And we have large notes 9,743.74 and other 2,000. Why
- 4 would they be divided? Answer: I cannot say other than large notes, there
- 15:17:30 5 could have been two different amounts as in two different bundles. I don't
- 6 know. Question: Mr. Murphy, I don't know if he initially thought, but he
- 7 certainly eventually thought, that the 9,743 represented 10,000 sterling and
- 8 Mr. Ahern has confirmed that this is correct and we know that 9,743.74 converts
- 9 at the rate of the day back to 10,000 sterling? Answer: all right. Question:
- 15:17:57 10 And you haven't known that to this amount? Answer: I believe your
- 11 correspondence to the bank highlights something of that nature."
- 12
- 13 That's the questioning that took place on that issue, again it's something
- 14 where I think you were indicating, or inferring in your responses here that you
- 15:18:17 15 were not accepting that this was in fact indicative of it being a 10,000
- 16 sterling amount, isn't that so?
- 17 A. No, I am not accepting or denying. I am just saying that I cannot one hundred
- 18 percent put my hand up and say that, yes, it was sterling.
- 19 Q. 573 Right. Now could I put to you, Mr. McNamara, that whilst the evidence I
- 15:18:42 20 suggest is overwhelming in the case of the 19 thousand transaction, that that
- 21 was sterling, that your position never changed at that time in April of this
- 22 year from being that this was only a possibility, isn't that so?
- 23 A. My position is that I had nothing concrete to give one hundred percent definite
- 24 answer that it was sterling or otherwise.
- 15:19:09 25 Q. 574 Right. Are you agreeing with me that your position in April was that you did
- 26 not alter your position, the bank's position, namely that it was merely a
- 27 possibility?
- 28 A. My position?
- 29 Q. 575 Yes, your position in, at the end of the interview process, where you were
- 15:19:29 30 being asked, where it was being put to you that these in fact were sterling

15:19:33 1 amounts, your response in respect of each one of these transactions went no
2 further than to say "it's a possibility, I can't do more," is that a fair
3 summary of your response?
4 A. It's a possibility of that transaction, yes.

15:19:50 5 Q. 576 You declined to follow the invitation put to you by your questioner that it was
6 overwhelming or that it was a matter of probability or certainty that these
7 were foreign exchange, isn't that right?
8 A. It's not a certainty, that's the only thing I can say. I don't have
9 documentation to certify it.

15:20:11 10 Q. 577 Now in the course of the interview on that day you were questioned in relation
11 to your dealings with Mr. Ahern, isn't that so?
12 A. Yeah, I believe so, yes.

13 Q. 578 And in particular about Mr. Ahern's enquiries of you in relation to foreign
14 exchange transactions, isn't that so?
15 A. Yes.

16 Q. 579 And if we look to page 20742 please? We will just read the entire of that
17 briefly.
18
19 "Question: can I just ask you one question, Mr. McNamara, Mr. Ahern has told us
15:20:52 20 that he has been in touch with the bank over the previous two years trying to
21 establish whether transactions were foreign exchange. Have you had any contact
22 with Mr. Ahern in your recent past in relation to this, particularly in
23 relation to this whole foreign exchange? Answer: I have had dealings with Mr.
24 Ahern, in terms that, like the Tribunal, he is looked for certain information.
15:21:14 25 He also has been looking for the same information to the best - you know, not
26 exactly letter by letter, but he was enquiring about the various transaction at
27 the outset. Question: at the outset? Answer: well, I think when the initial
28 query came in with the - Question: a couple of years ago. Answer. No. When
29 did this first start? Question: well, you were interviewed last year so was
15:21:39 30 that it. Answer: I am not talking from that. The Tribunal wrote to us asking

15:21:42 1 for something like, I think it was about 20 dockets that referred to O'Connell
2 Street, Finglas, Drumcondra, that was the initial as I understand it.
3 Question: sure. Answer: the start of it. And that I think came through from
4 Mr. Ahern's office initially and he has sought copy documents over that period
15:22:02 5 of time. In relation to the sterling, yes, he did ask us in relation to his
6 transactions. I can't recall if it was a specific transaction or just all his
7 transactions. Question: and when did he require? Answer: I don't have the
8 exact date, but I would say within the last few months. Question: so you don't
9 recall him being in touch say two years ago on this issue? Answer: no, I mean
15:22:29 10 my, I suppose, connection, involvement with the Tribunal was when his office, I
11 think may have initiated asking about dockets. A letter from his office, Frank
12 Ward's office, his solicitor's office or there was a letter".
13
14 We now go to 20743 "From yourselves around the same time, I started researching
15:22:49 15 these items. Question: and that initial contact was the issue of foreign
16 exchange rates. Answer: not that I recall. Question: so it is the only in the
17 recent times that the issue of foreign exchange has been raised? Answer: yes,
18 and again as I recall it, it is only in the recent past that I was asked if
19 there was a foreign currency connection to certain transactions or to all his
15:23:15 20 transactions. Question: and that was formal contact. It wasn't Mr. Ahern
21 contacting you directly? Answer: it was telephone calls. Question: from Mr.
22 Ahern? Answer: from his office but then I was put through to himself. Yes, I
23 have spoken to him once or twice. Question: thank you."
24
15:23:36 25 Now, in that series of questions and answers, can the Tribunal take it from
26 that, Mr. McNamara, that you were in personal contact with Mr. Ahern by
27 telephone in relation to the foreign exchange investigations that you were
28 carrying out in and prior to April of this year?
29 A. Are you asking if I was making contact with Mr. Ahern?
15:24:03 30 Q. 580 I am asking whether you were in telephone contact with Mr. Ahern regarding your

15:24:08 1 enquiries into the possibility of foreign exchange transactions involving him
2 within that year, do you understand the question?

3 A. I received I believe one or two phone calls that came through from his office.
4 I spoke to him and the question of foreign exchange, it was mentioned, but I
15:24:35 5 was not ringing him, it was the calls were coming through, or calls coming
6 through from his office.

7 Q. 581 Yes. Now, in the start of the question and answer series that we see there, it
8 was put to you by the questioner Mr. Murphy, that Mr. Ahern had told the
9 Tribunal that he had been in touch with the bank over the previous two years
10 trying to establish whether transactions were foreign exchange. Is it your
11 evidence that he was in contact with you over that period of two years in
12 relation to foreign exchange transactions. And for completeness, I'm not
13 talking about this year, you may exclude the year 2007 from that question?

14 A. I don't believe that I was asked any questions around the foreign exchange
15:25:22 15 connection.

16 Q. 582 Right. Now, is it your evidence that Mr. Ahern's enquiries and I am
17 distinguishing now between Mr. Ahern's enquiries and the Tribunal's own
18 inquiries which we know started with the bank on the 12th January of this year?

19 A. Sorry, what's the question?

15:25:43 20 Q. 583 The question I'm getting to it.

21 A. Sorry.

22 Q. 584 When do you say Mr. Ahern made the first enquiries of you this year in relation
23 to there being foreign exchange transactions through his accounts with AIB?

24 A. As I recall submitting to yourselves I believe the first was some time between
15:26:07 25 January/March of this year.

26 Q. 585 January and March of this year?

27 A. I can't put an exact date, as I explained, it was some time between that period
28 of time.

29 Q. 586 Right. Did Mr. Ahern indicate to you why it was that at that point in time he
15:26:20 30 was asking you to make enquiries as to foreign exchange transactions through

- 15:26:27 1 his accounts?
- 2 A. My recollection is that the, Mr. Ahern did not want information let's say that
- 3 I would, or through the bank we would have, what's the word, gathered, that he
- 4 was not aware of, and he wished to be aware of all such information, so that
- 15:26:52 5 when he would have, you know, have to answer any questions, I would imagine
- 6 that he would be aware of the same information that we had submitted or would
- 7 submit to the Tribunal.
- 8 Q. 587 Yes. Well, what did he ask you in relation to any specific foreign exchange
- 9 transaction?
- 15:27:09 10 A. Again I recall a phone call from a lady called Sandra who works in his office
- 11 and it was Sandra who asked in relation to the, I believe sterling transactions
- 12 as I mentioned in my letter to yourselves. I believe it was around three or
- 13 four different transaction amounts that she was referring to. When I got back
- 14 to her office I believe I spoke with Mr. Ahern, but as I said at the time I had
- 15:27:39 15 no, nothing conclusive or concrete other than foreign exchange stamp on each of
- 16 the lodgement dockets.
- 17 Q. 588 Following upon the interview which you had in April, the Tribunal wrote to the
- 18 bank's solicitor on the 8th May at page 21254 please, and at paragraph two of
- 19 that, you, he, Mr. Kiernan was asked as follows "Please provide a detailed
- 15:28:14 20 narrative statement to Mr. McNamara describing all contact he had with Mr.
- 21 Ahern in connection with Mr. Ahern's financial affairs or otherwise. In
- 22 particular Mr. McNamara should detail all contact with Mr. Ahern in connection
- 23 with the possible foreign exchange dimension of certain transactions.
- 24
- 15:28:31 25 To facilitate Mr. McNamara in this endeavour I attach for your attention a copy
- 26 of the transcript of the aforementioned interview and I would draw
- 27 Mr. McNamara's attention specifically to page 39 therein". Page 39 we have
- 28 read just a moment ago, Mr. McNamara.
- 29 A. Oh, right, yes.
- 15:28:51 30 Q. 589 I think in response to that, on the 24th May 2007 at page 21256, the Tribunal

15:28:58 1 received a letter from Mr. Des Kiernan, which enclosed in the body of it what
2 was a statement of yours in relation to the matter, again under the paragraph
3 heading 2.

15:29:12 5 Statement from Jim McNamara in relation to contact with Mr. Ahern concerning
6 his financial affairs."

7
8 I think if we move down from there to the fourth paragraph which deals
9 specifically with foreign exchange, the others are dealing with other matters
10 "My only recollection of any reference to a possible foreign exchange dimension
11 during our conversations was earlier this year when Sandra" I think that's a
12 girl working for Mr. Ahern, either his secretary or otherwise, is that right?

13 A. That's my belief as well, my understanding.

14 Q. 590 "Rang from Dublin Airport on her way to starting her holidays, explaining that
15 Mr. Ahern was looking for further details regarding certain transactions, but
16 in particular if there were any references to any foreign exchanges
17 connections. I believe that's transactions were as follows. 11 October 1994,
18 24,838,49, 15th June 1995, 11,743.74, and 1st December 1995, 19,142.92 ."

15:30:24 20 Now if we stop just at that point, Mr. McNamara, just for the moment, you note
21 that each one of these transactions coincides exactly with the enquiries that
22 were being made, it would appear at exactly the same time, by the Tribunal, of
23 the bank, isn't that so?

24 A. Yes.

15:30:42 25 Q. 591 These are the same transactions?

26 A. As highlighted during the, from the correspondence from the Tribunal to the
27 bank.

28 Q. 592 Yes.

29 A. Yes.

15:30:51 30 Q. 593 Do you know why it is that Mr. Ahern was making enquiries of you in relation to

- 15:30:59 1 three particular transactions which happened to be also the subject of inquiry
2 by the Tribunal?
- 3 A. No, I don't know why.
- 4 Q. 594 Was it a surprise to you when Sandra contacted you in relation to these
15:31:17 5 particular transactions, given that since January the Tribunal had specifically
6 been looking for transactions within that range?
- 7 A. Yes, it was a great surprise because all transaction amounts overlapped with
8 figures as mentioned in the Tribunal letter.
- 9 Q. 595 Yes. Now if we move on with your narrative here, you say when eventually,
15:31:45 10 sorry, "When I eventually spoke with Mr. Ahern I explain that all of our
11 research had not found any conclusive connection to any foreign exchanges type
12 transaction other than the brand on the dockets."
13
14 If we turn to the next page then 21257 "I have no recollection of being asked
15:32:05 15 over the last two year period by Mr. Ahern or through his office, if there was
16 any foreign exchange connection to any of the transactions processed through
17 his accounts other than as outlined above."
18
19 That was your best recollection as of the 24th May of this year of your
15:32:22 20 dealings with Mr. Ahern in connection with the foreign exchange, isn't that
21 right?
- 22 A. Yes, that's correct.
- 23 Q. 596 I think it follows from the content of this narrative statement that you were
24 in touch with Mr. Ahern by telephone in relation to this issue, isn't that
15:32:40 25 right?
- 26 A. I was responding to the original phone call from Sandra, yes.
- 27 Q. 597 Yes. But you ended up having a conversation with Mr. Ahern in relation to it,
28 isn't that right?
- 29 A. Yes.
- 15:32:55 30 Q. 598 And that conversation or those dealings you had were the subject of further

15:33:00 1 enquiry by the Tribunal which sought a specific response to queries which it
2 put to you, and that response was yours we will I know see on screen at page
3 22316, in which you say "I believe the conversation with Sandra took place
4 between January and March 2007, early one morning, I do not believe I kept a
15:33:25 5 record of this conversation unless it's contained within the files already
6 furnished to the Tribunal.

7
8 This conversation took place sometime after the conversation". Two, I think is
9 the exchange with Mr. Ahern, isn't that right?

15:33:37 10 A. Sorry, number 2?

11 Q. 599 This is addressing your dealings with Mr. Ahern?

12 A. Yes.

13 Q. 600 "This conversation took place sometime after the conversation with Sandra and
14 therefore the time frame was some time between January and April 2007. I do
15:33:50 15 not believe I kept a record of this conversation unless it's contained in the
16 files already furnished to the Tribunal."

17
18 Just on that point I think you said a little earlier in your evidence that you
19 believed it was January to March that you had that conversation?

15:34:04 20 A. Yes, I mean the time frame was somewhere, I believe somewhere in between there.

21 Q. 601 Sure. You go on to say "I cannot recall the precise details of the exchange
22 with Mr. Ahern and again I do not believe I kept a record unless it's contained
23 in the files already furnish to the Tribunal.

24
15:34:18 25 However, my broad recollection of the conversation is that Mr. Ahern, while
26 enquiring about certain transactions, queried whether the bank had established
27 any foreign exchange connection with those transactions, because he did not
28 wish to find himself, when at the Tribunal, being faced with questions or
29 documentation which would be totally new to him, and to which he would not have
15:34:41 30 the answers or at least the benefit of having all the facts beforehand to allow

15:34:45 1 him to be fully prepared prior to attending before the Tribunal.
2
3 I explained that our research to date had not found any conclusive connection
4 to any foreign exchange type transaction, other than the brand on the lodgement
15:35:00 5 dockets.
6
7 The conversation closed with Mr. Ahern thanking me for my time and effort put
8 in by the branch in relation to all the work undertaken in connection his
9 involvement with the Tribunal."
15:35:11 10
11 That was a response that you I think provided to the Tribunal on the 21st June
12 as we see from your signature, on the bottom of it, isn't that right?
13 A. That's correct.
14 Q. 602 What you are dealing within this particular response to the Tribunal is a
15:35:34 15 conversation which had taken place within three months or so of the preparation
16 of this document, isn't that right?
17 A. Yes, that's right.
18 Q. 603 And it acknowledges the fact that Mr. Ahern and yourself were discussing a
19 matter which was of communal interest to both of you, isn't that right? At the
15:35:54 20 time when he was asking you about it. He had an interest in establishing the
21 details?
22 A. Yes, he had an interest, he was a party to the transaction.
23 Q. 604 Exactly. And in addition to your having an interest in giving your customer
24 this information, it was also information which was being sought from you and
15:36:13 25 the bank by the Tribunal, isn't that right?
26 A. That's correct.
27 Q. 605 The Tribunal wanted to know whether these were in fact foreign exchange
28 transactions, isn't that right?
29 A. Yes, they had made reference to foreign exchange transactions.
15:36:27 30 Q. 606 Yes. And at the time they were making that enquiry of you they did not know

15:36:30 1 that they were foreign exchange transaction though they have now proven to be,
2 isn't that so? Other than, and I want to make the qualification, the fact that
3 8,000 pounds or thereabouts was referred to in relation to the 24,838.49
4 lodgement of which you were unaware, and Ms. Larkin had made reference to the
15:36:53 5 fact that she believed the 28,772.90 was a sterling amount. Again a matter
6 which you were unaware of, I just put those two qualifications, isn't that
7 right?
8 A. That's right.
9 Q. 607 You had been unable to tell the Tribunal that these were foreign exchange
15:37:14 10 transactions, isn't that right?
11 A. I was unable to confirm that they were.
12 Q. 608 Yes.
13 A. That they were cash lodged, foreign cash lodged to the transaction.
14 Q. 609 The people who would know whether they were foreign exchange transactions were
15:37:28 15 the person in the bank, Mr. Murphy, who probably had dealt with the customer,
16 isn't that right?
17 A. Probably, yes, correct.
18 Q. 610 And the customer who had made the lodgement, isn't that right?
19 A. Yes.
15:37:40 20 Q. 611 You have the opportunity now of asking Mr. Ahern whether or not any one of
21 these lodgements was a sterling amount, isn't that right?
22 A. I had the opportunity to ask him?
23 Q. 612 You had the opportunity in the telephone conversation with Mr. Ahern to enquire
24 from him whether any one of the three lodgements, the amounts, dates and
15:38:03 25 figures he gave to you, or were given to you by one of his assistants either in
26 January or February or March, you now had the opportunity to ask him whether or
27 not any one of these was a foreign exchange transaction, isn't that right?
28 A. That's right.
29 Q. 613 Did you ask him?
15:38:18 30 A. No, I did not.

- 15:38:19 1 Q. 614 I see. Do you think that it would have assisted your capacity to deal with the
2 Tribunal's ongoing enquiries as to whether these were foreign exchange
3 transactions to have asked the customer whether or not they were or were not
4 foreign exchange transactions?
- 15:38:39 5 A. Yes, it would have assisted had I asked.
- 6 Q. 615 And what is the explanation at this point, Mr. McNamara, for not doing so,
7 given that the Tribunal had been critical of the extent of your enquiry in
8 March, it had indicated that it considered that a full and thorough enquiry
9 into the matter would have revealed the information which it had established
10 itself through its own investigation. In those circumstances why did you not
11 ask Mr. Ahern to assist you in the enquiry as to whether or not these were
12 foreign exchange transactions by telling you whether they were or were not
13 foreign exchange transactions?
- 14 A. I was surprised to get the phone call because on the back of the correspondence
15 from the Tribunal and phone call referring to those individual transactions
16 they both came closely I think back-to-back and at the time I was, it didn't
17 enter my head to quiz Mr. Ahern as to whether they were lodgements or not. I
18 was taking the view that the Tribunal was asking and I was responding to the
19 Tribunal by getting the information for them, and that Mr. Ahern was a separate
15:40:00 20 issue and I was explaining to him that I had nothing other than the stamp. But
21 I didn't feel that I should ask him, I didn't think to ask him and quiz him on
22 those lodgements.
- 23 Q. 616 You used the word quiz there, Mr. McNamara. Mr. Ahern was asking you
24 apparently, for details in respect of three specific lodgements on three
15:40:23 25 specific days and whether or not there was a foreign exchange connection in
26 respect of them, isn't that right?
- 27 A. That's right, yes.
- 28 Q. 617 You didn't know whether there was, you believed, you tell us, that there was a
29 possibility that there was?
- 15:40:38 30 A. Correct.

- 15:40:38 1 Q. 618 Did you tell Mr. Ahern that there is a possibility that these transactions are
2 foreign exchange transactions?
- 3 A. I believe I told him that I had nothing other than the stamp on the lodgement
4 docket, that I would not, did not discuss in detail the actual transactions
15:41:02 5 with him or the requirement as requested from the Tribunal.
- 6 Q. 619 Well, what I am wondering, Mr. McNamara is, why it is that you confined your
7 response to Mr. Ahern to one which was limited to stating that the only
8 evidence that was available from the records of the bank was that there was no
9 conclusive connection to any foreign exchange type transaction other than the
15:41:31 10 foreign exchange stamp. Why did you confine your response in those terms?
- 11 A. Again there is no documentary hundred percent proof of any, you know, foreign
12 cash lodgement, so I was not able to say to him, yes, I have discovered
13 something in our All Items Report or I have discovered something from our copy
14 documentation.
- 15:41:58 15 Q. 620 Well, are you saying that you understood Mr. Ahern's queries in the first
16 instance to be queries that were directed not towards establishing whether
17 these were foreign exchange transactions, but directed towards establishing
18 what evidence is there in the bank that might show that these are foreign
19 exchange transactions. Do you understand the distinct between the two?
- 15:42:21 20 A. My recollection as I said is that he was trying to enquire as to whether there
21 was a foreign exchange dimension or connection with any or all of those
22 lodgements.
- 23 Q. 621 But I mean if that was the enquiry he was making of you, Mr. McNamara, wasn't
24 he the person who knew firstly that the 24,838.49 comprised 8,000 pounds
15:42:50 25 sterling? He knew that the 11,743.74 comprised 10,000 pounds sterling, and he
26 knew that the 19,142 comprised 20,000 pounds sterling, isn't that so? That
27 thank would be appear to be the situation?
- 28 A. It would appear to be, yes, correct.
- 29 Q. 622 In that situation why were you being asked whether there was any connection
15:43:17 30 between these amounts and the lodgements if he already knew this?

- 15:43:26 1 A. Possibly to confirm what he knew.
- 2 Q. 623 Well, were you able to confirm what he knew, because you weren't able to
3 confirm to the Tribunal that any one of these was a sterling transaction and
4 your evidence to the Tribunal as I understand today, is that that is still your
15:43:46 5 position. You are dependant upon the content of Mr. Ahern's statement,
6 acknowledging that these were foreign exchange in order for you to make that
7 connection, isn't that right?
- 8 A. I could not confirm to him, as I said, I had no conclusive connection to any
9 foreign exchange other than the stamp on the various lodgement dockets. So if
15:44:08 10 he knew that they were sterling and if I didn't know that they were sterling, I
11 had nothing other than the brand.
- 12 Q. 624 Having given Mr. Ahern the information that there was no conclusive evidence to
13 show that these were foreign exchange transactions other than the brand on the
14 lodgement dockets, did he then indicate to you "Well, I am aware that these
15:44:32 15 were foreign exchange transactions" or "I believe that I conducted a number of
16 foreign exchange transactions that year in amounts which are similar to that
17 and I want you to confirm or check whether or not from an accuracy point of
18 view, my belief that they took place on these dates is correct?"
- 19 A. On my recall is that there was no reference from Mr. Ahern to, as you said the
15:45:04 20 individual sterling lodgements, amounts, on those days. It was a case of here
21 are the account numbers and lodgement dates, were there any foreign
22 transactions involved in that?
- 23 Q. 625 Isn't that a most unusual enquiry to be made of you, Mr. McNamara, seeking a
24 limited amount of information from you?
- 15:45:31 25 A. Well, looking back, yes, it's just one piece of information that's being sought
26 from me.
- 27 Q. 626 But it was one piece of information that was also being sought by the Tribunal
28 of Inquiry at the same time, isn't that right?
- 29 A. Yes, because as I recall, I think your letter had come in, in around the same
15:45:51 30 time as the phone call.

- 15:45:52 1 Q. 627 Yes. In the knowledge that Mr. Ahern was querying the same amounts from you,
2 and in the context that they might be foreign exchange, did that not influence
3 your thinking when it came to providing information to the Tribunal as to
4 whether or not these were in fact foreign exchange transactions. Did you now
15:46:17 5 not have the customer himself making enquiries as to whether or not they were
6 foreign exchange transactions?
- 7 A. Like the situation with both Mr. Ahern and with the Tribunal, all I had
8 documentation wise, all we had discovered was the lodgement docket with no
9 tally roll, and no connection to foreign exchange.
- 15:46:40 10 Q. 628 But there was an immediate connection being made to you in the enquiries which
11 were made of you by Sandra from January to March 2007. She was asking you
12 specifically whether these lodgements had any connection with foreign exchange
13 or whether there was any documentation in the bank linking these to foreign
14 exchange, isn't that right?
- 15:47:01 15 A. That's right.
- 16 Q. 629 Isn't that a material consideration when it came to you answering the queries
17 from the Tribunal as to whether or not this could be foreign exchange. The
18 fact that the customer in these, each one of these transaction was themselves
19 looking for information as to whether or not they were foreign exchange, isn't
15:47:22 20 that material?
- 21 A. Yes, it is, looking back on it.
- 22 Q. 630 And why is it then that putting all that information together, why is it that
23 you were maintaining that there was no more than a possibility that this was
24 foreign exchange firstly, and that that possibility stemmed only from the fact
15:47:43 25 that there was a foreign exchange stamp on the document, do you understand?
- 26 A. I had nothing certain to confirm for either party that there was a foreign
27 currency behind each lodgement.
28
- 29 CHAIRMAN: Sorry, Mr. McNamara, here you had a situation where a customer was
15:48:05 30 seeking information, you knew the reason for that was to assist that customer

15:48:11 1 to provide information to the Tribunal, at the same time you were being asked
2 to provide information to the Tribunal?

3 A. Yes.

4

15:48:22 5 CHAIRMAN: You had the foreign exchange stamp on the dockets?

6 A. Correct.

7

8 CHAIRMAN: And you had the fact that they were uneven amounts?

9 A. O.k. Yes, they were uneven amounts.

15:48:39 10

11 CHAIRMAN: Now did you conduct, you are aware I think a few days ago where
12 these spreadsheets were opened in the course of the public hearings prepared by
13 the Tribunal?

14 A. Yes, I saw them here last week.

15:48:51 15

16 CHAIRMAN: Did you not conduct that type of mathematical exercise, given that
17 you had your, you had your customer raising the foreign exchange issue, you had
18 the uneven amounts, the brand on the docket and you had the queries coming from
19 the Tribunal. Did that not prompt you to say "Well, we better look at these
20 figures more closely and hopefully identify as best we can what the content of
21 these lodgements were?"

22 A. I did not do a spreadsheet or check the rate of conversion as I explained
23 earlier.

24

15:49:34 25 CHAIRMAN: Was there any exercise done along those lines, even to a less
26 detailed extent than the work done by the Tribunal, was there any exercise done
27 along those lines?

28 A. Not by myself and not that I am aware of by any of my colleagues, unless the
29 foreign exchange people carried out such an exercise, I don't know.

15:49:58 30

- 15:49:58 1 CHAIRMAN: But if they had presumably they would have informed you, given that
2 you were dealing with Mr. Ahern and the Tribunal?
- 3 A. If they such spreadsheets I would imagine, yes, they would have shown it to us
4 in the branch at least.
- 15:50:15 5
- 6 CHAIRMAN: All right. Sorry, Mr. O'Neill.
- 7 Q. 631 Mr. McNamara, when it came to evaluating whether these were foreign exchange
8 transactions or otherwise, as a possibility, is it the case that your position
9 with the Tribunal, and by that I mean, the position you adopted that this was a
10 possibility and no further, was that influenced by the fact that you had given
11 Mr. Ahern an assurance that the only evidence that was within the bank in
12 relation to these documents or foreign exchange was that there was a foreign
13 exchange stamp on the documents?
- 14 A. At all times I was working for the bank in response to the Tribunal queries.
15 Any queries that came through from Mr. Ahern were on a separate nature.
- 15:51:12 16 Q. 632 How were they separate? They were dealing exactly with the same issue, they
17 were dealing with three specific issues. Mr. Ahern wanted to know if they were
18 foreign exchange transactions apparently, the Tribunal wanted to know if they
19 were foreign exchange transactions. How can you say they were separate issues
20 that required separate consideration by you?
- 15:51:37 21 A. No, they were separate in that any correspondence that came through from the
22 Tribunal we dealt with that and we responded to accordingly and I never
23 cross-referenced any of that information with Mr. Ahern or discussed any of
24 that information with Mr. Ahern. So they were totally separate in that
25 respect. The actual amounts and the transaction dates, yes, they are obviously
26 of the same nature.
- 27 Q. 633 Not only are they the same nature, they are the same transaction?
- 28 A. Sorry, yes, the same transaction, yes.
- 29 Q. 634 Did Mr. Ahern ever indicate to you that the reason that he was looking for this
15:52:22 30 information was because the Tribunal had queried him in relation to foreign

15:52:27 1 exchange transactions?

2 A. No.

3 Q. 635 No. And it is the case that the Tribunal had not in fact made any enquiry of
4 Mr. Ahern in relation to foreign exchange transactions prior to the interview
15:52:44 5 which took place on the 5th April. So how is it, how could Mr. Ahern possibly
6 be making enquiries of you in relation to these foreign exchange transactions
7 when the Tribunal had not asked him about these self same foreign exchange
8 transactions at the time?

9
10 CHAIRMAN: I suppose that's --

11
12 MR. O'HOISIN: I have to object to that question, and Chairman, it's not an
13 appropriate question.

14
15 CHAIRMAN: This witness cannot express --

16
17 MR. O'HOISIN: It's not appropriate question and there is an additional point
18 that has to be made, and I have been very patient in listening to Mr. O'Neill
19 in relation to this for the last couple of minutes. He knows exactly what was
15:53:22 20 said at the private interview in fact he referred to it earlier on what was
21 said by Mr. Ahern at the private interview. He knows as a matter of fact that
22 Mr. Ahern volunteered at the private interview that he believed that
23 transactions three and four were foreign exchange transactions, were sterling
24 amounts, and this is before he was given -- this is before he was given the
15:53:46 25 rates. Now Mr. O'Neill has been proceeding on a basis with this witness, which
26 in my respectful submission is a misrepresentation of what Mr. Ahern said.

27
28 MR. O'NEILL: I reject that.

29
15:53:56 30 MR. O'HOISIN: He's proceeding on the basis that the sole purpose of Mr.

15:54:01 1 Ahern's telephone call to this witness was to ascertain whether there was any
2 evidence. Mr. Ahern had indicated in his private interview that he was trying
3 to get information from the bank for the previous two years in relation to the
4 matters.

15:54:26 5
6 MR. O'NEILL: I put that specifically to the witness if this is --

7
8 MR. O'HOISIN: You may have put it earlier on, Mr. O'Neill but you then
9 proceeded to --

15:54:29 10
11 CHAIRMAN: All that's being asked of this witness is his account of discussions
12 he had with Mr. Ahern and what investigations were conducted by the bank as
13 to --

14
15:54:44 15 MR. O'HOISIN: That's a very benign interpretation of what Mr. O'Neill is
16 doing. He is putting loaded questions to this witness and it's an unfair
17 representation of what Mr. Ahern said.

18
19 CHAIRMAN: No, wait now, up to the time of the question that you objected to,
15:54:57 20 that was entirely the content of Mr. O'Neill's cross-examination. Now I
21 accept, we accept that this witness can't be asked what was in Mr. Ahern's mind
22 or what was in his thinking when he made the phone call.

23
24 MR. O'NEILL: Just in case there is any doubt on this issue, Mr. McNamara,
15:55:19 25 which might be attributed to what your evidence on the issue is, is it the
26 position that Mr. Ahern never indicated to you the purposes for which he
27 required this information, other than to say that he wanted to know what
28 documentation in the bank would show in relation to these transactions?

29 A. As I, Mr. Ahern as I understand it, did not want to find himself in a situation
15:55:51 30 whereby information would be produced that he was not aware of.

- 15:55:57 1 Q. 636 Right.
- 2 A. Now --
- 3 Q. 637 In relation to foreign exchange transactions?
- 4 A. I would take it in relation to any transaction.
- 15:56:09 5 Q. 638 Mr. McNamara, we are dealing specifically with the exchanges that took place on
6 the telephone call between yourself and Mr. Ahern. It would appear from the
7 evidence so far, that Mr. Ahern, through his secretary, Sandra, made enquiries
8 of you in the bank on her way to the airport one morning, early, maybe in
9 January, possibly up to March, enquiring about three specific transactions
10 which took place on three specific days in the context of there being possibly
11 foreign exchange transactions, is that right?
- 12 A. That's right, yes.
- 13 Q. 639 Right. In that she not tell you that they were foreign exchange transactions?
- 14 A. Correct, she did not tell me.
- 15:56:56 15 Q. 640 She did not ask you to tell her whether they were foreign exchange
16 transactions?
- 17 A. Correct.
- 18 Q. 641 She asked you whether or not there was evidence in the bank to show that these
19 were foreign exchange transactions, is that right?
- 15:57:10 20 A. Yes, to show if there was any foreign exchange connection.
- 21 Q. 642 To which your response, given ultimately on the telephone to Mr. Ahern, was
22 that the only evidence that might connect these lodgements with foreign
23 exchange was the existence of a stamp from the foreign exchange department, is
24 that right?
- 15:57:31 25 A. Other than the brand, yes.
- 26 Q. 643 And that as you indicated to the Tribunal in your interviews and indeed at
27 certain points in your evidence to date is a meaningless consequence on a
28 document, because it could be that the transaction has nothing whatsoever to do
29 with foreign exchange, it is merely processed through the foreign exchange desk
15:57:58 30 for convenience of the bank, because other tellers may be busy or because a

- 15:58:03 1 teller might be requested by one of the senior officials to process that
2 particular transaction, it carries no inference that it's foreign exchange, is
3 that right?
- 4 A. It's one of the reasons as to - it doesn't carry on its own a guarantee that
15:58:20 5 there is a foreign currency backing to the lodgement.
- 6 Q. 644 And presumably therefore, if the only question asked of you in relation to the
7 origin or the connection between these particular lodgements and the existence
8 of a foreign exchange stamp on it, your response would be that it's a
9 possibility and it's a vague one because anybody could put a transaction
15:58:46 10 through foreign exchange, isn't that right?
- 11 A. Yes, it's possible that anybody can use the foreign exchange cashier.
- 12 Q. 645 Right. Now I want to return if I may to deal with the ongoing enquiries which
13 you are making to establish the nature of these transactions, and I think we
14 can accept that your exchanges with Mr. Ahern, your exchange with Mr. Ahern by
15:59:14 15 telephone and your communications with Mr, Ms. Cullagh by phone had nothing to
16 do, or you treated those as separate and distinct from your enquiry, the
17 enquiry made of you by the Tribunal, is that your evidence?
- 18 A. Absolutely.
- 19 Q. 646 Yes. So back in March of this year when the Tribunal still had expressed its
15:59:38 20 concern that perhaps enough wasn't being done in relation to enquiring as to
21 whether or not these were foreign exchange transactions or not, and setting out
22 as I say on page 19591, the Tribunal's belief at that particular time, you were
23 continuing your enquiries at that point to see whether there was more
24 information available, isn't that right?
- 16:00:10 25 A. Yes. We were continuing in our search.
- 26 Q. 647 Yes, but you, I'm talking about you rather than the bank in general, you were
27 continuing your enquiries, isn't that right?
- 28 A. That's right.
- 29 Q. 648 Now to the point that we see on the 6th March where the Tribunal was talking
16:00:19 30 about the connection between foreign exchange, the Tribunal had not been

- 16:00:25 1 provided with either the Foreign Currency Held accounts or the foreign notes in
2 transit accounts of the bank, isn't that right?
- 3 A. I believe that's correct.
- 4 Q. 649 Yes. Though these, if this was a foreign exchange were documents which might
16:00:41 5 assist in ascertaining whether or not foreign exchange transactions of the
6 values which were being enquired into had in fact taken place in the branch on
7 the day, isn't that right?
- 8 A. Yes, they would show various transactions.
- 9 Q. 650 Not only would they show all transactions as a total, they wouldn't show
16:01:01 10 various transactions, except that it would be broken down into the categories
11 of purchases of foreign currency, sales of foreign currency, purchases of
12 sterling, sales of sterling, purchases of other currencies, other than
13 sterling, and sales of other currencies other than sterling, in relation to the
14 Foreign Currency Held account, isn't that so?
- 16:01:23 15 A. That's correct.
- 16 Q. 651 Yes. The foreign notes in transit account would allow you to say what the
17 movement of monies were on those days and that could be significant if there
18 were large foreign exchange transactions conducted on those days, isn't that
19 right?
- 16:01:42 20 A. Yes, I believe so.
- 21 Q. 652 Now if we look to a document on screen, number 21264 please, the Tribunal
22 letter I was talking about earlier was on the 6th March, this is a document on
23 the 7th March, the day after that, it's to Eva Gibson, I think you are the
24 author of the document, isn't that right?
- 16:02:05 25 A. Yes. I am the author, yes.
- 26 Q. 653 Is Eva Gibson in the retrieval section of the bank?
- 27 A. Yes, she is.
- 28 Q. 654 Can you tell us what the purpose of the enquiry you were making here was of
29 12,798.65, 27,491.95 and 25,799.60. One of those being on the 15th June of
16:02:36 30 1995 the date upon which we now know Ms. Larkin lodged 10,000 pounds sterling,

- 16:02:42 1 and the other on the 11th October 1994 the day upon which Mr. Ahern says that,
2 in his lodgement of 24,838.49 there was 8,000 pounds sterling. This enquiry is
3 a targeted enquiry by you of the Retrievals Section made on this day,
4 immediately following upon the Tribunal's analysis of events, an analysis which
16:03:12 5 did not involve consideration of foreign exchange records in the bank, isn't
6 that right?
- 7 A. These figures as I recall are, looking at them would, are large amounts, are
8 large figures, so to see you get copies of those dockets and see if there is
9 anything on them to help us.
- 16:03:33 10 Q. 655 How did these figures come to your mind, Mr. McNamara, they must have a
11 relationship to something. What was it that caused you to enquire into these
12 particular figures?
- 13 A. The only thing I can think of at this stage is going down through the All Items
14 report and waste sheets.
- 16:03:53 15 Q. 656 Yes.
- 16 A. And it would throw up large figures.
- 17 Q. 657 Would they be thrown up as the sterling amounts which were transacted through
18 the branch on these two days?
- 19 A. I'm not too sure what the actual account numbers relate to, whether they are
16:04:13 20 individual sterling or currency or individual currency accounts.
- 21 Q. 658 We can have a look?
- 22 A. But I can assume that they were relating to foreign currency transactions.
- 23 Q. 659 Yes. So at this point on the 7th of the 3rd you believed that the foreign
24 exchange records of the bank, that is the Foreign Currency Held records and
16:04:34 25 possibly the foreign notes in transit accounts merited enquiry on these
26 particular days, is that right?
- 27 A. I would imagine so, yes.
- 28 Q. 660 I'm sorry?
- 29 A. I would imagine so, yes.
- 16:04:48 30 Q. 661 Well you know, you could have looked at any day for any amount, can you tell us

16:04:54 1 whether or not it is the case that you were looking at these particular
2 transactions to see whether or not sterling transactions which would allow for
3 10,000 pounds sterling to have been transacted through the bank on the 15th
4 June, and 25,000 pounds sterling transacted through the bank on the 11th
16:05:18 5 October. Was that the purpose of this enquiry made by you of the Retrievals
6 Section the day after the Tribunal had given you the information?
7 A. Yes, yes.
8 Q. 662 O.k. If we look now to page 21314 if we turn that, please. I think the
9 underlining here is probably your own, is it?
16:05:44 10 A. Yes, it is, yes.
11 Q. 663 And the manuscript on the side there?
12 A. That's also mine.
13 Q. 664 Get copy docket of 12,798.65?
14 A. 98.65, correct.
16:06:01 15 Q. 665 Yes. Why did you want to get that docket?
16 A. Because that is, to see what's on the docket to see if it carried any
17 information that would be of help to us.
18 Q. 666 Yes. That information being presumably the following, if it were the case that
19 only 1,279 pounds as opposed to 12,900 pounds had been purchased in sterling
16:06:36 20 that day, it would rule out the possibility that the 9,743.47 was in fact a
21 sterling amount, isn't that right?
22 A. Yes.
23 Q. 667 Having found that it is a sum in excess of 9,743.47 it allowed for the
24 possibility that the transaction of the purchase by the bank on that day of
16:07:07 25 12,798.65 included 10,000 pounds sterling, isn't that so?
26 A. Yes, yeah.
27 Q. 668 Was that the purpose of this exercise, is that what you were endeavouring to
28 do?
29 A. As I recall the purpose was to try and cross-reference what, any information
16:07:28 30 that that docket would show with, I think as you said the correspondence from

- 16:07:33 1 the Tribunal to see if there is a connection.
- 2 Q. 669 But I want to establish if I can with you, Mr. McNamara, why it is and what
- 3 process you were engaged in here. The Tribunal had no knowledge of there being
- 4 a document called as we see in the top of this, Foreign Currency Held account
- 16:07:53 5 had no information from the bank to this point that this document existed,
- 6 isn't that right?
- 7 A. I believe so, yes.
- 8 Q. 670 Yes. You, of course, would have been aware from very early on in your banking
- 9 history that there are records kept of the totals of funds which are held in
- 16:08:16 10 foreign currency within a branch on a daily basis, isn't that right?
- 11 A. That's right, correct.
- 12 Q. 671 Apparently, although this was a foreign exchange enquiry initiated in January,
- 13 at the end of January, you had not looked at these records before, is that
- 14 right?
- 16:08:36 15 A. Correct, yes.
- 16 Q. 672 Now having looked at it, you were looking at it for the purpose of seeing
- 17 whether or not these transactions could have included 10,000 sterling, isn't
- 18 that right?
- 19 A. Yes.
- 16:08:49 20 Q. 673 As a person who worked in this branch, who equally would have been aware of the
- 21 volume of foreign currency conducted on a daily basis through the branch and
- 22 that this sum in sterling was a large sum of sterling to have acquired at the
- 23 time by reference to the average, isn't that so?
- 24 A. I would not have, while I worked in the branch I would not have been aware of
- 16:09:14 25 the daily kind of holdings, not physically working in the foreign exchange cash
- 26 area. So I would not be able to say to you that the average was 2,000 or
- 27 whatever, 3,000.
- 28 Q. 674 Well, did you ever set about establishing what the average was before you
- 29 concluded your enquiry as to whether these three large sums of money, 24,838,
- 16:09:42 30 11,743 and 19 thousand, whether they comprised sterling or not, was it not a

- 16:09:50 1 matter that you would have looked at the average of the time to see what volume
2 of sterling was being conducted through the branch at the time?
- 3 A. No, I did not look at the averages.
- 4 Q. 675 We know now that each one of these transactions is considerably in excess of
16:10:09 5 what the average would have been for the period from June, sorry, from January
6 to June of 1995, and I accept of course that one of these is outside that
7 period, that is the 24,838, it was earlier in October of 1994. But taking one
8 month with another, it would appear that each one of these transactions was in
9 themselves exceptional to the extent that it exceeded the average by a multiple
16:10:41 10 of a minimum of four and in some instances almost ten times the average of
11 sterling being transacted in the branch at that time, is that so?
- 12 A. That is correct.
- 13 Q. 676 This is a matter which you simply ascertained by looking at the documentation
14 from the Retrieval Section of the bank, isn't that so?
- 16:11:05 15 A. Correct.
- 16 Q. 677 It was open to you to do it, though apparently you didn't do it, isn't that
17 right?
- 18 A. Correct, yes.
- 19 Q. 678 Right.
- 16:11:15 20 A. My understanding at all times was that I was to retrieve dockets,
21 documentation.
- 22 Q. 679 That understanding, Mr. McNamara, is one which reflects I think the fact that
23 there had been an order of the Tribunal directing the bank to provide all
24 documents in relation to the foreign exchange transactions of this value, isn't
16:11:38 25 that right?
- 26 A. Yes, I believe so.
- 27 Q. 680 We saw it yesterday, the 16th January was the day upon which the Tribunal gave
28 notice of its intention to make an order for discovery, but before that, on the
29 12th January the Tribunal had written to the bank looking for its assistance in
16:11:59 30 relation to whether or not there were sterling transactions conducted in the

16:12:02 1 branch and in particular whether these transactions were sterling, independent
2 of the Order for Discovery, which is an exercise directed towards establishing
3 what documents exist, if we look to document 19581, the Tribunal wrote to
4 Mr. Kiernan on the 12th January setting out each of these transactions, the -
16:12:33 5 24,838, 28,772.90 do Ms. Larkin's account, 11,000 to Ms. Larkin's account and
6 the 19 thousand Irish to Mr. Ahern's account. And in respect of the
7 aforementioned lodgements the members of the Tribunal are now anxious to
8 receive following documentation all underlying documentation, details of the
9 identity of the bank teller who dealt with each transaction, and please confirm
16:13:02 10 whether or not all or any of the transactions emanated from sterling.
11
12 So the enquiry was a broader enquiry than mere discovery, this predated
13 discovery. It required the bank or asked the bank's assistance is establishing
14 whether any up with of these were sterling transactions, isn't that right?
16:13:23 15 A. That's right.
16 Q. 681 So you weren't limiting yourself to just what the documents said, you had a
17 broader scope in your inquiry, isn't that right, from the Tribunal's point of
18 view to find out what these transactions were in fact, isn't that right?
19 A. Yes, yeah.
16:13:40 20 Q. 682 So there was two approaches taken here, one was an approach where the Tribunal
21 specifically identified each one of the Tribunal, the lodgements to the
22 accounts of Ms. Larkin and Mr. Ahern, isn't that right, in this letter?
23 A. Yes, that's correct.
24 Q. 683 Secondly, it made an Order for Discovery, not in respect of those named items,
16:14:05 25 but in respect of any transaction conducted on those days within those values,
26 isn't that right?
27 A. Yes, yes.
28 Q. 684 So it transpired to be correct that when that exercise was performed a
29 connection was made between foreign exchange transactions and these amounts,
16:14:25 30 isn't that right?

- 16:14:27 1 A. When which exercise, sorry?
- 2 Q. 685 When the exercise of the bank conducting the discovery obligation imposed on it
- 3 by order to produce documents which reflected foreign exchange transactions of
- 4 these amounts, that produced the documents which showed that the documents that
- 16:14:47 5 we see on the letter of the 12th were in fact foreign exchange transactions,
- 6 isn't that right?
- 7 A. Yes, yeah.
- 8 Q. 686 That connection was made by the device of the Tribunal making an order which
- 9 was not specific to these transactions but was general to all transactions
- 16:15:06 10 between certain values?
- 11 A. Correct.
- 12 Q. 687 On days which would catch each one of these if they were foreign exchange?
- 13 A. If they did happen on certain days, yes.
- 14 Q. 688 Yes, and it did so, isn't that right?
- 16:15:17 15 A. Yes, I believe so.
- 16 Q. 689 That's how the Tribunal was alerted to the fact that these were in fact foreign
- 17 exchange transactions by the bank, and again I qualify that by saying that
- 18 Ms. Larkin had indicated that she had a belief that the 28,772.90 may have been
- 19 sterling, and Mr. Ahern had indicated to the Tribunal that eight thousand
- 16:15:41 20 either exactly or thereabouts represented part of the 24,000 lodgement. But
- 21 the connection was made through the methodology that I have described, isn't
- 22 that right?
- 23 A. Yes.
- 24 Q. 690 Now, as you went through the Foreign Currency Held dockets and if I could look
- 16:16:07 25 to page 20678, and if we can turn that the other way please? Again we see on
- 26 this docket I think your writing on the bottom of it, isn't that right?
- 27 A. Yes, that's correct.
- 28 Q. 691 This is a docket for the 11th October 1994, the day upon which the 24,838
- 29 lodgement was made to the account of Mr. Ahern, isn't that right?
- 16:16:36 30 A. That's right, yes.

- 16:16:37 1 Q. 692 And here this is a document which you are considering and you underline the
2 figures 27,491.95, isn't that right?
- 3 A. That's correct.
- 4 Q. 693 Does that represent the amount of sterling in Irish value bought by the branch
16:16:59 5 on the 11th October 1994?
- 6 A. Yes. That's what it reads sterling B N, buy note as I read it 27,491 would be
7 the Irish equivalent.
- 8 Q. 694 That's what it reads, do you understand that to mean in the branch on O'Connell
9 Street on that day sterling to the value of 27,491.95 Irish was purchased?
- 16:17:24 10 A. Yes, correct, yeah.
- 11 Q. 695 And that figure, again by reference to its size, I am now talking about the
12 27,400 was a sum which was probably ten times greater than the average sterling
13 being transacted on that day, in that branch I should say, at that time, isn't
14 that right?
- 16:17:47 15 A. Yes, that's correct.
- 16 Q. 696 Even looking at the page we see before us, it was obvious I think to you
17 looking at the other sterling purchases of that week that what you were dealing
18 with here was an exceptional amount of sterling bought that day?
- 19 A. Yes.
- 16:18:03 20 Q. 697 You were looking at this in the context that the Tribunal on the day earlier,
21 the 6th March, had alerted you and the bank to the fact that 25,000 pounds
22 sterling even converted into a figure of 24,838.49 on that day, isn't that
23 right?
- 24 A. Yes, yeah.
- 16:18:26 25 Q. 698 And I take it you were looking at the sterling on this day to see whether or
26 not such a transaction could have been conducted within the branch on that day?
- 27 A. Yes, that would have been the reason for looking for a copy of that docket.
- 28 Q. 699 And did that document confirm to you that it was possible that it did happen
29 that day?
- 16:18:51 30 A. I believe it did, I just don't recall the actual docket itself.

- 16:18:54 1 Q. 700 Well, you can see the docket there on screen, you see the part of it that you
2 have marked at some point historically as being relevant to your inquiry?
3 A. Sorry that's the statement yeah, that says that the 27 thousand Irish pounds
4 worth of sterling was bought in that day, yes.
- 16:19:12 5 Q. 701 Yes. Am I right in saying that the context in which you were looking at that
6 document was to see whether or not 25,000 pounds sterling had been bought by
7 the bank that day?
8 A. Yes, based on the correspondence from yourselves.
- 9 Q. 702 Yes.
- 16:19:29 10 A. Yes.
- 11 Q. 703 And did it so confirm that it was possible that it did?
12 A. That it's possible, yes.
- 13 Q. 704 Yes.
- 14 A. Based on the figures, yes.
- 16:19:37 15 Q. 705 Is it yet another one of the straws that added together allowed you or would
16 have allowed you to conclude as a matter of probability that these were foreign
17 exchange transactions in particular, this one, involving the exchange of 25,000
18 pounds sterling?
19 A. The probability that the lodgement was 25,000 sterling yes, at this stage.
- 16:20:03 20 Q. 706 Well, at this stage we are talking now --
21 A. It just didn't confirm as I said one hundred percent for me, that the actual
22 lodgement into the account on that day was that sterling transaction.
- 23 Q. 707 As we go through these documents we will see that you also looked to what had
24 happened to the sterling remit, if we look to page 21288?
16:20:43 25 A. That's my writing.
- 26 Q. 708 Again this is your writing on the document, is that right?
27 A. Yes.
- 28 Q. 709 You require a copy of the document 31,224.82 on the 13th of the 10th, is that
29 right?
16:20:55 30 A. Yes.

- 16:20:56 1 Q. 710 This was part of the ongoing inquiry being conducted by you in March directed
2 towards establishing where that money went, is that right, the money we are
3 talking about a little earlier, the 27 thousand sterling?
4 A. It was part of that inquiry, yes.
- 16:21:11 5 Q. 711 Yes. Part of that inquiry to establish where that money went, is that right?
6 What were you looking for when you wrote this note seeking further information
7 in relation to 31,224 which we see here is a credit, in other words a sale out
8 from the bank, isn't that right?
9 A. That's right, yes.
- 16:21:36 10 Q. 712 Yes. We are looking here at foreign currencies held, is it the case that you
11 wanted to see whether or not that money was being remitted up to Currency
12 Services?
13 A. I don't recall the exact transaction at the time, my understanding would be
14 that it was to get again like everything else, a copy of the docket, and see
16:22:01 15 what information it will show us and what information we will get.
16 Q. 713 I appreciate that, Mr. McNamara, what information were you looking for, we know
17 it shows information, it shows a figure of 31,224, it's not the same figure as
18 we saw purchased by the bank of sterling two days before which we see is
19 27,491?
16:22:26 20 A. Mm-hmm.
- 21 Q. 714 This is not a purchase, this is money going out of the bank, isn't that right,
22 out of the branch?
23 A. Yes, I believe so, yes.
- 24 Q. 715 It's credit. You were following that money. You were following an audit trail
16:22:38 25 to see where that money went, isn't that so?
26 A. I was trying to follow, yeah, large transactions so that's a large transaction.
- 27 Q. 716 Well, you were following a specific large transaction, you were following the
28 transaction which had taken place on the 11th which was the exchange of 27,491
29 pounds worth of sterling on the day, isn't that right?
16:23:04 30 A. Yes, it would appear, yeah.

- 16:23:06 1 Q. 717 Wasn't this all part of the sterling inquiry you were conducting into the
2 amount of Irish 24,838.49 with a view to seeing whether or not that was 25,000
3 sterling or not?
- 4 A. It would have helped us, yes, in our --
- 16:23:36 5 Q. 718 I know would have helped you, but I am trying to understand why it is you were
6 looking at these specific figures?
- 7 A. Because obviously these figures are large Irish pound amounts which would
8 equate back to large foreign currency amounts, which in turn would have been,
9 if I am correct, in line with the correspondence from yourselves, highlighting
10 the various sterling lodgements into the various accounts.
- 11 Q. 719 Yes. Though in relation to this specific lodgement we know that there is an
12 issue as to whether or not this was an 8,000 pounds sterling amount that was
13 changed on this day, in which instance you will see that if Mr. Ahern had
14 changed 8,000 pounds sterling only, somebody else must have changed 19,000
15 sterling to get up to 27,400 which we know to be the total, isn't that right?
- 16:24:16 16 A. Yes, that's correct.
- 17 Q. 720 Yes. You and followed, I suggest, that money into the foreign notes in transit
18 account at 21289, we see that the 39 -- sorry the 31,224.62, you see that
19 figure?
- 16:24:51 20 A. Yes.
- 21 Q. 721 That's the figure that you have been querying earlier, requiring a copy docket
22 for, this now confirms that that amount in sterling was remitted to currency
23 services, isn't that right?
- 24 A. Yes, I believe so, yes.
- 16:25:06 25 Q. 722 Yes. So what those three documents tells us is that the proceeds of the
26 exchange of foreign currency on the 11th October 1994 comprised sterling to a
27 value of 27,491 pounds which, combined with other funds, was remitted up two
28 days later to currency services as sterling, isn't that right?
- 29 A. Yes, that's correct.
- 16:25:37 30 Q. 723 Right. And I think you carried out a similar exercise in relation to the

- 16:25:44 1 12,798.65, if we look to page 21314? And if we can turn that please, again you
2 are writing in the margin, you note the amount, you underline the entry and
3 it's shown in the Foreign Currency Held for the 15th June, and again that is
4 that exercise that you are conducting, is that right?
- 16:26:09 5 A. Yes, that's correct.
- 6 Q. 724 And finally on this issue at page 21325, we see that you are looking again to
7 the transactions which took place on the 1st December 1995, that's the day upon
8 which the sum of 19,142.92 pounds worth of sterling was purchased by the bank
9 from Mr. Ahern. Now, you were looking to that, I take it that underlining is
10 yours?
- 11 A. Yes.
- 12 Q. 725 Of the sterling amount?
- 13 A. I'd say so, yes.
- 14 Q. 726 You can see that on that day, 19,754.04 worth of sterling was purchased in the
15 branch that day, isn't that right?
- 16 A. That's right, yes.
- 17 Q. 727 Now all of those transactions, all of that detail is all consistent with you
18 looking into the foreign exchange element of the bank's transactions through
19 the use of the Foreign Currency Held account, to see if there was information
20 there which could confirm the existence of the sterling element of the three
21 lodgements which were being queried by the Tribunal, isn't that right?
- 16:27:15 22 A. Yes.
- 23 Q. 728 Did this information assist you in that regard?
- 24 A. It did assist in the sense that they were large transactions on those days,
16:27:42 25 yes, large foreign currency sterling transactions on those days.
- 26 Q. 729 Yes. What does -- why is "large" relevant in the context of your inquiry as
27 opposed to small, Mr. McNamara?
- 28 A. Your reference was to large transactions into Mr. Ahern's accounts.
- 29 Q. 730 No, the Tribunal reference was in relation to three specific sums taking place
16:28:05 30 on three specific days. Is it the case that your inquiries conducted through

- 16:28:11 1 the Foreign Currency Held accounts confirmed that in each instance upon which
2 the queries raised by the Tribunal, sufficient sterling had been purchased by
3 the bank to have allowed for each one of these transactions to be a sterling
4 transaction?
- 16:28:28 5 A. It would have allowed, yes, I think. The figures -- yes, it would have
6 cross-referenced the --
- 7 Q. 731 Wasn't that the whole purpose of your exercise?
- 8 A. The?
- 9 Q. 732 The exercise that you conducted, of seeking out this information, of analysing
16:28:45 10 it for the respective days, of marking the individual amounts. Wasn't that all
11 geared towards establishing whether or not there was additional evidence that
12 might support the possibility in your mind, and the probability I suggest, in
13 the minds of others, that this was, that each one of these was a foreign
14 exchange transaction?
- 16:29:06 15 A. Yes. They would support the probability that there was foreign currency.
- 16 Q. 733 Now the Tribunal had been informed that the bank's inquiries were ongoing. Did
17 you ever inform the Tribunal that the ongoing inquiries of the Tribunal had
18 produced this information which might be of assistance to the Tribunal in its
19 determination?
- 16:29:34 20 A. I don't, I cannot answer that question, I don't know at this point in time. I
21 I'd need see all the correspondence that went back to the Tribunal.
- 22 Q. 734 Right. Can we take it that the Tribunal received these documents accompanying
23 an order for the Affidavit of Discovery which was sworn on the 12th March of
24 that year, by a Mr. Nixon, who is the Branch Manager at the time, isn't that
16:29:58 25 right?
- 26 A. That's right, yes.
- 27 Q. 735 Is it correct to say that these investigations that had taken place in March
28 were investigations that were being conducted by you within the branch? You
29 were the most senior person actively engaged in this process of going through
16:30:15 30 these documents and reaching conclusions?

- 16:30:18 1 A. No, I was -- I was not the most senior person involved in any of this
2 investigation.
- 3 Q. 736 Sorry, I am trying to distinguish now between the work that was done,
4 everything we have seen on screen so far has your signature on it, isn't that
16:30:34 5 right?
- 6 A. Yes.
- 7 Q. 737 This is all documentation which has come from the files which were produced to
8 the Tribunal on foot of Tribunal Order for Discovery, which required the bank
9 to produce all of its files in relation to its dealings with Mr. Ahern in
16:30:52 10 relation to his accounts. In the production of that documentation, I am
11 suggesting to you that all of this type of documentation, in other words the
12 analysis, the workings which are being carried out, in relation to these
13 particular transactions, are workings of yours and not of anybody else's. Do
14 you understand that?
- 16:31:11 15 A. I understand what you are saying, yes.
- 16 Q. 738 Yes. Do you qualify that? Are you saying that there was somebody else above
17 you who was actually carrying out this analytical process, or evaluation, of
18 the documentation?
- 19 A. No. What I am saying is that I would have outlined or underlined and requested
16:31:30 20 the actual documentation, but the idea of the Foreign Currency Held account or
21 Foreign Currency Notice Account, that would not have been mine on my own, I
22 would not have been fully au fait with all of the various individual foreign
23 currency accounts, that I could go just go there myself and extract the
24 information or know what to look for.
- 16:31:54 25 Q. 739 I accept that in the extraction of the information you are required to contact
26 the retrievals section, that's what the documents show that we put on screen,
27 you are the person seeking the documentation.
- 28 A. Yes. I am the person that submitted at application.
- 29 Q. 740 Right. There is no documentation on file where you present this documentation
16:32:10 30 to one of your superiors, saying this is the information I have found, should I

- 16:32:14 1 go further, should I conduct any further inquiry, this is my analysis, isn't
2 that right.
- 3 A. There is no documentary evidence, correct.
- 4 Q. 741 No. Well are you saying that you presented your findings to somebody else who
16:32:28 5 made a decision as to what the Tribunal was to receive by way of information,
6 following upon your workings?
- 7 A. No. Any of the documents that were retrieved first of all, be it by myself
8 or -- that information was shared and it was, it was shared with members of the
9 branch team that were looking at the various correspondence that came in from
16:32:58 10 the Tribunal. So any correspondence that came from the Tribunal to our legal
11 department, and in turn from our legal department to the branch was addressed
12 to our manager Fintan Nixon, so he saw all the correspondence that came in
13 initially.
- 14 Q. 742 I accept he saw everything, and he would have to, as the manager, see what was
16:33:15 15 passing between you, but could I suggest that the actual workings were being
16 done by you and the detail of what was being furnished to the bank's solicitor
17 for onward transmission to the Tribunal was your decisions, your workings?
- 18 A. Not on my --
- 19 Q. 743 Approved by the manager, run by the manager, or settled by the manager,
16:33:40 20 whatever term you wish to use. But that it was your workings and not his?
- 21 A. As I said --
- 22 Q. 744 Have you a difficulty with that? If you do, fine?
- 23 A. All I am saying is that I did not run this show on my own. I did not decide
24 what information went back to our legal department and what information was not
16:33:59 25 returned to our legal department. I was not, that was not my call.
26
- 27 CHAIRMAN: But Mr. McNamara when we see you requesting this information?
- 28 A. Correct, yes.
29
- 16:34:11 30 CHAIRMAN: In effect. We see you underlining certain figures?

16:34:15 1 A. Yes, that's to highlight what we need.
2
3 CHAIRMAN: So at some stage this information came on to your desk?
4 A. Yes.
16:34:24 5
6 CHAIRMAN: And presumably an analysis, insofar as it was capable of providing
7 an analysis, an analysis was done as to what this information might mean or
8 might probably mean?
9 A. Might probably, correct, yes.
16:34:40 10
11 CHAIRMAN: Yes. And did you do that on your own or did you, were you assisted
12 by anyone else in the bank in doing that?
13 A. I would have been assisted by, I'd say about three other people at least.
14
16:34:53 15 CHAIRMAN: And who would they be?
16 A. One person would have been Sarah Murray. One person -- now when I say I will
17 give you these three names, I am not saying all three were involved at every
18 meeting or were involved in every, everything.
19
16:35:10 20 CHAIRMAN: But were they all bank people?
21 A. Oh, yes, yes.
22
23 CHAIRMAN: Were they working under you?
24 A. No, no. All three people are, from a ranking point of view, they are all above
16:35:19 25 me.
26
27 CHAIRMAN: All right. And then a decision was made to pass on information to
28 the solicitor for the bank, to the bank?
29 A. Yes. We would have responded to the inquiry.
16:35:35 30

16:35:35 1 CHAIRMAN: Who would then relay that information to the Tribunal?

2 A. Yes, the information that the --

3

4 CHAIRMAN: So who made the decision to provide the information to the bank's

16:35:45 5 solicitor for transmission to the Tribunal? Was that your decision or was it a

6 joint decision taken by three or four of you?

7 A. I would say it was a joint decision.

8 Q. 745 You have mentioned Ms. Murray, who will be a witness here. Who are the other

9 persons, the other three you say were involved in this decision making process?

16:36:05 10 A. Party to the various correspondence and documentation; Sarah Murray, Ron Dardis

11 and Fintan Nixon.

12 Q. 746 Yes. I appreciate they were parties to the correspondence, what I am asking

13 you really is who is making the decisions as to what these documents meant?

14 What their effect was in the context of the ongoing inquiry from the Tribunal

16:36:26 15 endeavouring to establish if the bank could confirm that these were foreign

16 exchange transactions?

17 A. Would I say all four of us.

18 Q. 747 I see.

19

16:36:34 20 CHAIRMAN: All right. Well it's 25 to five. Mr. McNamara will have to come

21 back at 2 o'clock tomorrow. Mr. Gilmartin will be here at 10 o'clock.

22

23 In relation to Friday, is there a -- has a decision been made as to what

24 witnesses are here?

16:36:52 25

26 MR. O'NEILL: I had understood that perhaps Mr. Gilmartin is not available

27 Friday morning.

28

29 CHAIRMAN: He is not available Friday.

16:36:59 30

16:36:59 1 MR. O'NEILL: In those circumstances the schedule has been amended and is on
2 the current web, indicating that at 10.30 on Friday Ms. Rosemary Murtagh of the
3 Foreign Exchange Currency Room will be giving evidence. Mr. Brian Crowley is
4 giving evidence on other aspects of the Quarryvale inquiry.

16:37:23 5
6 CHAIRMAN: But he will be short.

7
8 MR. O'NEILL: He will be relatively short.

9
16:37:27 10 CHAIRMAN: So tomorrow at 2 o'clock?

11
12 MR. O'NEILL: I think that, yes, I think possibly, certainly Mr. McNamara at 2
13 o'clock. I think Ms. Murtagh we wish to go back to Friday. Ms. Blake could
14 possibly remain for tomorrow I should say.

16:37:44 15
16 CHAIRMAN: Well perhaps you might talk to the bank's solicitor?

17
18 MR. O'NEILL: Yes indeed. Thank you.

19
16:37:51 20 CHAIRMAN: Thank you. 10 o'clock tomorrow.

21
22 **THE TRIBUNAL THEN ADJOURNED TO 10 AM THE FOLLOWING MORNING**
23 **THURSDAY 26TH JULY 2007.**

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