

1 THE TRIBUNAL RESUMED AS FOLLOWS AT 10.30 AM ON  
2 THURSDAY, 9TH OCTOBER 2003:

3  
4 CHAIRMAN: Morning.

5  
6 MR. QUINN: Morning, Sir. It was intended Ms. Joan Caffrey would be the first  
7 witness this morning, we have been trying to endeavour to contact Ms. Caffrey.  
8 I am sure there is a very valid explanation for her non-attendance. In the  
9 circumstances if it were agreeable to the Tribunal, Mr. Caldwell's evidence  
10 could be taken and perhaps Ms. Caffrey's evidence could be taken at another  
11 stage, at the conclusion perhaps of Mr. Caldwell's evidence.

12  
13 CHAIRMAN: That's fine.

14  
15 MR. GALLAGHER: Mr. John Caldwell, please.

16  
17 CHAIRMAN: Should Mr. Caldwell be sworn? Is he sworn?

18  
19 MR. GALLAGHER: Perhaps -- he was sworn on an earlier date but just as well I  
20 suppose.

21  
22 CHAIRMAN: All right.

23  
24 JOHN CALDWELL, HAVING BEEN SWORN, WAS EXAMINED  
25 BY MR. GALLAGHER AS FOLLOWS:

26  
27 Q.1 Good morning, Mr. Caldwell.

28 A. Morning, Mr. Gallagher.

29 Q.2 You have already given evidence to this Tribunal on day 317. On that occasion  
30 you confirmed that you had qualified as a solicitor and that you had recently

1 retired from working as a solicitor and you would now regard yourself as former  
2 solicitor and consultant.

3 A. That's correct.

4 Q.3 Would you tell this Tribunal, please, when did you qualify as a solicitor?

5 A. 1980.

6 Q.4 I see. Where had you served your apprenticeship?

7 A. In a firm which was known at that stage as Fitzpatrick's and subsequently became  
8 known as Binchy & Partners.

9 Q.5 And did you continue to work with Fitzpatrick's and subsequently Binchy's for the  
10 entire of your career as a solicitor?

11 A. Yes, I did.

12 Q.6 Did you specialise in a particular form of law, area of law?

13 A. I specialised in taxation and commercial law.

14 Q.7 I think you met Mr. Kennedy at some stage in the course of your career.

15 A. Yes, I did.

16 Q.8 Would you tell the Tribunal where and in what circumstances you met  
17 Mr. Kennedy?

18 A. Mr. Kennedy was a client of Binchy & Partners. He, his affairs were dealt  
19 with, as I recollect it by, Brian Gartland, who was the property partner in  
20 Binchy and Partners, and I was a very junior solicitor specialising on the tax  
21 side. And I was introduced to him in relation to some tax matters.

22  
23 My first recollection is in relation, I think, to an issue in relation to a  
24 company called Ballyowen, which had some lands in Lucan. And I think there was  
25 a stamp duty issue and an issue in relation to how the profits of that company  
26 would be distributed, that I think was, Mr. Gallagher, in the early 1980s.

27 Q.9 I see. Did you have any involvement in terms of partnership or otherwise with  
28 Mr. Kennedy, apart from what you have described at that time?

29 A. Not at that time. The first time that I would have had a, again if I  
30 recollect, I had a business relationship with Mr. Kennedy, was in I think 1987,

1 and that was in relation to a company which acquired some land on the north of  
2 Dublin, North County Dublin.

3 Q.10 Where was that?

4 A. That was at Portrane.

5 Q.11 Was that land purchased by a company called 85 Developments Limited?

6 A. That's correct, Mr. Gallagher.

7 Q.12 And would you tell the Tribunal how that arrangement came about?

8 A. My recollection of that is that that came about -- Mr. Kennedy had instituted  
9 some proceedings against a Mrs. Collins, who was the owner of the lands and  
10 those had sort of been dealt with by Mr. Gartland and by the litigation people  
11 within the firm.

12

13 And I can't remember exactly how it arose but I recollect that he had  
14 difficulties in completing that transaction. Specific performance proceedings  
15 had been issued. And those specific performance proceedings were successful,  
16 but Mr. Kennedy was financially unable to complete the transaction and I had a  
17 conversation with him in the premises that we were then in, which were 37-39  
18 Fitzwilliam Square, and as a result of that I said that I would try to find  
19 some financial backing for the completion.

20

21 In essence the commercial arrangement that I came to with him was that the  
22 funding would be obtained which was approximately 160 thousand pounds, and that  
23 the company would be owed 50/50 between the Caldwell interests and the Kennedy  
24 interests. And that I think was around June of 1987.

25 Q.13 Did you raise the 160 thousand pounds that was necessary to acquire the land?

26 A. Initially those funds were provided by Mr. Bullock, who is a gentleman that  
27 lives in the Isle of Man. Then I had the property refinanced and I had it  
28 refinanced with, as I recollect it, a bank in Northern Ireland that I'd  
29 associations with in Northern Ireland.

30 Q.14 Who was the beneficial owner of the funds provided by Mr. Bullock?

1 A. Those came from general funds that he had.

2 Q.15 That who had?

3 A. Mr. Bullock had.

4 Q.16 And whose, who was the beneficial owner of the general funds that Mr. Bullock  
5 had?

6 A. I would believe he was.

7 Q.17 He was. How did you get in contact with Mr. Bullock?

8 A. I had known Mr. Bullock for several years at that stage. He had worked with a  
9 firm called I think Charles Kane & Co. in the Isle of Man and subsequently  
10 worked with Mr. Patrick Taylor in the Isle of Man and I had known him through  
11 that connection.

12 Q.18 And are you telling the Tribunal that it is your belief that the funds which  
13 Mr -- came through Mr. Bullock were beneficially owned by him?

14 A. Yes, that's correct, there was a -- my recollection of it, Mr. Gallagher, is  
15 that it was a temporary loan for a very short period of time and that the funds  
16 came from Mr. Bullock's sources.

17 Q.19 Yes, I understand -- do you mean his sources in the sense that they were his  
18 own monies rather than monies held on trust or monies held on behalf of any  
19 other person or entity?

20 A. Well, he never said to me that they were held on behalf of any other person or  
21 entity. My understanding of it was they were monies available to him and that  
22 he was in a position to advance on a short-term basis.

23 Q.20 So, the Tribunal can take it from your evidence that it was your understanding  
24 that Mr. Bullock personally was providing these monies and that these were his  
25 monies?

26 A. I have nothing which contradicts that, Mr. Gallagher, in relation to it.

27 Q.21 No, but is that your belief?

28 A. Yes, that's my belief, Mr. Gallagher.

29 Q.22 Now, what was the arrangement for the repayment of those monies?

30 A. Well it was a very short space of time, as I recollect it, I can't remember in,

1       whether it was several weeks or longer than that in relation to it, but the  
2       funds were there for a short period of time and then the land was financed  
3       through a mortgage which was obtained from I think it was Lombard and Ulster in  
4       Northern Ireland but I may be wrong on that. This is not that fresh in my  
5       memory.

6 Q.23 I see. The sum of 160 thousand pounds repaid to Mr. Bullock?

7 A. Yes.

8 Q.24 Was he paid interest on that sum?

9 A. I don't recollect.

10 Q.25 Well, can you recall whether the arrangement was that he would be paid interest  
11       on whatever monies he advanced or not?

12 A. I can't recollect whether that was the case or not.

13 Q.26 You see, it seems strange to me, I have to confess, that Mr. Bullock who is  
14       based in the Isle of Man would advance monies in respect of a property in which  
15       he had no beneficial interest and would do so in circumstances where he wasn't  
16       going to be paid a significant interest on the monies he might advance?

17 A. He may well have. It is something I can check with him, but as I am dealing  
18       with this matter now and not having looked at this particular stuff, which is  
19       at least -- 1987, as I recollect it, it's a long time ago, so I can follow that  
20       up with further inquiries.

21 Q.27 Yeah. Are you friendly with Mr. Bullock?

22 A. I have known Mr. Bullock for, going on for 20 years.

23 Q.28 The question was: Are you friendly with Mr. Bullock?

24 A. Yeah, I would say that I was friendly with him, yes.

25 Q.29 He is a resident of the Isle of Man?

26 A. Yes, he is.

27 Q.30 Has he been involved in many transactions on your behalf over the years?

28 A. Yes, he has.

29 Q.31 You have practiced as a solicitor for something of the order of 20, 22 years?

30 A. Yes, something of that order, Mr. Gallagher, yes.

1 Q.32 And I suggest to you that Mr. Bullock was a very close associate of yours, did  
2 a tremendous amount of work with you and for you in the Isle of Man.

3 A. We worked closely on quite a number of matters over the years.

4 Q.33 Do you disagree that he was a very close associate of yours and did a  
5 tremendous amount of work with you and for you in the Isle of Man?

6 A. We would have worked on a lot of things. I would regard him as, yes, a close  
7 associate, but he also did a lot of work for a lot of other people as well.

8 Q.34 I asked you a specific question. I would prefer if you would answer the  
9 question I asked of you.

10 A. Certainly, Mr. Gallagher.

11 Q.35 I asked you: do you agree he was a very close associate of yours and did a  
12 tremendous amount of work with you and for you in the Isle of Man?

13 A. Yes, he was.

14 Q.36 And do you think Mr. Bullock would be prepared to assist this Tribunal?

15 A. In what way, Mr. Gallagher?

16 Q.37 In anyway he can help by providing information, records, documents, statements,  
17 anything of that nature, that might assist the Tribunal?

18 A. Well, certainly he has assisted quite substantially. He has -- I have written  
19 to him, requested him for documents, I have spoken to him about providing  
20 documents and he has done that. He has taken, found files and those files have  
21 been delivered to the Tribunal.

22 Q.38 Yes, do you think he would help the Tribunal by providing any assistance that  
23 he can provide to the Tribunal?

24 A. I don't know, Mr. Gallagher, that's a matter that you would have to ask --

25 Q.39 Would you wish or encourage him to do so?

26 A. I would encourage him to do so and I have encouraged him to do so.

27 Q.40 Tell me about, just while we are in the Isle of Man, as it were, would you tell  
28 me about your relationship with Mr. and Mrs. Harker and what role they have  
29 played in the various transactions you have been involved in professionally or  
30 business?

1 A. Mr -- Mrs. Harker, not to any great extent, she is Mr. Harker's, his wife. The  
2 Mr. Harker I have dealt with over, I suppose, 15 years on various matters?

3 Q.41 Yes. What, what's Mr. Harker's profession?

4 A. Mr. Harker is a chartered accountant.

5 Q.42 Does he have his own practice?

6 A. He does.

7 Q.43 Is Mr. Bullock a chartered accountant?

8 A. No, I don't believe he is a chartered accountant.

9 Q.44 What's his profession or business?

10 A. He is a, I suppose he is a company service provider.

11 Q.45 Sorry, I don't quite understand that. What company service provider?

12 A. Well, being based in the Isle of Man quite -- a company, he would provide  
13 companies and administer companies for individuals or trusts.

14 Q.46 Does he have an office in the Isle of Man?

15 A. Yes, he does.

16 Q.47 Do you know the address of the office?

17 A. Yes, it's 53 Strand Street Douglas, Isle of Man.

18 Q.48 Now, you were telling us about the first time you had dealings with  
19 Mr. Kennedy. You say that yourself and Mr. Kennedy bought the lands at  
20 Portrane jointly, you held them --

21 A. Yes, as I recollect, Mr. Gallagher, sorry to interrupt you, Mr. Kennedy's  
22 company had a contract to acquire the land in Portrane. And the benefit of  
23 that contract was assigned or sub sold to a company called 85 Development  
24 Limited, a company based in the Isle of Man. And that the position in relation  
25 to that company was that the Kennedy side had 50 per cent of that company and  
26 the Caldwell side had 50 per cent of that company, and I use that language of  
27 "Caldwell side" in relation to it, because the -- I, the legal and beneficial  
28 ownership of it was structured in a particular fashion. If you want me to go  
29 into that I can go into it now in relation to it. But I was not the legal and  
30 beneficial owner of the shares, I had it, it was structured through

1 Mr. Bullock.

2 Q.49 Why was that?

3 A. It was for tax planning reasons and for asset protection reasons and for  
4 reasons of privacy.

5 Q.50 What do you mean by "tax planning reasons"?

6 A. The "tax planning reasons" I mean reasons in relation to inheritance tax. From  
7 my perspective, Mr. Gallagher, I am not domiciled in Ireland for tax purposes  
8 and that leaves me in the position that I am subject to tax on, as an  
9 individual when I was resident in Ireland, I was subject to tax on income  
10 arising in Ireland or in the United Kingdom, but not subject to tax in relation  
11 to income or gains which arose outside of Ireland or the United Kingdom. And  
12 in those circumstances it was beneficial for me to look to structure ventures  
13 that I was involved in in a fashion that meant that the income and gains  
14 arising on the investment after Irish tax was dealt with, would arise to me  
15 outside of Ireland and outside of the United Kingdom. For that reason I would  
16 prefer to do investments or ventures in non-Irish companies and for that reason  
17 I used 85 Developments.

18 Q.51 When did you cease to be domiciled in Ireland?

19 A. Well, I was never domiciled in Ireland, Mr. Gallagher. I was born in Northern  
20 Ireland. So my domicile of origin is not -- is not one for the Republic of  
21 Ireland. To acquire a domicile, to change that I would have had to acquire  
22 domicile of choice in the Republic and I have never acquired a domicile of  
23 choice in the Republic.

24 Q.52 But you have lived in the Republic?

25 A. I have lived in the Republic.

26 Q.53 How many years did you live in the Republic?

27 A. I think I came to - I came to Ireland from America in the, to teach at UCD  
28 about 1976/'77. But I am not a hundred per cent sure on that, but that's --

29 Q.54 Did you live continuously in Ireland from 1977 up to the fairly recent past?

30 A. I was a resident in Ireland in the sense of being resident for tax purposes in

1           this context up until the 5th of April 1995. And I left Ireland for tax  
2           purposes a few days before the 5th of April 1995.

3 Q.55 Well, at that time you are talking about in relation to 85 Developments you  
4           were resident in Ireland?

5 A.    Yes. Yes, I was.

6 Q.56 And Mr. Kennedy was resident in Ireland?

7 A.    Mr. Kennedy was resident in Ireland, yes.

8 Q.57 Was he domiciled in Ireland?

9 A.    I would assume that he was, yes.

10 Q.58 I find it difficult then to understand why the property in Portrane was not  
11       taken in the name of an Irish company or if not taken in the name of an Irish  
12       company why you and Mr. Kennedy were not shown as the directors or beneficial  
13       owners of the company, shareholders?

14 A.    Well, in terms of not being taken as an Irish company that was my decision,  
15       that was my decision because it suited my economic -- my economic interests.  
16       And as I was the one who was ultimately to be facilitating the financing of  
17       that company I dictated the structure in relation to it.

18 Q.59 Did you disclose your involvement with the lands in question when you  
19       refinanced the property through Lombard & Ulster in the north, in Belfast?

20 A.    Yes, I would have done the negotiations with Lombard & Ulster in relation to  
21       the financing of it, if I am right that it was -- am I correct, Mr. Gallagher  
22       that --

23 Q.60 I don't know. Does it follow that you were shown in the records of the company  
24       in the Companies Office as having been a director or having a share of the  
25       company?

26 A.    No, Mr. Gallagher, I wouldn't have been. The directors of 85 Developments I  
27       think were Mr. Bullock and Mr. Harker and the shareholders of 85 Developments  
28       were Mr. Bullock and I think his father, his late father.

29 Q.61 And why were you not shown as shareholder or as a director?

30 A.    For the reason that I have explained. The tax planning reason, the privacy

1 reason.

2 Q.62 Tax planning we'll leave tax planning aside. You could certainly, it would  
3 seem to me, have had the same tax benefits or minimisation of tax if you had  
4 described yourself as a director or shareholder, would that be so?

5 A. No, it wouldn't be so. If I described myself as not so much as director,  
6 Mr. Gallagher, but certainly as being a shareholder, if I was a shareholder of  
7 it the -- I don't believe I would have been in the same situation.

8 Q.63 In what way would your situation have been different?

9 A. I am thinking back on what was the plan and the structure at that stage. You  
10 may well be right in terms of me being an individual shareholder in relation to  
11 it, that if I was a named shareholder in relation to it then the disposal of  
12 the asset up on liquidation of it, if the venture occurred, would, as it was a  
13 disposal of shares in an Isle of Man company and I was not non-domiciled, would  
14 not be subject to Irish tax.

15 Q.64 Then why not disclose your involvement and your interest?

16 A. I had -- the reasons I have given, the reasons of tax planning. The reasons of  
17 privacy and the reasons of asset protection.

18 Q.65 Why privacy? What's the problem about privacy, you were a director of many  
19 companies, Mr. Caldwell, and have been through your career as John Caldwell is  
20 to be, name to be found all over the Companies Office.

21 A. Yes, I certainly am listed on quite a number of companies in the Companies  
22 Office. Quite a number of companies had, a lot of which are, over the years  
23 were just shelf companies that were created by, in the firm, and were held on  
24 the record of the firm, other companies in which I was a participant and  
25 actively involved in them. 85 Developments I had, I wasn't -- that was the way  
26 I structured it in that fashion as myself not being named on it and not --

27 Q.66 To conceal your involvement in it, wasn't it?

28 A. There is no mystery. There is no major, you know, secret in relation to it.

29 Q.67 Well, there was up to fairly recently, wasn't there?

30 A. Yes, I have been a very private individual, Mr. Gallagher, I have not sought

1 publicity in any shape or fashion anywhere and I have kept my affairs to  
2 myself.

3 Q.68 I should say that I hadn't intended asking you about 85 Developments, it simply  
4 arose in the course of your response. Your initial dealings with Mr. Kennedy  
5 we'll be coming back to deal with 85 Developments in the future, but I just  
6 wanted to move on now to the next dealings you had with Mr. Kennedy in terms of  
7 lands and properties.

8

9 JUDGE KEYS: Mr. Gallagher, just before you go on to that I wonder could I ask  
10 Mr. Caldwell one question? In relation to your domicile, from the evidence you  
11 have given it appears you have resided in Ireland for up to 25 years, would  
12 that be correct, working as a solicitor mainly and involved with business  
13 transactions?

14 A. Judge, I left Ireland in residency terms in 1995.

15

16 JUDGE KEYS: That's right. You lived in the Republic since 1976 when you came  
17 to UCD and you came from America.

18 A. That's correct.

19

20 JUDGE KEYS: Where was your main house of -- where was your main place of  
21 residence at that stage when you came from America?

22 A. The main place of residence was, I moved house several times, I lived outside  
23 Athboy for a while.

24

25 JUDGE KEYS: Pardon?

26 A. I lived outside Athboy for a while and outside Enniskerry and then in Dun  
27 Laoghaire.

28

29 JUDGE KEYS: Did you have any residence in Northern Ireland or Great Britain?

30 A. No, I didn't.

1

2 JUDGE KEYS: And you still maintain you are domiciled in Northern Ireland?

3 A. I still maintain that, yes, the adoption of domicile is a matter of choice, I  
4 chose not to adopt it. And in filing tax returns consistently over the years I  
5 took that position.

6

7 JUDGE KEYS: So for all intents and purposes, while you elected to keep your  
8 Northern Ireland domicile, I take it at that stage you had no assets, your main  
9 residence wasn't in Northern Ireland, you didn't reside in Northern Ireland and  
10 you spent most of your time, as I understand it, being your main place of  
11 residence is in the Republic of Ireland working full time as solicitor in  
12 McMahan & Binchy.

13 A. Yes, I was working full time as solicitor.

14

15 JUDGE KEYS: Do I take it that the whole purpose of maintaining your domicile  
16 had something to do with tax, minimising your tax in business transactions?

17 A. That's correct, yes.

18

19 JUDGE KEYS: Thank you. Sorry.

20

21 Q.69 MR. GALLAGHER: I think that in all your business transactions including your  
22 dealings with the Law Society you gave, during the period in question from  
23 1980s up to indeed a very short time after this Tribunal was established, you  
24 gave your address in Killiney and there are other addresses in Dun Laoghaire  
25 and elsewhere as being your normal place of residence.

26 A. Without checking all the records in relation to it. My residence certainly  
27 in -- was up to 1995 was certainly, my sole available residence would have been  
28 the ones that I have listed in Enniskerry or Killiney or wherever.

29 Q.70 They would have been the addresses you have given to the Law Society when you  
30 were seeking your annual certificate?

1 A. Absolutely, that was -- the form would have been filled out by the office  
2 manager and the address would have been on it.

3 Q.71 I see. Would you tell the Tribunal about your next involvement with  
4 Mr. Kennedy?

5 A. I believe my next involvement with him was in relation to the Carrickmines  
6 lands and that was in 1988.

7 Q.72 At that time had the specific performance proceedings in relation to the 85  
8 Developments lands at Portrane concluded?

9 A. I suspect that they had, yes.

10 Q.73 Had you applied for planning permission in respect of those lands?

11 A. I can't recollect that.

12 Q.74 Well, was there an application for planning permission on those lands?

13 A. Yes, there was, Mr. Gallagher.

14 Q.75 Was there an application for the construction of foundations for a significant  
15 number of houses on those lands?

16 A. Yes, there was a planning application and the normal practice would have been a  
17 by-law application. So I suspect that both those were made.

18 Q.76 But you didn't apply for the construction of houses on those lands. You  
19 applied for the construction of foundations on those lands, isn't that right?

20 A. You are saying that the planning application for the site was for development  
21 works.

22 Q.77 Yes, consisting of the provision of basic foundations for significant number of  
23 houses.

24 A. That may well have been the case. That would have been a function I think of  
25 the cost of the application.

26 Q.78 Yes. And that application was unsuccessful, and unsuccessful on appeal as I  
27 recall.

28 A. Yes, it was. You may have been involved in it yourself, Mr. Gallagher.

29 Q.79 Indeed I was. I think that gave rise to an application for compensation.

30 A. Yes, it did.

1 Q.80 And that application for compensation was one which arose within a year or so,  
2 perhaps two years after the lands had been acquired for 160 thousand pounds.

3 A. It may well have been in that time period, yes.

4 Q.81 And was a claim, I suggest for compensation, of the order of 2 million pounds?

5 A. I suspect it was in that order, yes.

6 Q.82 Was that claim being processed at the time you first became involved in  
7 Carrickmines?

8 A. That claim I think ran over effectively over several years because of the  
9 litigation.

10 Q.83 There was litigation, arbitration, High Court proceedings, two High Court  
11 proceedings and an appeal to the Supreme Court?

12 A. Supreme Court as well.

13 Q.84 So that ran over sometime.

14 A. Yes.

15 Q.85 So I take it you had very close contact with Mr. Kennedy during that time?

16 A. Yes, I did.

17 Q.86 You were business partners?

18 A. Yes, we were.

19 Q.87 Were you meeting very frequently?

20 A. We would have met on a regular basis, yes.

21 Q.88 Were you also his solicitor, a solicitor for 85 Developments limited?

22 A. The firm were the solicitors for 85 Developments. I think Mr. Brian Delahunt,  
23 in fact, dealt with the arbitration, claim itself.

24 Q.89 Was he acting on your instructions?

25 A. He would have acted on my instructions, yes.

26 Q.90 Why did you not act --

27 A. Well --

28 Q.91 -- in the arbitration?

29 A. I tried to as often as possible to have other people process, do the legal work  
30 in relation to these matters rather than do it myself.

1 Q.92 Well, that may have been your reason, but one other view would be that you were  
2 distancing yourself from the, and hiding your involvement in the transaction?

3 A. Not distancing and my hiding my involvement in it, Mr. Gallagher. I was there,  
4 I was giving instructions in relation to it. I was assisting in relation to it  
5 from whatever commercial decisions had to be taken in relation to it. The  
6 lawyer who was dealing with the case dealt with the case, processed the  
7 paperwork, processed the applications and so on in relation to it.

8 Q.93 Yes, but on your instructions and on your behalf?

9 A. Well, on instructions from me and on behalf of 85 Developments.

10 Q.94 Yes, but ultimately on your behalf and on behalf of Mr. Kennedy?

11 A. Ultimately, on behalf of the company and ultimately on behalf of --

12 Q.95 You were the company, that's the reality.

13 A. Well, no. I am a believer in the difference between the individual and the  
14 company.

15 Q.96 Mr. Caldwell, the bottom line is you were the person who was going to get the  
16 money at the end of the day if the claim for 2 hundred million, 2 million  
17 pounds or of that order had been successful, the reality is that a significant  
18 amount of that money would have been transferred into your account or to be  
19 held for your benefit and for the benefit of Mr. Kennedy, isn't that true?

20 A. If the company had succeeded in its claim or had got planning permission and  
21 sold the land, the proceeds would have been divided into two sides into the  
22 Kennedy side and Caldwell side.

23 Q.97 Ultimately you would have received a substantial amount of that money?

24 A. A substantial amount of that money, yes, would have found its way into whatever  
25 structure.

26 Q.98 Into your account?

27 A. Into whatever structure I had --

28 Q.99 Into your control?

29 A. Into a structure that I would have --

30 Q.100Mr. Caldwell, into your control. You could decide exactly where it was going

1 to and how it was going to be spent or how it was going to be invested, isn't  
2 that so?

3 A. Into a structure I would have control and influence in relation to.

4 Q.101Mr. Caldwell, into a structure that you would control?

5 A. I have acknowledged that, Mr. Gallagher. I am a structure of which I would  
6 have control and influence, yes.

7 Q.102Not control and influence into which you would control. You would make the  
8 decisions and you would pass those decisions on to somebody else for  
9 implementation, isn't that right?

10 A. Yes, that follows from control. Yes, it does, yes.

11 Q.103It would be your money?

12 A. It wouldn't my be my money, Mr. Gallagher, necessarily. If it was transferred  
13 into my account, I am not being pedantic.

14 Q.104It seems you are being semantic in the context of what we are talking about?

15 A. If it were transferred into my account it would be my money, if it were left in  
16 the company's account it would not be my money but nonetheless money I could  
17 have influence or control in relation to.

18 Q.105Held for your benefit?

19 A. In relation to the direction, that money for purpose of investment or whatever  
20 else --

21 Q.106It would be held for your benefit?

22 A. Not necessarily for my benefit. Could have been held for the benefit of my  
23 children.

24 Q.107If you had so structured it. But on the assumption you didn't structure it,  
25 then it was so structured?

26 A. It's a hypothesis in relation to this.

27 Q.108Had you structured it in relation to, it was going to go for the benefit of  
28 your children?

29 A. No, because it was --

30 Q.109All right. So that didn't arise then?

1 A. May I finish, Mr. Gallagher? The way that it was structured was that it was  
2 structured in the name of Mr. Bullock and in the name of his father in relation  
3 to it. They -- the ownership was theirs in relation to it, the legal and  
4 beneficial ownership was theirs in relation to it. Now, I was in a position,  
5 given my relationship with them, that if there ultimately was a situation in  
6 which this was successful then those funds arising on that would -- I don't  
7 resile from this, would have been transferred into a structure that I directly  
8 was transferred into.

9 Q.110 Let me say to you that I have a difficulty with the word "beneficial", because  
10 it seems to me from my perspective that if somebody holds money beneficially  
11 for me, whilst it's nominally in their name or their account it is my money.  
12 They have no proprietorial interest or right or entitlement to it, is that  
13 correct, would you accept that?

14 A. If it's a situation that the funds are held in someone's account and that you  
15 are absolutely entitled as against them to those funds, then clearly you are  
16 the beneficial owner of those funds.

17

18 CHAIRMAN: Mr. Caldwell, just, is this what you intend to convey, you can  
19 correct me if I am wrong, that if the claim for 2 million pounds, or whatever,  
20 had come to fruition the money would have been divided more or less equally  
21 between Mr. Kennedy and some structures, you call it, is that right?

22 A. That's correct.

23

24 CHAIRMAN: But from the, at the moment that the compensation claim came to  
25 fruition and before you directed it into a particular structure, be it for your  
26 children or whatever, you at that point would have had control over it. You  
27 could have put the money in your pocket, or you could have bought a property  
28 for yourself or you could have put it into a structure designed for secrecy or  
29 purposes or tax or whatever?

30 A. Yes. If the compensation claim came to fruition the funds would be paid into

1 the company, the debt would be discharged the fees discharged and the net funds  
2 would be available in the company. I could have directed Mr. Bullock to  
3 transfer those funds into structures for my children or for myself or indeed  
4 for himself.

5

6 CHAIRMAN: You had complete control, at that point you had complete control of  
7 your share of the proceeds?

8 A. Yes -- well, I had control over the distribution of those proceeds by the  
9 company in charge or in those hands, they were held as a result of the  
10 compensation claim.

11

12 CHAIRMAN: So at that point you would have had a clear and obvious beneficial  
13 ownership of the money?

14 A. No, I wouldn't accept that I had, with respect, a beneficial ownership of the  
15 money until such time as I directed that they were transferred into a structure  
16 that was for my benefit per se.

17

18 CHAIRMAN: But the day before you would make that direction and the money  
19 sitting there ready for distribution you had, you were the beneficial -- you  
20 were beneficially entitled to that money?

21 A. Well, if I -- if the circumstances were such that the funds were there and  
22 before I gave a direction in relation to it, I died, the funds that were there  
23 would not be funds which would be my funds at that point in time because I had  
24 not exercised the control in relation to them.

25

26 CHAIRMAN: So who would be entitled to the funds in that example?

27 A. That would be a situation for whatever guidance that Mr. Bullock would have as  
28 to what he, what should happen to those funds.

29

30 CHAIRMAN: But would not your estate then --

1 A. No, they would not form part of my estate.

2

3 CHAIRMAN: But would your estate be entitled to direct where the money would  
4 go?

5 A. They would be -- what would be happening is Mr. Bullock would be relying on his  
6 understanding of what I would like him to do with them. Now, he would have no  
7 compulsion to do that, but I would expect that he would have acted on that  
8 understanding.

9

10 CHAIRMAN: All right, but you had, in any event you had control of the, of  
11 your net share of the profits and it was up to you to decide whether you took  
12 the money into your own pocket or paid it in through some structure?

13 A. Yes, the funds were in the company and they would be available for the company  
14 to pay them wherever I would wish.

15

16 JUDGE FAHERTY: Mr. Caldwell, I can understand why you say Mr. Bullock and his  
17 late father would have been the owners of the structure, the legal owners, but  
18 how can you claim they would have been the beneficial owners? As I understand  
19 it this had come to fruition, this was compensation that would have been paid  
20 to the company 2 million in respect of lands which had been acquired prior to  
21 that.

22 A. Mm-hmm.

23

24 JUDGE FAHERTY: In respect of which you had borrowed 160 from Mr. Bullock but  
25 refinanced with a Northern Irish bank and repaid Mr. Bullock within weeks.

26 A. Yes.

27

28 JUDGE FAHERTY: But in those circumstances, while it may well be the case on  
29 paper that the legal ownership of the structure into which the funds went would  
30 be in the name of Mr. Bullock, I still can't fathom how you can maintain that

1 they would be, Mr. Bullock and his father would have beneficial ownership of  
2 those funds even prior to any direction you would make?

3 A. Yes. That's the position, that's how I conceived of the relationship with  
4 Mr. Bullock in relation to them. That the legal and beneficial ownership  
5 vested in Mr. Bullock in relation to the shares and I was not the beneficial  
6 owner of that.

7  
8 In terms of my dealings with Mr. Bullock on an ongoing basis, this situation,  
9 which I do accept is a curious construction, is -- has caused me difficulties  
10 given what's happened out in Jackson Way and Carrickmines and so on where the  
11 lands have become extremely valuable, because the situation now in relation to  
12 that is that if I were to ask Mr. Bullock now, given my position as to his  
13 ownership in relation to it, to transfer the shares in Renzenbrinck  
14 Investments, which owns 50 per cent of it, to me -- as I can do on foot of the  
15 declaration that he has signed -- then there would be a capital gains tax  
16 liability. Because my view in relation to that is that it's not a situation in  
17 which I am the beneficial owner of those shares as we stay here. That's why I  
18 have been in discussions and correspondence with Mr. Bullock over the last  
19 couple of years to try and ensure that he deals with this issue in terms of his  
20 own estate and the, creates a will to deal with the passing of the shares in  
21 the event of his own death.

22  
23 JUDGE FAHERTY: I am sure Mr. Gallagher will deal in due course now with Jackson  
24 Way and Carrickmines land. But in the heel of the hunt, if you put up 50 per  
25 cent, which you did, of the, put up the money in relation to the 85  
26 Developments, you are the beneficial owner of the fruits of that investment?

27 A. Its -- as it stands from my view, from the legal point of view, I may be wrong  
28 in my view, but my view in relation to it and how I conceived of this as a  
29 construct, was that I was not the legal and beneficial -- I was not the legal  
30 nor was I the beneficial owner of the shares in either 85 Developments or in

1 Paisley Park or in Renzenbrinck. And the relationship with Mr. Bullock has, I  
2 rely and trusted him and do trust him implicitly in relation to it.

3  
4 I am in the situation where he -- I have now to try and create checks and  
5 balances in relation to Mr. Bullock and the possibility that other members of  
6 his family may arrive at some stage in the event of his death and claim an  
7 interest in this, because my stated position to him and stated position is that  
8 I am not the beneficial owner.

9  
10 I have now got some paperwork which has been disclosed to the Tribunal and  
11 paperwork I got from him subsequent to the Affidavit of Discovery, which gives  
12 me more control of the situation and I have been pressing him to do a will. So  
13 that in the event of his death the property passes, that is the shares pass.  
14 It's the legal construct I created at the time and I am the victim of my own  
15 construct at this point in time.

16  
17 JUDGE FAHERTY: But Mr. Caldwell, you said at the outset, very early on in your  
18 evidence, one of the reasons you did all of this was asset protection.

19 A. Yes, it was. Yes. And that precisely, judge, is the reason.

20  
21 JUDGE FAHERTY: What you describe now and the eventualities that you project as  
22 might happen, couldn't in anyway be described as, on your description as asset  
23 protection, because you appear to tell us you are at the mercy of the goodwill  
24 of Mr. Bullock at this point.

25 A. Sorry to interrupt, I am as events have unfolded. From an asset protection  
26 point of view the assets were not my mine so they were not subject to any  
27 claims in relation to creditors, not my assets. But the down side of having  
28 been in that position is that I now have to accept the legal position that  
29 exists in relation to it. And the stated position I have in relation to it and  
30 to try and to protect the interests that's there. While Mr. Bullock is alive I

1 don't feel threatened in relation to it, because I have known, as I said to  
2 Mr. Gallagher, I have known Mr. Bullock for over 20 years. I trust him  
3 implicitly in relation to it. But if he were to die then I would have, I could  
4 have a very difficult situation.

5  
6 JUDGE KEYS: Mr. Caldwell, just so I understand the situation. If the claim,  
7 compensation claim was successful and if 2 million divided by 50 per cent to  
8 you and 50 per cent to Kennedy goes into the company, of which Mr. Bullock has  
9 control over, as I understand, if he decides to pocket the one million while  
10 you are alive can you do anything about that legally?

11 A. I would be in considerable difficulty, judge, in those circumstances, yes.

12

13 JUDGE KEYS: Do I take it also that --

14 A. I don't believe, sorry -- I don't believe that he would do that.

15

16 JUDGE KEYS: That's beside the point. What you are saying is you set up a  
17 structure which you say was for tax planning purposes, for asset protection and  
18 for privacy, which had the effect or could have the effect of giving a million  
19 pounds if a claim had been successful to Mr. Bullock and that he could pocket  
20 it, and legally there is nothing you could have done about it.

21 A. That's correct.

22

23 JUDGE KEYS: Sure, that sounds a ludicrous set-up.

24 A. It is -- I didn't anticipate -- I didn't anticipate and don't anticipate that  
25 those circumstances will arise but it is conceivable that those circumstances  
26 could arise.

27

28 JUDGE KEYS: Is this a unique exercise, because I have never heard of it before  
29 where base transactions involving that type of money would set it up in such a  
30 way that some person, who is a shareholder in a company, can pocket one million

1 pounds of money which really belongs to somebody else, without any legal  
2 redress?

3 A. I am a victim of my own structure in relation to it. And that is the net  
4 result of it.

5

6 JUDGE KEYS: Do I also take it if you were to die that your estate would lose  
7 out in the situation and if Mr. Bullock also felt, I am going to pocket the  
8 money now --

9 A. Yes, in the absence of a --

10

11 JUDGE KEYS: A will to be executed by him to transfer the shares.

12 A. Yes.

13

14 JUDGE FAHERTY: I understood you told the Chairman a moment ago that you didn't  
15 agree with your ownership of the beneficial interest, but that you could direct  
16 Mr. Bullock and his late father at the time to put the monies into somewhere  
17 where you would control.

18 A. Yes.

19

20 JUDGE FAHERTY: You can't have it every way. If you say that to the Chairman I  
21 don't think you can respond the way you responded to Judge Keys that you are a  
22 victim.

23 A. What we have is, we have a situation which is where a number of scenarios can  
24 occur in relation to it. If the scenario which occurs in relation to it is the  
25 one you have described, judge, which is the compensation claim, had come to  
26 fruition and the company have fulfilled its purpose then in those circumstances  
27 I would have directed him and asked him to transfer those funds into the  
28 structure. Given my relationship with him I would have expected him to do  
29 that. That did not happen in relation to it. That situation has not arisen.  
30 The company is still as it was, subject to his father having died and his

1 mother having succeeded to the shares, the -- in a situation now where the land  
2 is still in the company in testimony in this unfortunate situation.

3  
4 Q.111MR. GALLAGHER: Mr. Caldwell, would you tell the Tribunal what you understand  
5 the difference to be between a trustee and a beneficiary?

6 A. A trustee I would believe is an individual, could be an individual or company  
7 that holds property on behalf of someone else that they hold the legal title to  
8 that property, and that someone else is entitled to the beneficial title.

9 Q.112Hold it on behalf of somebody else?

10 A. Yes.

11 Q.113Hold it on behalf of somebody who is the beneficial owner of the property,  
12 isn't that right?

13 A. Correct, yes.

14 Q.114And the trustee has no proprietary interest in the property which they hold  
15 on trust, isn't that right?

16 A. They have no property right, interest, yes.

17 Q.115Isn't that the situation that obtained in relation to Mr. Bullock, and isn't it  
18 the situation that still obtains in relation to Mr. Bullock?

19 A. It was -- with respect, it's not the situation that obtains in relation to  
20 Mr. Bullock, He holds both the legal and the beneficial title.

21 Q.116Well, how does he hold the beneficial title?

22 A. Because if in relation to the shares, if he died those would form part of his  
23 estate. I have no hold on --

24 Q.117Does he hold them on your behalf?

25 A. No, he does not.

26 Q.118So, you have no claim on them good, bad or indifferent?

27 A. What I have is the capacity to now call on him to transfer the shares as I  
28 direct him to transfer the shares.

29 Q.119On foot of what agreement was this to be done?

30 A. Well, I am talking in that case about the Renzenbrinck shares in relation to 85

1 Developments. I do not have that same piece of paper which they would be --

2 Q.120What arrangement did you reach with Mr. Bullock when you said, I want you to  
3 set up this company for Jim Kennedy and myself, you set yourself up as director  
4 and shareholder? What arrangement did you have with him that would ensure that  
5 you were able to control the company and direct as to the manner in which its  
6 assets would be dealt with?

7 A. Nothing other than trust in the, trust in what I regard as the strengths of my  
8 relationship with Mr. Bullock.

9 Q.121And if Mr. Bullock had been asked the question: Are these shares owned and  
10 held for your sole benefit, what would he have had to say?

11 A. He would have had to say no.

12 Q.122He would have to say no. And he would say they were not held for my sole  
13 benefit because they were held for John Caldwell?

14 A. Sorry, I have misunderstood the question. He would have said that they were  
15 held -- I thought you asked a question would he have said they were held for  
16 his benefit, they were held for his benefit, they were not held for my benefit  
17 and he would so say.

18 Q.123Did you have any arrangement in writing with Mr. Bullock in relation to his  
19 dealing with the lands and with the shares in the company that owned the  
20 Portrane lands, the 85 Developments company?

21 A. No, I didn't.

22 Q.124You didn't?

23 A. I didn't, no.

24 Q.125So, how did it come to pass that Mr. Bullock established a company and had  
25 himself registered as a director and as a shareholder if it wasn't as a result  
26 of an arrangement with you?

27 A. Well, in so far -- an arrangement with me is that I requested him to provide a  
28 company which would enter into this transaction in relation to the lands at  
29 Portrane, and the company he provided was 85 Developments.

30 Q.126But you asked him more than that. You asked him to be a director of the

1 company and you asked him to be the sole shareholder or a shareholder with his,  
2 somebody acting with him?

3 A. Yes, I did.

4 Q.127Now, did you explain to him why you wanted that done?

5 A. Well, I would -- I don't recollect an exact conversation, but I would have told  
6 him that it was in relation to the acquisition of land at Portrane.

7 Q.128And did you tell him why you wanted him to act in that fashion?

8 A. I presume I had a conversation with him, yes, in relation to it.

9 Q.129What arrangement was arrived at between yourself and Mr. Bullock?

10 A. I am not understanding, I don't understand the question.

11 Q.130You had an arrangement with him, presumably he wasn't going to, he was going to  
12 act on your instructions in some way in the future.

13 A. Well, he provided the company. I told him how I wanted this structured and he  
14 agreed to do that.

15 Q.131Surely you had some arrangement with him in which you said, Martin, when I give  
16 you a call, when, I want you to transfer this or when the compensation claim  
17 comes to fruition we'll have to deal with the investing of the money and I will  
18 give you instructions then?

19 A. When the company was set up there was no discussion in relation to the  
20 compensation claim that I can recollect, the compensation claim was something  
21 which would have arisen subsequently as a result of the planning being refused.

22 Q.132Well, when the company was set up did you explain to him that you would expect  
23 him to take his instructions from you as to what he should do in relation to  
24 the execution of documents and such matters?

25 A. Well, the normal course of the relationship with him would be that he would  
26 look to me for instructions in relation to it but he would also deal directly  
27 with the solicitors himself, because once it's a property transaction the  
28 company is buying the property, it is not rocket science. There is, you just  
29 get on with it and do it and the instructions are, would be quite  
30 straightforward in relation to that which would emanate from himself.

1 Q.133Yes, but it would be carrying out your wishes?

2 A. Yes, in that my wish is that this company would acquire this property, yes.

3 Q.134And I take it he complied with your wishes in the disposal of the property?

4 A. Well, the property hasn't been disposed of.

5 Q.135I see. And is the property still held by Mr. Bullock?

6 A. Well, the --

7 Q.136Through the structure that you have set up?

8 A. The company still owns the property and the structure is still, so far as  
9 Mr. Bullock and myself is concerned, is still there as it was from the very  
10 beginning, subject to the death of his father.

11 Q.137And is the structure in position, the same structure in position in relation to  
12 the Kennedy interest?

13 A. The Kennedy interest is not held in the same way.

14 Q.138How, in what way has it changed?

15 A. Well, the Kennedy interest is held for the Kennedy structure.

16 Q.139You might explain that, please.

17 A. By my understanding of that is it is held on behalf of a trust for the Kennedy  
18 side.

19 Q.140So does it follow that Mr. Bullock held the entire shareholding and entire  
20 interest of the company on what you describe as "on behalf of the Kennedy  
21 interest and the Caldwell interest" and the Kennedy interest has, in fact,  
22 arranged to have its interest now held by a trust?

23 A. The Kennedy interest is held, that's correct, it's held by a trust. The  
24 Caldwell side of it is still held as I have described it.

25 Q.141By Mr. Bullock?

26 A. Well -- by Mr. Bullock's mother, in fact, is the division.

27 Q.142I see. You say that there is no deed of trust or declaration or  
28 acknowledgement by Mrs. Bullock, who presumably is significantly older than  
29 Mr. Bullock?

30 A. That's correct.

1 Q.143That if she holds this property -- this valuable property I take it now.

2 A. It's value is questionable, but it's --

3 Q.144Well it certainly is worth more than 160 thousand pounds I would suggest?

4 A. It is, correct.

5 Q.145Has it been rezoned?

6 A. No, it has not.

7 Q.146Has land adjoining it been rezoned or in close proximity to it?

8 A. I don't believe so.

9 Q.147I see. Are you saying that Mrs. Bullock senior has not executed any document,  
10 any Declaration of Trust or anything of that nature, which would indicate that  
11 she holds half of these lands for your benefit?

12 A. She has executed nothing in relation to it, and it's a matter which I have  
13 discussed with Mr. Bullock in terms of asking him to ask his mother to do a  
14 will in relation to these --

15 Q.148Have you asked Mrs. Bullock?

16 A. I have not spoken to her about it.

17 Q.149Have you any idea whether she is willing or not to execute such a document?

18 A. I have had no response from Mr. Bullock in relation to it. I have asked him in  
19 relation to Renzenbrinck to do the same so far as he is concerned himself and  
20 to date he has not done so.

21  
22 JUDGE FAHERTY: Just, I want to clarify something, Mr. Caldwell, is it  
23 Mr. Martin Bullock and his mother, Mrs. Bullock senior?

24 A. Yes, that's right.

25  
26 JUDGE FAHERTY: She succeeded into the late Mr. Bullock's --

27 A. She did.

28  
29 JUDGE FAHERTY: So, in fact, you have two persons you say who hold these lands  
30 or the benefit, that's what you are saying, Mr. Bullock and Mrs. Bullock

1 senior.

2 A. Yes. Just to clarify there were two shareholders in the company.

3

4 JUDGE FAHERTY: Yes, I understand.

5 A. Mr. Bullock senior and Mr. Bullock junior and on the death of Mr. Bullock they  
6 transferred to his wife.

7 Q.150What happens in the event of the unfortunate death of Mrs. Bullock senior?

8 A. I hope to remedy that by --

9 Q.151But if you haven't remedied it?

10 A. Then it will fall under her will and presumably will pass to Mr. Martin  
11 Bullock.

12 Q.152If she has made a will. If she hasn't made a will?

13 A. I don't know. I would say as her only son and heir it will pass to him.

14

15 CHAIRMAN: Perhaps we might take a few minutes, about ten minutes.

16

17 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED

18 AGAIN AS FOLLOWS:

19

20 Q.153MR. GALLAGHER: Mr. Caldwell, just before the break you told the Tribunal that  
21 you hadn't spoken to Mrs. Bullock senior about the lands at Portrane or the  
22 company which holds that land, is that correct?

23 A. That's correct, Mr. Gallagher.

24 Q.154Have you ever met Mrs. Bullock senior?

25 A. Yes, I have.

26 Q.155Have you spoken to her about any business transactions --

27 A. No, I have not.

28 Q.156-- which you were involved?

29 A. She is an elderly lady.

30 Q.157So far as you are concerned she might very well leave all her assets, which

1 would include half of the interest of the lands in Portrane, to the Douglas dog  
2 and cats home?

3 A. She may well leave it it to the benevolent society, Mr. Gallagher, yes.

4 Q.158And if somebody came to you as a solicitor and told you the story that you had  
5 just told the Tribunal, would you not think that that solicitor might be guilty  
6 of gross negligence in relation to the assets of the unfortunate who had given  
7 their monies to Mr. Bullock and indeed to the elderly Mrs. Bullock with no way  
8 of enforcing the retrieval of those monies?

9 A. If you put yourself in that position then you take the consequences of it,  
10 Mr. Gallagher.

11 Q.159Why would anybody put themselves in that position?

12 A. I put myself in that position for the reasons I have given and it's a fact,  
13 that's the position that I find myself in.

14 Q.160And the reasons you have given are tax planning and privacy?

15 A. And assets protection.

16 Q.161And assets protection. Would you consider that you have protected those assets  
17 particularly well?

18 A. At the time, yes, I would have protected it well. But --

19 Q.162Do you think they are now well protected?

20 A. At this point in time they are open to whatever in one case Mrs. Bullock does  
21 in her will, and in the other case whatever Mr. Bullock junior does in his.

22 Q.163But you have no beneficial interest in this, isn't that right?

23 A. I have no beneficial interest.

24 Q.164Are you the ultimate beneficiary of those lands?

25 A. I have no beneficial interest.

26 Q.165Are you the ultimate beneficiary of those lands?

27 A. I would regard myself, I think the -- I would regard myself as in a de facto  
28 situation, but not in a legal sense the beneficiary of them.

29

30 JUDGE KEYS: I take it, Mr. Caldwell, from a tax point of you, this is purely

1 tax driven, isn't that correct?

2 A. From a tax point of view they are not my assets.

3

4 JUDGE KEYS: Yes. What benefit do you receive out of all of this by setting up  
5 this structure purely tax and privacy, it can't be asset protection.

6 A. The original notion was tax privacy and asset protection. But the asset  
7 protection aspect of it with the passage of time, when I did this all those  
8 years ago, I never envisaged I was going to be sitting 14, 15 years later with  
9 structures which had, were still the same as they were, and the events have  
10 evolved and I am faced with circumstances that I created and I have tried to  
11 deal with those circumstances through --

12

13 JUDGE KEYS: Do I take it then until you become the beneficial owner of the  
14 assets you have no tax liabilities on those sums, is that correct?

15 A. That's correct.

16

17 JUDGE KEYS: So, therefore, you could have millions of pounds all over the  
18 globe, under these structures which can be re-invested again, again  
19 accumulating more monies on foot of those investments and as long as you don't  
20 become the beneficial owner you don't have to pay a penny tax on them.

21 A. That's correct.

22

23 JUDGE KEYS: Even though in reality it's your money?

24 A. Well, the --

25

26 JUDGE KEYS: In reality. In reality now?

27 A. Not in reality, with respect, it is the funds of the entities. These are legal  
28 structures and I have said that -- I can control direction of them, I can say  
29 where it is invested but it is not my money.

30

1 JUDGE KEYS: What happens when you run out of money, if you were to walk out of  
2 the Tribunal today without a penny in your pocket does that mean you have no  
3 access to any money?

4 A. I am at the grace and favour of Mr. Bullock in relation to it, if the funds are  
5 inside one of these companies that we are discussing.

6

7 JUDGE KEYS: Tell me, does Mrs. Bullock know she is a director of this company?

8 A. She is a shareholder.

9

10 JUDGE KEYS: Sorry, shareholder, beg your pardon, does she know she is a  
11 shareholder?

12 A. I assume that's the situation, yes. I assume.

13

14 JUDGE KEYS: What age is she, what age is Mrs. Bullock?

15 A. She is a lady in her late 70s early 80s, that sort of age. And in some ways,  
16 judge, this particular issue 85 Developments, and I don't wish ill of  
17 Mrs. Bullock, would resolve itself if a will were done in relation to it and  
18 she dies at some stage in the next couple of years I will be looking at a  
19 will --

20

21 JUDGE KEYS: What are you going to do if she refuses to make a will?

22 A. Nothing I can do from a legal point of view.

23

24 JUDGE KEYS: Again if Mr. Bullock refuses to do a will and decides, I will take  
25 the money and I am off?

26 A. Nothing I can do.

27

28 JUDGE KEYS: Nothing you can do.

29

30 JUDGE FAHERTY: Mr. Caldwell, you said earlier if this had come to fruition, if

1 the compensation had come to fruition that while you say that in the first  
2 instance that would vest in the then legal owners Mr. Bullock and his late  
3 father now Mrs. Bullock senior, that thereafter you had control over how you  
4 could direct them to apply the proceeds.

5 A. Yes, I would expect, judge, that --

6

7 JUDGE FAHERTY: But is that the case, that's what you told us earlier.

8 A. I would expect that Mr. Bullock would act on what I would say to him in terms  
9 of how the proceeds would be invested.

10

11 JUDGE FAHERTY: We now know there isn't any compensation, but what there is a  
12 company, Mr. Bullock being the shareholder of a company, which holds the lands,  
13 isn't that correct?

14 A. That's correct.

15

16 JUDGE FAHERTY: So, if it is within your power to direct Mr. Bullock had there  
17 been compensation, surely it's within your power then to direct Mr. Bullock to  
18 divest himself, and indeed Mrs. Bullock, of their respective shareholders,  
19 shareholdings in the company, the same principle must apply surely.

20 A. Well, if I asked him to divest himself of it there is a distinction in my mind  
21 between having the beneficial ownership at this point in time and having the  
22 capacity, The capacity or control to ask the beneficial owner to part with that  
23 beneficial ownership. And that's the situation that, in relation to 85  
24 Developments I am in in a trust basis. In relation to the Renzenbrinck  
25 situation I was in that trust situation. That trusting relationship, up until  
26 I had him sign a little short agreement, which says, it formally says he would  
27 act on my directions it does not specify that I am the beneficial owner of  
28 those shares.

29

30 JUDGE FAHERTY: Just going back to 85 Developments for a minute. We'll deal

1 with Renzenbrinck in due course. Have you asked Mr. Bullock and Mrs. Bullock  
2 to divest themselves of their shareholding in the company?

3 A. No, I haven't.

4

5 JUDGE FAHERTY: Why haven't you? Wouldn't that be the first port of call at  
6 this juncture?

7 A. No, I feel no impetus or requirement to do that. If I --

8

9 JUDGE FAHERTY: Mrs. Bullock, I wish her long life, but she is approaching her  
10 80s, as I understand it and nobody knows what may happen to one in, how soon  
11 you pass away.

12 A. Yes.

13

14 JUDGE FAHERTY: Surely that's your first port of call to ask Mr. Bullock and  
15 Mrs. Bullock simply divest themselves.

16 A. If I were to do that at this point in time and ask them to transfer the shares  
17 at this point in time as, or direct them to transfer the shares, that would  
18 trigger a disposal for capital gains tax purposes on the transfer of those  
19 shares and I have, there is no incentive to trigger a disposal for the sake of  
20 triggering a disposal.

21

22 JUDGE FAHERTY: Mr. Caldwell, you have just told us also that you might have to  
23 take a full hit in the event that Mrs. Bullock isn't amenable to making a will  
24 in your favour, and Mr. Bullock decides to do something and not make a will  
25 either in your favour. Surely you being susceptible to capital gains tax is  
26 better than having no entitlement at all or no benefit at all ultimately you  
27 may have to make that hard choice.

28 A. I may have to make that hard choice, but as I sit here now I look at a  
29 situation where I trust Mr. Bullock and I rely and continue to rely on that  
30 situation.

1

2 JUDGE FAHERTY: Yes, Mr. Gallagher.

3

4 Q.166MR. GALLAGHER: You say that you are the de facto beneficial owner of the  
5 lands in question.

6 A. In the sense that we have been discussing that, because of this control aspect  
7 in relation to it that that puts me in a unique position.

8 Q.167If you decided today to sell the lands, and you telephoned Mr. Bullock, do you  
9 expect that he would act upon your instructions?

10 A. If I telephoned him in relation to the disposal of it I would expect him to  
11 implement that decision. I wouldn't be able to sell the lands as it happens,  
12 because the sale of the lands is subject to - if we are talking about 85  
13 Developments.

14 Q.168Apart from that difficulty. If you were in a position to say -- I and Jim  
15 Kennedy have decided to sell the lands and would you please put that in hand?

16 A. I would be surprised if he said no.

17 Q.169It's your belief he would act on your instructions in relation --

18 A. Yes, again it is back to this.

19 Q.170Has he acted on your instructions in the past in relation to those lands.

20 A. Yes, he has. He processed the compensation claim, that was early, the direct  
21 are --

22 Q.171Had he authorised the engagement of experts to assist in the processing of that  
23 claim for example.

24 A. I would assume, yes.

25 Q.172And did he so on the basis that such experts had been nominated by you and/or  
26 Mr. Kennedy?

27 A. Yes.

28 Q.173If I can now turn for a few moments to the, your involvement with Mr. Kennedy.  
29 I take it that during all of this time you were meeting with Mr. Kennedy on a  
30 very regular basis?

1 A. I would have been Mr. Gallagher, yes.

2 Q.174And so far as you were concerned, and think carefully about this if you would  
3 please, I am not suggesting you are not thinking carefully but I just want you  
4 to be certain of your answer, Mr. Kennedy and yourself were the two people who  
5 were involved in the purchase of those lands and de facto, we'll use it, I am  
6 not going to in any pejorative way or anything like that, you were the de facto  
7 beneficial owners of the land, as I understand your evidence so far?

8 A. In -- in relation to myself that would be the situation. In relation to  
9 Mr. Kennedy his -- he was in a different situation in that he -- his  
10 shareholding in the respective companies was held for structures with which he  
11 was associated so he was, he is not in the same situation that I am and not --  
12 just not in the same situation as I am with Mr. Bullock.

13 Q.175Just so I can try to follow this. You both got involved, and forget about the  
14 structures for a moment, you both decided, as I understand your evidence, to  
15 buy the lands in Portrane for 160 thousand pounds?

16 A. Well, the history of the Portrane lands is that Mr. Kennedy's company,  
17 Ballyowen had a contract to purchase it, that -- he didn't have the finance to  
18 be able to do that. He had financial difficulties and as I explained earlier,  
19 arranged for the funding in relation to that in a two stage process. So there  
20 already was a contractual position.

21 Q.176All right, I am not -- I accept that, and I don't want to explore the  
22 structures. By "structures" I mean the corporate structures or trust  
23 structures or the non-trust structures or call them what you wish.  
24 So far as I understand it, there were two individuals who had, who were  
25 involved?

26 A. Correct, yes.

27 Q.177That was yourself and Mr. Kennedy?

28 A. Correct.

29 Q.178And can the Tribunal take it that insofar as you were, you know, to the best of  
30 your knowledge and belief, no other individual was involved?

1 A. That's correct.

2 Q.179 In that, in those lands or in the acquisition of those lands or dealing with  
3 those lands?

4 A. Absolutely.

5 Q.180 And no person had or was entitled to a benefit, whether de facto or other  
6 benefit, in relation to any portion of those lands or the proceeds of the sale  
7 of any of those lands?

8 A. To the best of my knowledge that's absolutely the case.

9 Q.181 Now, would you tell the Tribunal how often per week or per month you would have  
10 met Mr. Kennedy at the time you were dealing with the Portrane lands and indeed  
11 the other transactions that were ongoing?

12 A. It would be speculation, back at that stage in '88/'89 there was a lot of  
13 activity going on and I would have met him on a very regular basis.

14 Q.182 Would you have been in contact with him on, a couple of times a week?

15 A. Certainly a couple of times a week, yes. Some weeks I would expect I would  
16 have met him every day during the week and other weeks maybe one day or not at  
17 all, but I was in regular contact with him.

18 Q.183 Were those meetings primarily business meetings as distinct from legal  
19 meetings?

20 A. Largely the case, yes, business meetings.

21 Q.184 Largely business rather than legal?

22 A. Largely, yes. In legal terms I would have had some, in thinking back on it,  
23 and there may be other instances, but one instance that comes to mind was his  
24 difficulty in the Bank of Ireland. A receiver had been appointed, I think that  
25 was during that time period, and I would have had some legal discussions with  
26 him in relation to that.

27 Q.185 Yes, that was in relation to Lismore Homes?

28 A. Lismore Homes that is correct, but I think the principal dealing with that was  
29 Gartland at the time.

30 Q.186 In addition to the dealings he would have had with Mr. Gartland and others

1 perhaps in the firm, he was dealing with you on an ongoing basis as a business  
2 partner?

3 A. Quite often in a lot of instances I would meet him was in a business  
4 relationship, yes.

5 Q.187And you met him and you dealt with him in relation to the Carrickmines land.

6 One question I should have put to you before I move on there. In a statement  
7 you furnished to the Tribunal in relation to 85 Developments, and I will come  
8 to your statements in due course, but just before I leave 85, you described and  
9 you said that "The shares in 85 Developments are held to my order".

10 A. Yes.

11 Q.188What precisely do you mean by the words "Are held to my order?"

12 A. That's the notion we have been discussing this morning. This issue of me being  
13 able to give direction in relation to the sale and the dealings the properties  
14 that were held by the company. That's the concept that I had.

15 Q.189Well, was there anything factually different from -- would there have been any  
16 difference in appointing an agent to operate and act for you in dealing with  
17 those various transactions?

18 A. There would have been, yes. The agent, if you mean in -- I am not sure whether  
19 you are talking about the shares or --

20 Q.190No. Assume for a moment that the lands were not held, and I accept they are  
21 held by a company, assume that they weren't held by a company but you had an  
22 agent, auctioneer looking after them. You would telephone and you would write,  
23 as the case may be, and give instructions to the auctioneer about the letting  
24 and what you wanted done about those lands, isn't that right?

25 A. That's correct, yes.

26 Q.191Now, would there be any difference if an auctioneer were looking after the  
27 lands?

28 A. Well, the principle difference would be the auctioneer would be there in a, his  
29 professional capacity.

30 Q.192As an agent?

1 A. I wouldn't be an owner of the property.

2 Q.193No. But he would be carrying out your instructions?

3 A. He would be, yes, he would be carrying out the instructions.

4 Q.194In the same way that Mr. Bullock would be carrying out your instructions?

5 A. Well, not in the same sense. Mr. Bullock was the director of a company, it is  
6 not an agencies relationship.

7 Q.195The only difference is the corporate veil?

8 A. Yes, it is not an agencies relationship.

9 Q.196But the only difference is the corporate veil, isn't that right?

10 A. Well, his -- the difference is the corporate veil and the fact that he is a  
11 director of the company. And one is dealing with him in that capacity as a  
12 director of the company as opposed to dealing with him as an agent.

13 Q.197Now to come to the Carrickmines lands. When did you first become involved in  
14 the Carrickmines lands?

15 A. In early 1987. Mr. Kennedy spoke to me about the Carrickmines lands in that he  
16 was at that stage trying to negotiate the purchase of those lands, and as a  
17 result of that and this is, that was part of the, at that stage the  
18 professional dealing with him, I arranged with Mr. Bullock to have a company  
19 established which was Paisley Park, as a vehicle for the acquisition of those  
20 lands. And sometime within the next year he came to me and told me, I think in  
21 1988, that he had negotiated a purchase of the lands.

22 Q.198I think that you were eventually the lands were purchased in the name of  
23 Paisley Park?

24 A. That's correct.

25 Q.199And the original shareholders of the share capital Paisley Park were Maskani  
26 Management Limited, Renzenbrinck Investment limited and Xenon Limited.

27 A. The original shareholders were Maskani and Renzenbrinck, the Xenon -- I am not  
28 quite sure how to pronounce it.

29 Q.200That makes two of us.

30 A. In relation to it, that particular company came in subsequently and became 20

1 per cent shareholder.

2 Q.201I want to refer to some statements that you have furnished to the Tribunal, and  
3 before I do I think perhaps we might just set in context your dealings with the  
4 Tribunal.

5

6 You were originally written to on the 2nd of June 2000. May I have page 625 of  
7 the, Mr. Caldwell's brief?

8 A. Is there something I should be looking at?

9 Q.202There will be something on screen in a moment.

10 A. Okay.

11 Q.203And I am not going to read them all in great detail, just to, as it were --  
12 that was a letter written to you on the 2nd of June 2000. It was probably the  
13 first letter that the Tribunal wrote to you, certainly first one I wrote. It  
14 was read by me in public on day 330 in the course of my opening and it asked  
15 you about certain payments you might have made to Frank Dunlop, etcetera. You  
16 replied on, through your solicitors Cahill & Company on the 13th of June 2000  
17 on page 625 and 627. We don't need to get into that in detail.

18

19 On the 16th of June the Tribunal wrote and explained to you their understanding  
20 of the legislation, and on the 19th of June they wrote and asked you, having  
21 told you that the Tribunal had received information to the effect that  
22 substantial -- sorry, page 631:

23

24 "The Tribunal has received information to the effect that substantial monies  
25 were paid to elected members of Dublin County Council by or on behalf of  
26 Paisley Park Investments Limited and/or Jackson Way Properties Limited for the  
27 purposes of securing the rezoning of lands at Carrickmines being the lands  
28 comprised in folio 4940 County Dublin prior to the making of the 1993 Dublin  
29 County Development Plan and the current Dun Laoghaire/Rathdown County  
30 Development Plan."

1 It went on to identify the three companies just referred to. And on page 632  
2 the Tribunal say as follows:

3 "In order to assist the Tribunal in it's investigations the Sole Member has  
4 asked me to write to you to inquire whether your client John Caldwell has or  
5 had a beneficial in A the lands comprised in folio 4940 County Dublin, and/or  
6 Paisley Park Investments Limited and/or Jackson Way Properties Limited and/or  
7 Maskani Management Limited and/or Renzenbrinck Investment Incorporated and  
8 Xenon Limited."

9 And you were asked if the answer is in the affirmative to state certain things.

10

11 I think that in or about that time a summons was issued to compel you to give  
12 evidence to the Tribunal, is that right?

13 A. That's correct.

14 Q.204 And a witness summons which issued on the 8th of July 2000 required you to  
15 attend and give evidence on the 6th of September. And on the 4th of September  
16 the Tribunal received a statement. May I have page 634, please, and this is  
17 your statement you will see it on screen.

18

19 Statement of John Caldwell.

20 "The Tribunal of Inquiry into Certain Planning Matters and Payments have by  
21 letter dated 19th of June 2000 requested from me John Caldwell of 5 Queens'  
22 Mansion, Douglas, Isle of Man, a response to matters set out in their letter of  
23 19th June 2000. I make this statement in a private and personal capacity and do  
24 not do so as a solicitor carrying on practice at Binchys Solicitors, 40 Lower  
25 Baggot Street, Dublin 2.

26

27 The Tribunal of Inquiry into Certain Planning Matters and Payments have by  
28 letter of the 19th of June to 2000 the Tribunal informed me that the Tribunal  
29 was in receipt of information to the effect that substantial monies were paid  
30 to elected members of Dublin County Council by or on behalf of Paisley Park

1 Investments Limited and/or Jackson Way Properties Limited for the purpose of  
2 seeking the rezoning of lands at Carrickmines being the lands comprised in  
3 folio 4940 County Dublin prior to the making of the 1993 Dublin County Council  
4 Development Plan and the current Dun Laoghaire/Rathdown County Development  
5 Plan.

6  
7 While in the letter of the 19th June 2000 the Tribunal set out certain facts  
8 concerning the lands comprised in folio 4940 County Dublin they have no set out  
9 or given any information or evidence that suggests or supports the allegation  
10 that substantial monies were paid to elected members of Dublin County Council  
11 by or on behalf of Paisley Park Investments Limited and/or Jackson Way  
12 Properties Limited for the purpose of securing the rezoning of lands at  
13 Carrickmines.

14  
15 However the Tribunal have asked certain questions of me, whether I have or had  
16 a beneficial interest in A the lands comprised in folio 4940 County Dublin  
17 and/or Paisley Park Investments Limited and/or Jackson Way Properties Limited  
18 and/or Maskani Management Limited and/or Renzenbrinck Investment Incorporated  
19 and/or Xenon Limited and if the answer was in the affirmative in relation to  
20 all or any of the foregoing to please state:

21 1: The nature of my interest in such land and/or company.

22 2: The dates to when such interest arose or were acquired.

23 3: If the interest was disposed of when and to whom it was disposed of.

24 4: Whether directly or indirectly and whether on my own behalf or any other  
25 persons of legal entity gave or provided any money or benefits to or for any  
26 politicians and/or officials and/or any other persons in relation to the said  
27 lands and whether in relation to attempts to secure the rezoning thereof or  
28 otherwise.

29 5: If the answers to question 4 was in the affirmative please furnish details  
30 of such monies and/or benefits indicating and without prejudice to the

1       generality of this question the following: The name or names of all the  
2       parties concerned, the monies or benefits provided in the dates thereof. The  
3       purpose for which such monies and/or benefits were provided and the amount or  
4       amounts of monies and/or benefits made or given.

5  
6       I hereby deal with the queries raised above in the following manner:

7  
8       A. The lands comprised in folio 4940 County Dublin are registered in the name  
9       of Jackson Way Properties Limited and they have been so registered since in or  
10      about the fifth day of May 1994 and Mr. Holland is the director of the said  
11      company.

12  
13      B. Paisley Park Investments Limited was an Isle of Man company registered in  
14      or about the 5th day of March 1987 and Mr. Bullock and Mr. Harker are the  
15      directors of the said company.

16  
17      Maskani Management Limited and Renzenbrinck Investments Incorporated.

18      Maskani Management Limited is owned by Mr. Bullock, a resident of the Isle of  
19      Man and Maskani Management Limited is a company registered in the Isle of Man.  
20      Renzenbrinck Investment Incorporated is a company owned by Mr. Harker who is a  
21      resident of the Isle of Man and is a company incorporated within Panama.

22  
23      In or about 1987 Mr. James Kennedy, an estate agent, informed me of the  
24      possibility of lands in Carrickmines being land registered on folio 4940 County  
25      Dublin being available for purchase. Mr. Bullock of Maskani Management Limited  
26      directed Paisley Park Developments Limited to appoint Mr. Kennedy to act as its  
27      agent for the purposes of purchasing the lands on folio 4940 at Carrickmines  
28      County Dublin. Mr. Kennedy acting on behalf of Paisley Park Developments  
29      Limited negotiate with Mr. Stanley of Siteland Management Limited acting on  
30      behalf of the then owner of the land a Mr. B Tracey for the purchase of the

1 said land. The negotiation were concluded in March 1988 and Paisley Park  
2 Developments Limited entered into an agreement to purchase the lands from  
3 Mr. Tracey and deposit monies were paid to Siteland Management Limited Messrs  
4 Reddy Charlton & McKnight acted for Paisley Park Developments Limited.

5  
6 A dispute arose between Mr. Stanley and the company which was ultimately  
7 settled through Mr. Kennedy negotiating a 20 per cent interest in Paisley Park  
8 Developments Limited for Mr. Stanley or a company nominated on his behalf.  
9 Mr. Tracey consented to this. Mr. Stanley nominated the company Xenon Limited  
10 and a shareholder's agreement settled by Messrs. Reddy Charlton & McKnight  
11 resulted Maskani Management Limited holds 40 A ordinary shares. Renzenbrinck  
12 Investments Incorporated 40 A ordinary shares and Xenon Limited 20 B ordinary  
13 shares. This occurred in or about November 1988. A contract for the purchase  
14 of the lands was then signed by Paisley Park Development Limited and the  
15 deposit paid. Further disputes arose as a cheque for Mr. Stanley for part of  
16 the deposit bounced and Mr. Tracey sought to deny the contract. Specific  
17 performance proceedings were issued on behalf of Paisley Park Developments  
18 Limited by Reddy Charlton & McKnight. These were ultimately resolved and in  
19 November 1989 a second contract was signed by Mr. Tracey and the purchase  
20 completed in mid 1991.

21  
22 In March 1992 Paisley Park Developments Limited was placed in voluntary solvent  
23 liquidation and its assets distributed in specie. The lands in folio 4940 were  
24 transferred to Jackson Way Properties Limited as a nominee for Maskani and  
25 Renzenbrinck, the former shareholders of Paisley Park Developments Limited.

26  
27 The lands are held to my order.

28  
29 I have not on my own behalf or on behalf of any other party paid directly or  
30 indirectly any monies benefits to or for any politician, any official or any

1 other person in relation to the said lands for the purpose of attempting to  
2 secure a rezoning thereof.

3  
4 If there are any matters arising from this statement which the Tribunal of  
5 Inquiry into Certain Planning Matters and Payments wishes to seek clarification  
6 on I will certainly seek to assist them."

7  
8 Signed John Caldwell dated 4/9/2000.

9  
10 Now that purported to be a full and frank account of your involvement and your  
11 knowledge of and dealings with the various companies, isn't that right?

12 A. It was a response to the queries raised in the letter, as we -- I think some  
13 correspondence subsequently pointed out there was an error in relation to  
14 Renzenbrinck and Maskani.

15 Q.205 It was intended to be full and frank accounts of your involvement in and your  
16 knowledge of dealings with the various companies and the lands concerned?

17 A. I felt that it dealt with the key issues in relation to it.

18 Q.206 It was intended to be a full and frank account of your dealings with the lands  
19 and with the various companies?

20 A. I felt that, I felt it dealt with the key issue and the key issue being --

21 Q.207 Mr. Caldwell, the question is: Did you believe that this was a full and frank  
22 account of your dealings with the lands and the companies in question?

23 A. As I say, it dealt with the --

24 Q.208 I know what it dealt with.

25 A. It dealt with the key matters.

26 Q.209 I am aware of that.

27 A. It didn't deal with all the intricacies of movements and negotiations of  
28 contract, but it dealt with all the pertinent issues.

29 Q.210 Did you believe it was a full and frank account of your dealings with the lands  
30 in question?

1 A. I am, I mean I felt it was what was required.

2 Q.211And did it on that basis, did you agree it was a full and frank account?

3 A. At that time I felt it was what was required and what I, and I answered what  
4 was asked of me at that time and I, I invited further clarification if it was  
5 wanted in relation to it.

6 Q.212Were you intending to assist the Tribunal in furnishing that statement?

7 A. Yes, I was.

8 Q.213And in order to assist the Tribunal you would obviously have to tell the truth  
9 to the Tribunal?

10 A. Yes, I would.

11 Q.214And you would have to be frank with the Tribunal?

12 A. I am.

13 Q.215And not seek to obfuscate any matter.

14 A. I don't believe that there is anything which obfuscates anything in relation to  
15 the statement that I made.

16 Q.216Well now, the factual position was as follows I suggest: You and Mr. Kennedy  
17 and indeed Mr. Stanley were involved in endeavouring to purchase these lands  
18 from Mr. Tracey. Isn't that right?

19 A. Yes, there were negotiations.

20 Q.217You were endeavouring to purchase and there were various agreements and rows  
21 about what was agreed and what the purchase price was and should be, all that  
22 sort of thing, isn't that right?

23 A. Yes, there were lots of toing and froing in relation to the purchase of the  
24 property.

25 Q.218Well, if we go back to page 635. You say that Mr. Kennedy informed you of the  
26 possibility of lands in Carrickmines, being the land registers on the folio in  
27 question, being available for purchase. And then you say Mr. Bullock of  
28 Maskani directed Paisley Park Limited to appoint Mr. Kennedy to act as its  
29 agent for the purpose of purchasing the lands.

30 A. Yes, that's correct.

1 Q.219Now, Mr. Kennedy was the man who was seeking to purchase the land.

2 A. Yes, he was. He was in negotiation to do that.

3 Q.220But you didn't say that. You said that Mr. Bullock of Maskani Management  
4 Limited, somebody out in the ether so far as anybody reading this document was  
5 concerned at that time, that Mr. Bullock, mysterious gentleman way out there,  
6 directed Paisley Park to appoint Mr. Kennedy to act as its agent?

7 A. Yes, that is correct. That is factually correct.

8 Q.221That is factually correct, but it is also misleading.

9 A. The statement doesn't, does not go on to say --

10 Q.222It was misleading in that it omits to say, of course Mr. Kennedy through me, or  
11 directly, phoned Martin Bullock and said, Martin, I want you to write me a  
12 letter to ask to appoint me as agent for Paisley Park?

13 A. The statement does not say that.

14 Q.223No, so it is misleading in that it omitted to give that information?

15 A. Well, I would be unhappy with the statement in light of all the further  
16 statements I have made and the extent of the disclosure, but I dealt with it at  
17 the time Mr. Gallagher, I dealt with the questions that I was asked in relation  
18 to it.

19 Q.224Mr. Caldwell, was the statement misleading by omission or was it not?

20 A. The statement didn't run to pages and pages of detail.

21 Q.225That I am aware of. Was it misleading by omission or was it not?

22 A. It was not intended to be misleading.

23 Q.226It was misleading by omission or it was not. Now, the answer is either yes or  
24 no.

25 A. The question of, in me reading the statement and the information that's in the  
26 statement is correct. It does not contain all the information that --

27 Q.227Mr. Caldwell, I am aware of that and so is the Tribunal. Now, the question is  
28 a very simple question. Do you consider that this statement was misleading by  
29 omission or was it not misleading by omission?

30 A. It would have been more helpful to the Tribunal to contain more information

1 than it did, Mr. Gallagher.

2 Q.228 Indeed it would. It would also be more helpful and give the Tribunal, I  
3 suggest, an opportunity of judging your credibility in relation to this if you  
4 were to answer the question that I ask you. Do you consider that this  
5 statement was misleading by omission or not?

6 A. In hindsight, Mr. Gallagher, I would have preferred to file a statement which  
7 was much more comprehensive.

8 Q.229 I am not asking in hindsight. If you don't understand the question, please,  
9 tell me.

10 A. I do understand the question.

11 Q.230 Well, would you, please, answer the question. Was it misleading by omission or  
12 was it not?

13 A. I -- well, in that it didn't contain information which complete, information --  
14 it was an incomplete statement in relation and to that --

15 Q.231 Was it misleading by omission or was it not?

16 A. To that extent it left the Tribunal without information which may have been --

17 Q.232 Was it misleading or not?

18 A. I don't think I said anything in that which is misleading, Mr. Gallagher.

19 Q.233 Do you think it is not misleading to say that Mr. Bullock directed Paisley Park  
20 to appoint James Kennedy as its agent when that, in, fact the fact was you and  
21 Mr. Kennedy arranged for Mr. Bullock to give a letter of instruction back to  
22 Mr. Kennedy?

23 A. I would accept, Mr. Gallagher, I would accept with hindsight that it was, it  
24 was misleading to the Tribunal and I should have given a more comprehensive  
25 response.

26 Q.234 Well, all I can say is that I would have preferred if I had got that answer  
27 five minutes ago.

28 A. I apologise.

29 Q.235 So you accept that it was misleading by omission?

30 A. I accepted it. Yes.

1 Q.236 On the 4th of September on page 6, 637 you had a further statement which  
2 related to other matters, and I don't think I need trouble the Tribunal with  
3 them at this stage.

4  
5 On the 6th of September 2000, page 639, the Tribunal wrote to Messrs. Finnbar  
6 Cahill & Company. And can we have that on screen, please? Your letter of the  
7 4th with enclosure was received by hand at the Tribunal office at 4 pm on the  
8 4th.

9 "On the morning of the 4th the Sole Member has decided to defer the hearing of  
10 Mr. Caldwell's evidence to a date to be fixed and I conveyed this information  
11 to you by telephone sometime before your letter and enclosures were received at  
12 the Tribunal office.

13  
14 The Sole Member has noted that although the original request for a detailed  
15 narrative statement was made on the 2nd of June the statements furnished by  
16 Mr. Caldwell were dated the 4th September 2009 just two days before he was to  
17 give evidence in public on foot of a summons by the Tribunal.

18  
19 it is further noted that Mr. Caldwell has chosen to make his statements in a  
20 private and personal capacity and not as a solicitor carrying on practice at  
21 Binchy's, Solicitors, 40 Lower Baggot Street, Dublin 2.

22  
23 In a statement purporting to deal with the matters raised in the Tribunal's  
24 letter of the 19th of June 2000 Mr. Caldwell sets out a number of the questions  
25 he was asked to answer. He appears to have dealt with the queries raised  
26 otherwise than by answering them directly.

27  
28 The Tribunal does not understand Mr. Caldwell's a statement that the lands are  
29 held to my order. Would you please obtain a comprehensive explanation for this  
30 statement and in particular ascertain whether A Mr. Caldwell has now or had at

1 any time either directly or indirectly a beneficial interest in the lands  
2 comprised in folio 4940 or any part thereof.

3

4 B. Mr. Caldwell has now or had at any time, either directly or indirectly any  
5 beneficial interest in any of the companies referred to in his statement of the  
6 4th September 2000.

7

8 If the answer to A and/or B is in the affirmative Mr. Caldwell should give full  
9 and detailed particulars of the extent and nature of his interest in the lands  
10 in question and how they were held by him or on his behalf."

11

12 Now, there is -- you, the next letter I think is a letter on page 641, if I  
13 may, a letter of the 19th of October 2000 from Cahill & Company:

14

15 "We refer to previous correspondence.

16

17 Our client would consider that the statements furnished with our letter of the  
18 4th September last dealt with the queries which had been raised.

19

20 Insofar as clarification is required our client instructs us that he does not  
21 have nor did he ever have any beneficial interest in Maskani Management  
22 Limited, or Renzenbrinck Investment Inc. or Jackson Way Properties Limited or  
23 Xenon Limited."

24

25 Did you give those instructions to Mrs. Cahill & Company?

26 A. Yes, I did.

27 Q.237 Did you give them with the intention that that information would be conveyed to  
28 the Tribunal?

29 A. Yes, it was to go in the letter to the Tribunal.

30 Q.238 May I have page 665, please? This is a letter from Miley & Miley, Solicitors.

1 And I will come back to the correspondence, earlier correspondence in a moment.  
2 But Miley & Miley were asked in a letter of the 16th of September the following  
3 question:

4 "Does Mr. Caldwell now",

5 Perhaps we can have it on screen -- page 661 -- paragraph 4.1. The question  
6 that arose at that time arising from earlier correspondence including  
7 Mr. Cahill's letter of the 19th of October the question was as follows:

8 "Does Mr. Caldwell now or did he at any time either directly or indirectly have  
9 a beneficial or any interest in the lands comprised in folio 4940 County Dublin  
10 or any part thereof?  
11

12 In this regard I would draw your attention and your client to the fact that on  
13 6th November 2000 Charlie Bird reported on RTE news that he was introduced by  
14 Frank Dunlop to Mr. Caldwell as the person who was the owner of the land at  
15 Carrickmines."  
16

17 Now, I just want to go on to page 665, which is the letter of the 31st of  
18 January 2000 from Miley & Miley Solicitors. And they say, the first paragraph:  
19 "Our client John Caldwell,  
20

21 We refer to your letter of the 16th November last and having regard to it and  
22 our letter of the 20th ult now respond to section four of your letter.  
23

24 Our response is made on the basis of instruction given to us by our client and  
25 is informed by the large volume of documentation contained in the will he ever  
26 over file enclosed here with, here in referred to the act Jackson book. Using  
27 your numbering system the response is as follows.  
28

29 4.1. A. The answer to the question is yes. Our client has now and did  
30 previously have what amounts in his opinion to an indirect beneficial interest

1 in the lands comprised in folio 4940 County Dublin."

2

3 Did you instruct Messrs. Miley & Miley to some inform the Tribunal?

4 A. Yes, I did.

5 Q.239 Now, it appears therefore, if we take the letter of the 19th of October, 2000

6 from Cahill & Company and the letter of the 31st of January 2000 some three

7 months later, that you have given absolutely conflicting replies to the

8 Tribunal to essentially the same question.

9

10 MR. FINLAY: Before Mr. Caldwell is asked to answer the last question,  
11 Chairman, I assume as a matter of proper order, that Mr. Gallagher will put the  
12 entire of the letter of the 19th of October 2000 to Mr. Caldwell, having  
13 extracted only a single paragraph for the purpose of his present line of  
14 questioning.

15

16 Mr. Caldwell has not been shown it, it hasn't been on screen and he doesn't  
17 have it in front of him, The entire content of the letter of the 19th of  
18 October 2000 and in particular the fourth paragraph of that letter.

19

20 CHAIRMAN: That's --

21

22 MR. GALLAGHER: I will deal with all those matters in due course

23

24 CHAIRMAN: Mr. Gallagher, just in relation to, so that we are clear as to what  
25 you are quoting, to put to Mr. Caldwell that the effect of information provided  
26 in the letter of Miley & Miley of 31st of January 2002 is, in effect, different  
27 to the information given at an earlier stage?

28

29 MR. GALLAGHER: Indeed.

30

1 CHAIRMAN: What information are you talking about?

2

3 MR. GALLAGHER: I am talking about the letter of the 19th of October, the  
4 second paragraph. Mr. Caldwell says:

5 "Insofar as clarification is concerned this purports to be clarification. Our  
6 client instructs us that he does not have nor did he ever have any beneficial  
7 interest in Maskani Management limited or Renzenbrinck or Jackson Way  
8 Properties or Xenon."

9

10 Now, that's a clear unequivocal statement as I understand it.

11

12 I am suggesting it is contradicted by the statement, further clarification of  
13 the 31st of January where Messrs. Miley & Miley say that:

14

15 "The answer to this question is yes our client has now and did previously have  
16 what amounts, in his opinion, to an indirect beneficial interest in the lands  
17 comprised in folio 4940, County Dublin."

18

19 MR. FINLAY: That it is perfectly clear on the letter, any fair reading of it,  
20 that the clarification of the letter of the 19th of October 2000 referred to  
21 the beginning of the third paragraph, continues in the following paragraph  
22 which Mr. Gallagher has carefully chosen not to open to the witness. It's  
23 perfectly clear.

24

25 The clarification which he is talking about, he is talking about clarification.  
26 And the clarification continues through the following paragraph, they are part  
27 of the clarification, but he has chosen not to open them to the witness and I  
28 consider that, with respect, to be grossly unfair to the witness.

29

30 CHAIRMAN: I think, Mr. Gallagher, it might be appropriate to open the full

1 content of that letter of the 19th of October and then in turn to put the  
2 content of the second letter.

3

4 MR. GALLAGHER: Certainly. This is a letter of the 19th October.

5

6 "We refer to previous correspondence. Our client would consider the statement  
7 furnished with our letter of the 4th of September last deal with the queries  
8 which has been raised.

9

10 Insofar as clarification is required our client instructs us that he does not  
11 have nor did he ever have any beneficial interest in Maskani Management Limited  
12 or Renzenbrinck Investment Inc or Jackson Way Properties Limited or Xenon  
13 Limited.

14

15 The shares of Paisley Park Developments Limited, were held indirectly through  
16 Maskani and Renzenbrinck for our client save for a period from circa November  
17 1988 when 20 per cent of Paisley Park was owned by Xenon Limited, Mr. Stanley's  
18 company. This Xenon Limited percentage reduced to circa one per cent prior to  
19 the liquidation of Paisley Park following a further allotment of shares the pro  
20 rata share of which was not taken up by Xenon Limited.

21

22 Post the Paisley Park liquidation the lands were held indirectly via Maskani  
23 and Renzenbrinck to the order of our client. By this we mean that our client  
24 has and does have the power to control the use, sale "

25

26 MR. FINLAY: Excuse me, Mr. Gallagher should carefully use this paragraph, it  
27 was the very paragraph we are referring to. He has not opened correctly the  
28 text of the paragraph and the transcript will so show. I would invite  
29 Mr. Gallagher to carefully read that paragraph.

30

1 CHAIRMAN: This is a paragraph with regard --

2

3 MR. FINLAY: Post Paisley.

4

5 MR. GALLAGHER: Sorry, I thought I had read it correctly, if I didn't I will  
6 read it again:

7 "Post the Paisley Park liquidation the lands were held indirectly via Maskani  
8 and Renzenbrinck to the order of our client. By this we mean that our client  
9 had and does have the power to control the use, sale, etcetera, of the lands  
10 i.e. exercise via the structure, all the powers and rights of ownership of the  
11 lands."

12

13 I hadn't read this earlier, this letter I should say was read in public on day  
14 330 when I was opening this module. The letter continues:

15

16 "With regard to 85 Developments Limited when our client uses the term "to his  
17 order" he means that he had and does have the power to control the exercise of  
18 shareholder rights, sale, etcetera, of the shares of 85 Developments Limited,  
19 85 and hence the company, i.e. via the registered owner exercise all the powers  
20 and rights of ownership of the shares.

21

22 The shares of 85 were held by Mr. Martin Bullock and his late father whose  
23 holding is now held by Mr. Bullock's mother."

24

25 Now, the letter, second letter that we referred to is the letter of the 31st of  
26 January 2002.

27

28 CHAIRMAN: What page is that?

29

30 MR. GALLAGHER: That's page 665.

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CHAIRMAN: Well, if the entire of this letter is to be read at this stage it runs to several pages it might be appropriate to do that, perhaps it might be left until 2 o'clock and it would give Mr. Caldwell an opportunity to look at the two letters.

MR. FINLAY: In that regard, Chairman, in order to expedite matters after lunch if I may take up your observation just now because it was something I was about to mention in any event. With great respect, I think that for any witness it is most unsatisfactory, certainly wouldn't happen in the High Court, to ask a witness to deal with correspondence of this complexity and length, without having the actual documents in front of them. The technique being adopted by Counsel for the Tribunal is to extract sections of a letter on a scrolling screen, but it is a most difficult way to follow, the general path of a letter, I personally find it very difficult.

CHAIRMAN: I understood that Mr. Caldwell had a brief.

MR. GALLAGHER: We'll arrange to get Mr. Caldwell, if he doesn't have a brief actually at the moment, has he?

CHAIRMAN: It was furnished to him I take it?

MR. GALLAGHER: It was circulated as part of the statements, all of these documents were circulated as part of the statement.

CHAIRMAN: Can he be furnished with brief with --

MR. GALLAGHER: With those documents, yes, he can.

1 JUDGE FAHERTY: That will do.

2

3 MR. FINLAY: That would be most helpful both to Mr. Caldwell and myself.

4

5 CHAIRMAN: I understood he had the material.

6

7 MR. FINLAY: He doesn't.

8

9 CHAIRMAN: But he is certainly entitled to it.

10

11 MR. FINLAY: Thank you very much.

12

13 CHAIRMAN: All right. 2 o'clock.

14

15 THE TRIBUNAL THEN ADJOURNED FOR LUNCH

16

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30

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2

3 Q.240MR. GALLAGHER: Good afternoon, Mr. Caldwell.

4

5 I think you have before you hard copies of the correspondence which passed  
6 between your solicitors and the Tribunal?

7 A. Yes, I do.

8 Q.241Which I was referring to earlier. That correspondence has formed part of the  
9 Carrickmines brief, which was circulated some months ago to all interested  
10 parties. And you now have a copy of that before you.

11

12 Before lunch I was asking you some questions about the letter of the 19th of  
13 October 2000 which I read here, as I have read on day 330, and a reply  
14 contained in the letter of the 31st of January 2002 from Messrs. Miley & Miley.  
15 And I was suggesting to you that they do not tally in the answers, in that in  
16 the first letter your then solicitors Cahill & Company, on your instructions  
17 said that you did not have, nor did you ever have any beneficial interest in  
18 Maskani, Renzenbrinck, Jackson Way and Xenon. And then in the letter of the  
19 31st of January 2002 your then solicitors said that you did at that time and  
20 did previously have what, in your opinion, amounted to an indirect beneficial  
21 beneficial interest.

22

23 In one letter your solicitors say you did not have any beneficial interest in  
24 the other you say you did have an indirect interest.

25

26 MR. FINLAY: If that's a question to Mr. Caldwell, before he is required to  
27 answer it, can I just understand the procedure being adopted by Mr. Gallagher?  
28 I understood, perhaps wrongly before lunch, that the object of the exercise  
29 which I intervened to secure, was to ensure that the relevant texts were before  
30 this Tribunal in every sense of the word. Mr. Gallagher has now properly

1 opened a full text of the letter of the 19th of October, unless my memory is  
2 wrong, has made no attempt to open the critically important four-page, detailed  
3 text of the letter of the 31st of January and for a purpose, which may become  
4 relevant in future, in my most respectful submission, it is essential for the  
5 record at least, for the transcript, that the full text of the letter of the  
6 31st of January 2002 is in the record as is the text of the letter already of  
7 the 19th.

8

9 CHAIRMAN: I think it is appropriate that the full letter be opened to him and  
10 then you can go back and --

11

12 MR. GALLAGHER: The letter of the 31st of January -- I will certainly do that,  
13 Sir.

14

15 CHAIRMAN: Then you can go back and deal --

16

17 MR. GALLAGHER: I should say it has been opened in --

18

19 CHAIRMAN: I think given that a lot of time has passed, it was opened on a  
20 previous occasion.

21

22 MR. GALLAGHER: On day 330 but I wasn't going to rely on that, I simply draw  
23 attention to the fact that it was opened.

24

25 CHAIRMAN: I think given that we are now dealing with it in some detail it  
26 should be perhaps opened.

27

28 MR. GALLAGHER: All right I will do so.

29

30 The letter of the 31st of January 2002, is one which runs to some eight pages.

1 I will read it to you Mr. Caldwell for the record.

2

3 "Our client: John Caldwell.

4 Dear Sirs,

5 We refer to your letter of the 16th of November last again and having regard to  
6 it and to our letter of the 20th "

7 Perhaps I better start at the letter of the 16th of November just for  
8 completeness?

9

10 CHAIRMAN: Well, is it necessary to read -- this is also a long letter?

11

12 MR. GALLAGHER: Yes, I don't want to read it in full, but --

13

14 CHAIRMAN: I think Mr. Finlay's point was that if you are going to take  
15 extracts from 31st of January and compare it to the letter that was read before  
16 lunchtime that the entire of both letters should be, as it were, opened.

17

18 MR. GALLAGHER: All right. I am quite prepared to do so, but I think if I am  
19 going to open all correspondence I think all relevant correspondence should be  
20 opened. I don't wish to open the letter of the 19th of September in it's  
21 totality, but I want to open an extract.

22

23 I also think perhaps because it hasn't been opened, I should at this stage  
24 put -- before I go on -- put to Mr. Caldwell a letter that he wrote to the  
25 Tribunal on the 13th of September 2001.

26

27 It is on page 876. Do you have that Mr. Caldwell?

28

29 MR. FINLAY: Sorry, Chairman, I cannot find this letter.

30

1 JUDGE FAHERTY: The brief is compiled chronologically I think, so it is very  
2 near the beginning, as I understand it. Is that correct? I think all the  
3 letters are in chronological sequence.

4  
5 MR. GALLAGHER: I think the documentation given are in chronological sequence.  
6 Ms. Murphy is now handing a copy of that letter to Mr. Caldwell.

7 A. Thank you.

8 Q.242 You have that, Mr. Caldwell.

9  
10 JUDGE FAHERTY: I think Mr. Finlay, have you got one?

11  
12 MR. FINLAY: I am so sorry, is this a letter to or from Mr. Caldwell?

13  
14 MR. GALLAGHER: From Mr. Caldwell dated 13 of September 2001, addressed 5  
15 Queens Mansions, Douglas.

16  
17 MR. FINLAY: I appear not to have that letter. Yes, I do. I have a letter of  
18 the 2nd of October 2001.

19  
20 MR. GALLAGHER: No, this is the 13th of September 2001.

21  
22 MR. FINLAY: No. If I could have a copy of that letter?

23 I now have a copy of the letter Chairman.

24  
25 Q.243 MR. GALLAGHER: This is the sequence of correspondence, your solicitors Cahill  
26 & Company wrote to the Tribunal on the 19th of October and I have read that  
27 letter, in the year 2000.

28  
29 Then we have some correspondence in the year 2001 and on the 13th of September  
30 2001 you referred, a letter dated 10th of August 2001 and you say for the

1 record -- you deal with Mr. Ray Burke and that's history, as it were, we  
2 needn't return to it, the Tribunal.

3  
4 "2. I have withdrawn instructions from Messrs. Cahill & Company, solicitor, to  
5 act on my behalf and it is not my intention to instruct any other solicitor at  
6 this time.

7  
8 I am mindful of the task that the Sole Member is seeking to perform and do not  
9 wish to inconvenience, prevent or delay that task. However I do believe that I  
10 can make no useful contribution by way of documentation as I have none or  
11 evidence as I have none in the matter which the Tribunal is concerned. Any  
12 knowledge I have has been gleaned from the media and information provided by  
13 the Sole Member's inquiries. Without any acknowledgement or admission of any  
14 requirement to reply to or comply with any of your matters raised and so as to  
15 inform and assist the Sole Member the following comments are provided to you.

16  
17 I am neither a citizen of Ireland nor have I for many years been a resident in  
18 Ireland. I am no longer a holder of a practising certificate as a solicitor in  
19 Ireland.

20  
21 No valid order or documents have been served on me which compel my attendance  
22 before the Tribunal. The alleged so-called of 10 August 2001 is invalid as being  
23 outside the term was reference and there was one made in excess of jurisdiction  
24 and has been invalidly served.

25  
26 The Sole Member has already received all documents and records available from  
27 Binchys, the firm where I was formally a partner. I have no other documents  
28 independent of those documents.

29  
30 The Sole Member has received from Messrs. Miley & Miley, Kennedy McGonigal,

1 Stokes Kennedy Crowley Lombard & Ulster Bank et al."

2

3 Then it goes on to deal with other persons who were involved with the Tribunal  
4 at that stage.

5

6 Subsequent to that you were written to by the Tribunal on the 19th of September  
7 2001. And this is on page 649 --

8 A. Sorry, Mr. Gallagher, those comments that you have read out, they were in the  
9 context of another module and not this module.

10 Q.244 Indeed. But I take it that the comment, for example, "I am neither a citizen  
11 of Ireland nor have I for many years been a resident in Ireland and no longer  
12 the holder of a practising certificate as a solicitor", that is applicable  
13 irrespective of what module is being investigated.

14 A. Yes, it is and those are matters that were dealt with between myself and the  
15 Tribunal in subsequent supplemental proceedings and from which we have moved  
16 on. I have moved on.

17 Q.245 The Tribunal wrote to you on the 19th of September 2001 in response to that  
18 letter and said:

19

20 "It has been noted that you have withdrawn instructions from Messrs. Cahill &  
21 Company, solicitors, to act on your behalf and it is not your intention to  
22 instruct any other solicitor at this time."

23

24 The Tribunal went on to say with reference to your letter of the 13th:

25 "I make the following observation:

26

27 1. The Sole Member is satisfied that you are in possession of relevant,  
28 important evidence which the Tribunal wishes to hear."

29 And it commented on the various other points that you had made in your earlier  
30 correspondence.

1

2 The Tribunal then furnished you with all the documentation that it had earlier  
3 furnished to Messrs. Cahill & Company so you could be fully briefed and fully  
4 aware of all the documentation, and you replied to that correspondence by  
5 letter of the 2nd of October 2001.

6

7 Now, the position, just put in chronological sequence, is that you were to give  
8 evidence to the Tribunal on the 27th of September 2001, isn't that right?

9 A. I don't remember the date exactly but I am sure you are correct.

10 Q.246 And there was no appearance on that occasion. There was evidence heard from a  
11 number of witnesses, including witnesses from the Department of Justice in  
12 relation to your citizenship status, from the Law Society in relation to the  
13 fact that you held a practising certificate at that time, the year in question,  
14 from Dun Laoghaire/Rathdown County Council in relation to the voters register  
15 and other witnesses, isn't that right?

16 A. Yes, there were witnesses, yes.

17 Q.247 And as a result you were ordered to appear before the High Court on the 10th of  
18 October 2001. That application was adjourned to the 16th of October and on  
19 that occasion an order was made by consent, you were represented by counsel,  
20 Mr. Finlay, and there was an order made that you would, by the High Court that  
21 you would attend and give evidence here and you did so.

22 A. Yes, by consent.

23 Q.248 Now, subsequent to that the Tribunal wrote to you, to your then solicitors  
24 Miley & Miley, on the 16th of November 2001, this is on page 657, and having  
25 referred to the previous correspondence went on to ask the following question  
26 at paragraph 4.1 on page 661:

27

28 "With reference to the Tribunal's letter of 19th of June 2000 and 6th September  
29 2000 and Mr. Caldwell's responses thereto dated 4th September 2000 and a letter  
30 from Cahill & Company of 19th October 2000 I am directed by the Sole Member to

1 request Mr. Caldwell to answer the following question:

2 A: Does Mr. Caldwell now or did he at any time either directly or indirectly  
3 have a beneficial or any interest in the lands comprised in folio 4940 County  
4 Dublin or any part thereof.

5

6 In this regard I would draw your attention and your client to the fact that on  
7 6th November 2000 Charlie Bird reported on RTE news that he was introduced by  
8 Frank Dunlop to Mr. Caldwell as the person who was the owner of the lands at  
9 Carrickmines."

10

11 Then there is a number of other questions that arose in that letter which I  
12 don't propose to deal with at this stage.

13

14 And the next document that I want to refer to is the letter of the 31st of  
15 January 2002, which is on page 665, and it's the reply from Miley and Miley,  
16 that I have just referred to.

17

18 That letter which was read on day 330 read as follows:

19 "We refer to your letter of the 16th November last again and having regard to  
20 it and to our letter of the 20th ult now respond to section 4 of your letter.  
21 Our response is made on the basis of the instructions given to us by our client  
22 and is informed by the large volume of documentation contained in the will he  
23 ever arch file enclosed here with. Here in referred to as the Jackson book.  
24 Using your numbering system the response is as follows.

25

26 4.1.A. The answer to this question is yes.

27 Our client has now and did previously have what amounts in his opinion to an  
28 indirect beneficial interest in the lands comprised in folio 4940 County  
29 Dublin.

30

1 The position is as follows:

2

3 1. Our client first became involved with these land when he was a partner in  
4 Binchy a partner solicitor in 1978 at that time he was approached by Mr. James  
5 Kennedy who was known to him from other business transactions within Binchy a  
6 partner. Mr. Kennedy informed our client that he had been negotiation with  
7 Mr. Sam Stanley in connection with a purchase of lands comprised in folio 4940  
8 of County Dublin which were the property of Mr. Bob Tracey's. Mr. Stanley  
9 operated a company called Siteland Management Limited whom our client believes  
10 was Mr. Tracey's agent. Our client arranged with Martin Bullock in the Isle of  
11 Man to provide a company which would be used to hold the land if it was  
12 acquired. This company was named Paisley Park Investment Limited. In March  
13 188 Mr. Kennedy informed our client that he had agreed buy the lands for 540  
14 thousand pound and enquired of our client as to whether he would take a 50 per  
15 cent interest in the transaction. Our client reach agreed this proposition."

16

17 Now, I will stop there for a moment. I put it to you that that version is  
18 different to the version which you gave in the letter of the, the statement of  
19 the 4th of September 2000 in relation to the formation of Paisley Park and what  
20 gave rise to it and the instructions that were given. Do you accept that?

21 A. The letter -- it's much more comprehensive than the earlier statement.

22 Q.249 Well, do you recall that in the letter of the 4th of September the statement of  
23 the 4th September you said that Mr. Bullock of Maskani directed Paisley Park to  
24 appoint Mr. Kennedy as its agent for the purpose of purchasing the land.  
25 Mr. Kennedy acting on behalf of Paisley Park, etcetera, acted, negotiated that,  
26 is not what is being said at this stage?

27 A. Well that's, that's what happened in relation to it was Mr. Bullock did  
28 instruct Mr. Ken Kennedy to act as the agent of the company. That was the  
29 stage, the opening stage in relation to it was as described here.

30 Q.250 Mr. Bullock did so on your instructions?

1 A. He did, yes. He did, yes.

2 Q.251And on Mr. Kennedy's instructions?

3 A. No, my instructions.

4 Q.252Your instructions with Mr. Kennedy's knowledge?

5 A. With Mr. Kennedy's knowledge.

6 Q.253I see.

7 "A booking deposit of five thousand pounds was initially paid to Siteland  
8 Management Limited drawn on Binchy & Partners client account and this was to be  
9 paid over to Mr. Bob Tracey."

10

11 Can I ask you at that stage whose money was that five thousand pounds?

12 A. That would have been money coming out of funds that were available to myself  
13 and one of Mr. Bullock's --

14 Q.254Who owned the money?

15 A. The monies would have been owned by a company, I don't know which one, in the  
16 Isle of Man. We --

17 Q.255Who was the beneficial owner of those monies?

18 A. Again the company would have been the beneficial owner of those monies. The  
19 structures that I had in place were the same as I described this morning in  
20 relation to the holding of funds.

21 Q.256Whose money were they? Someone had to own those monies and someone had to be  
22 the beneficial owner of those monies I would like to know who.

23 A. There is a distinction, Mr. Gallagher, that, in relation to it, there is a  
24 distinction between the company that owns the money and the control aspect in  
25 relation to it. It is what is applied in relation to both the land, which was  
26 owned by the companies and the aspect of control. They are two separate  
27 things.

28

29 CHAIRMAN: If -- Mr. Caldwell, if the company that supplied the 5,000, if that  
30 had been dissolved who would have got that 5,000?

1 A. The 5,000 would have gone, if it was one of the company's which Mr. Bullock was  
2 a shareholder in, it would have gone to Mr. Bullock in those circumstances.

3  
4 CHAIRMAN: So to the extent that the money eventually belonged to someone it  
5 was Mr. Bullock?

6 A. Yes, in that instance he was the arm.

7  
8 Q.257MR. GALLAGHER: And are you saying that you were not able to establish through  
9 the client account in question whose monies, who transferred those monies or on  
10 whose behalf those monies were transferred into that account?

11 A. No, we haven't been able to find the information. He checked with the bank in  
12 relation to that.

13 Q.258What did the records show as to where that money came from?

14 A. The -- I think that the five thousand pound was paid out of Paisley Park, I am  
15 not sure, I would have to --

16 Q.259Paisley Park didn't have assets at this stage. Paisley Park hadn't been  
17 purchased, the lands hadn't been purchased?

18 A. No, it didn't have any assets, but it would have access to funds which would  
19 enable it to pay various bits and piece.

20 Q.260What bank account did it have to enable it to have funds?

21 A. Paisley Park had it's own bank account and funds would have been paid into that  
22 bank account.

23 Q.261Are you saying that the money was provided by the company Paisley Park, the sum  
24 of 5,000 pounds?

25 A. In this instance without going back and checking and seeing, the deposit would  
26 have been paid on behalf of Paisley Park, it may have come out of Paisley  
27 Park's bank account, or it may have come out of another bank account.

28 Q.262How could it have been paid on behalf of Paisley Park. Paisley Park was not,  
29 or was Paisley Park incorporated at that stage?

30 A. Yes, it was.

1 Q.263I see. Was Mr. Bullock the man who was operating and controlling Paisley Park  
2 on a day to day basis at that time?

3 A. Mr. Bullock was the man to deal with it on a day to day basis.

4 Q.264Why did Mr. Bullock transfer the monies into Binchy & Partners client account?

5 A. He would have been requested to do that by myself.

6 Q.265Why did you put it in through their client account, why not pay it directly to  
7 you or to somebody else?

8 A. Well, it's a booking deposit on a transaction, property transaction booking  
9 deposit was paid to the solicitor for the purposes of disbursement on behalf of  
10 the client.

11 Q.266Who was the solicitor acting for Paisley Park in the transaction?

12 A. Binchy & Partners, solicitors.

13 Q.267I see. Did they continue at all times to act for Paisley Park?

14 A. No, Reddy Charlton McKnight stepped in and acted for Paisley Park in relation  
15 to the transaction.

16 Q.268I see. Did Mr. Frank Friel act for Paisley Park as solicitor?

17 A. Yes, he did.

18 Q.269When did that occur?

19 A. That occurred some years later I think in relation to possibly two things. In  
20 relation to the liquidation and possibly in relation to some letting of the  
21 property.

22 Q.270Mr. Friel acted in the registration of inhibitions in respect of the lands to  
23 prevent any registration of any interest other than the interest of Mr. Kennedy  
24 or Paisley Park as the case may be?

25 A. He may well have done so.

26 Q.271Why was Mr. Friel instructed to act instead of Binchy & Partners?

27 A. Binchy & Partners acted in the initial part of the transaction. Mr. Sam  
28 Stanley insisted that Reddy Charlton & McKnight acted in relation to the  
29 acquisition by Paisley Park and that was agreed to. But the situation with  
30 Paisley Park and Mr. Stanley was fraught with difficulties, so I couldn't rely

1 on the situation where covenants, not covenants inhibitions would be lodged  
2 against it by Reddy Charlton McKnight. To my mind they were acting on a number  
3 of occasions for Mr. Stanley in his personal capacity. So, I instructed Frank  
4 Friel & Co. to act in that.

5 Q.272 Frank Friel had formally been a solicitor in Fitzpatrick's and been a colleague  
6 of yours?

7 A. That's correct.

8 Q.273 In Binchy & Partners?

9 A. That's correct.

10 Q.274 Why did you ask Mr. Friel to act instead of Binchys?

11 A. I can't recollect.

12 Q.275 Was it an attempt to distance yourself from the transaction?

13 A. No, I have used, I tend to, as I said, I use other firms of solicitors to deal  
14 with matters and there was no, nothing in terms of distancing oneself. Frank  
15 Friel was available to deal with that aspect of it and I instructed him on it  
16 through Mr. Bullock in Paisley Park.

17 Q.276 Mr. Friel had a separate stand alone solicitor's practice at this stage?

18 A. Yes, he did.

19 Q.277 So in terms of cost to you and cost to Paisley Park one might reasonably expect  
20 that it would be more expensive to employ Mr. Friel as an independent solicitor  
21 than to do the whole of it yourself?

22 A. So be it. If it was the case, it was the case.

23 Q.278 That's why I don't understand why you would incur additional costs that were  
24 not necessary unless there was a reason for doing it.

25 A. No. I mean, no particular reason which comes to mind, Mr. Gallagher, in  
26 relation to, that springs back into my recollection. He was employed to do a  
27 specific job in relation to it and he did that.

28 Q.279 Wasn't for altruistic reasons or anything like that?

29 A. Hardly.

30 Q.280 The letter continues after the reference to the 5,000 and this was paid, to be

1 paid to Mr. Bobby Tracey.

2 "Thereafter further disposition of 10,000 and 5,000 were paid. Our client  
3 arranged for all of these monies to be provided and he thinks these initial  
4 sums totalling 20,000 were sourced through Mr. Bullock."

5 Now, you arranged for the monies to be provided.

6 A. Yes, in the same sense that --

7 Q.281Whose money was provided?

8 A. The money again would have been monies in an account which was under the  
9 ownership and control of Mr. Bullock.

10 Q.282Yes, but whose, who is the indirect beneficial owner of that company or the  
11 account?

12 A. The person, Mr. Bullock was the signatory on all accounts in relation to it.  
13 And he was the person who was the legal and beneficial owner insofar as the  
14 company was concerned or the deposit was concerned. My role in this at all  
15 times was a control role and I stuck rigidly to that.

16 Q.283Well, were these monies held to your order?

17 A. No.

18 Q.284Were you an indirect beneficial owner of those monies or any part thereof?

19 A. In the sense that I would have controlled them, yes, I would be in that  
20 category. In this de facto category that I have described, de facto beneficial  
21 owner. But not, in a legal sense, a beneficial owner.

22 Q.285I see. So, you were in a position to say to Mr. Bullock, transfer those monies  
23 to Switzerland or transfer them to Germany or transfer them to an account in  
24 London or send them over to my account here in Binchy's?

25 A. Or invest those funds.

26 Q.286And he did what you asked him to do?

27 A. He would do that, yes.

28 Q.287So to that extent they were held to your order?

29 A. They were held through the control that I had through Mr. Bullock to --

30 Q.288You controlled --

1 A. -- whatever directions I would give him.

2 Q.289You controlled the movement of those funds and the disposition of those funds,  
3 isn't that right?

4 A. I, through Mr. Bullock I would have controlled the disposition of the funds.

5 Q.290You told him what to do with them?

6 A. Yes.

7 Q.291And he wouldn't do anything with them without your approval or sanction?

8 A. Other than possibly placing on deposit or something like that, but without --  
9 to pay them --

10 Q.292He wouldn't dissipate them, he wouldn't expend them on properties or on  
11 holidays or on furnishing his offices or anything of that nature?

12 A. No. The funds were funds in the company and they were dealt with as I said to  
13 him they should be dealt with.

14 Q.293They weren't his to deal with in whatever manner he wanted to deal with them?

15 A. The funds were there -- if he chose to do that, Mr. Gallagher, he could have do  
16 done it, but he didn't do that.

17 Q.294He would have been in breach of his arrangements with you if he had done so?

18 A. He would have in breach of the understanding and trust that I had with him,  
19 yes.

20 Q.295And you would regard breach of trust like that as a serious breach anyway?

21 A. I would regard that as an act of bad faith in relation to this, you have given  
22 the ownership structure in relation --

23 Q.296It would be more than bad faith, it would be a breach of trust.

24 A. No, not a breach of trust in relation to it. He was never in a position of  
25 being a trustee.

26 Q.297Whether he was a trustee or not you trusted him to deal with the monies as you  
27 directed?

28 A. I have -- I had faith in my relationship with him.

29 Q.298If you had faith you had trust.

30 A. Yes, I suppose that's true. I had trust but not in a legal sense of trust.

1

2 JUDGE FAHERTY: This would appear to be the same type of arrangement as the 85?

3 A. That's correct.

4

5 JUDGE FAHERTY: You had as much control over these monies, and you conceded this  
6 morning that you had control ultimately, you could direct Mr. Bullock to do  
7 your wishes with the monies.

8 A. Yes, and I --

9

10 JUDGE FAHERTY: So this was a similar type of arrangement.

11 A. I -- a similar type of arrangement, yes.

12

13 JUDGE KEYS: Mr. Caldwell, the monies that you drew down from that company was  
14 that as a result or another transaction that you were involved in again under  
15 the same structure?

16 A. In all probability, yes, there would have been another company.

17

18 JUDGE KEYS: As I said before lunch your whole system was, you set up this  
19 structure whereby in a pure legal sense, as you say, you never became the legal  
20 beneficial owner of the monies when the transaction generated a profit, so  
21 consequently you didn't have to pay any capital gains or tax on it, but when  
22 you once became the beneficial owner you were then liable to pay tax on that  
23 sum?

24 A. In essence that's correct. In terms of the company itself, there was a tax  
25 liability so far as the company was concerned.

26

27 JUDGE KEYS: So you kept building up through companies without being in inverted  
28 commas "the legal beneficial owner" large sums of money reverted in other  
29 transactions of which no tax has been paid to date, or if it has been paid it  
30 is on the basis that you then declared it after the legal beneficial owner of

1 the monies?

2 A. Two aspects, in terms of accumulation of those funds. If taxes were due in  
3 relation to the transaction in which it was generated.

4  
5 JUDGE KEYS: Yes, but from a capital gain point of view in relation to yourself  
6 personally.

7 A. Precisely. If I had taken the fund as a dividend or taken the fund as a salary  
8 I would have been subject to tax. So effectively I have created a roll up fund  
9 to all intents and purposes where I didn't have ownership in relation to it and  
10 the fund could accumulate.

11  
12 JUDGE KEYS: Do I take it they were done in companies outside this jurisdiction,  
13 because of the level of taxation that may arise in this jurisdiction to other  
14 jurisdictions?

15 A. Yes, if I had chosen to structure my business affairs in Irish companies and  
16 chosen to take funds out of them I would have been subject to tax in relation  
17 to that extraction of the funds.

18  
19 JUDGE KEYS: But there comes a day when you have to cash in your chips, I take,  
20 it otherwise you are never going to get any access to these monies

21 A. That's correct, there is a day when you --

22  
23 JUDGE KEYS: Of reckoning.

24 A. Yes, and -- there is a point, there is some point in time when you can take the  
25 funds to yourself. And in my situation I decided in 1995 that I would cease to  
26 be resident in Ireland for tax purposes and I organised my affairs so as to  
27 achieve that from a tax point of view in an Irish context and went to live in  
28 the Isle of Man. And --

29  
30 JUDGE KEYS: To draw down the monies you had accumulated in other companies at a

1 lower tax rate?

2 A. The Isle of Man isn't subject, if you are a resident of the Isle of Man and you  
3 are not resident in Ireland for tax purposes, you are only subject to capital  
4 gains tax -- there is no capital gains tax in the Isle of Man.

5

6 JUDGE KEYS: Being in the Isle of Man, if that's the case, if you cash in all  
7 your chips now because you are a resident of the Isle of Man you pay no capital  
8 gains at all, is that correct?

9 A. Personally, that's correct.

10

11 JUDGE KEYS: I see.

12

13 Q.299MR. GALLAGHER: The letter continues:

14 "Thereafter further deposits of 10,000 and 5,000 were paid. Our client  
15 arranged for all of these monies to be provided and he thinks these initial  
16 sums totalling 20,000 pounds were sourced through Mr. Bullock. A schedule of  
17 deposits is contained in the Jackson book, page 415. Due to a dispute the  
18 contract price was increased to 700,000 and the deposit increased to 50,000,  
19 our client has no recollection of how the balance of 30,000 of the deposit was  
20 paid. Our client believes these monies were sourced through Mr. Martin  
21 Bullock."

22

23 Have you asked Mr. Bullock where these monies came from and what companies they  
24 came through?

25 A. Yes, I have, Mr. Gallagher.

26 Q.300What has he said?

27 A. He hasn't been able to give me an answer in relation to that.

28 Q.301Doesn't that suggest Mr. Bullock is rather lax in dealings with the monies that  
29 you, that he holds to your order?

30 A. Well, it was quite a number of years ago and records usually only go back for

1 so many years.

2 Q.302Mr. Bullock presumably has, you trust him to keep an accurate record of your  
3 accounts. Has he not failed you in not being able to tell you in, exactly  
4 whether the monies came from?

5 A. Not at all. I think it wouldn't, would -- it would be unreasonable of me to  
6 place that burden on him. He is in a company situation, he would be required  
7 to keep records for six years, for tax purposes possibly ten. But the -- so  
8 it's not unusual to find you can't find records that are this old.

9 Q.303Mr. Caldwell, one of those days, you haven't already done so, you are going to  
10 go knocking on Mr. Bullock's door and say, Martin, I want my money. I want you  
11 to deal with the money in the following manner, Or whatever formula of words  
12 you feel appropriate. You are avoiding the word "trustee" and "beneficiary"  
13 and you are going to have to ask him to ask for those monies, isn't that right?

14 A. I may or may not ask him to account for those. I wouldn't be asking him to  
15 account for monies as far back as 1988.

16 Q.304You were asked by the Tribunal to ask him.

17 A. Yes, I did and as I have said in that context I did, Mr. Gallagher.

18 Q.305What did Martin tell you about his dealings with these monies and what profit  
19 or what account he took them out of?

20 A. He had no recollection and no record.

21 Q.306And he had no record. Did that cause you great alarm?

22 A. Not in the least.

23 Q.307I see. But I mean Martin is compus mentis, no question of him forgetting that  
24 he is acting on your instructions?

25 A. No, he is perfectly capable and rational human being.

26 Q.308And just to be clear on this, you are asking the Tribunal to believe that you  
27 phoned or contacted Martin Bullock and said, "Dear, Mr. Bullock, I want you to  
28 assist the Tribunal, will you please tell me what accounts and what banks those  
29 payments came out of" and he had to tell you, "I am sorry, honest to God, John  
30 I can't tell you, I haven't a clue"?

1 A. Absolutely, that's correct. He didn't have a clue where they were coming from.  
2 Because we are talking about something which is the better part of 10, 12 years  
3 ago. And he had no records. He thought it might have come out of Paisley Park  
4 or out of Silkeborg and that was as far as he could recollect and he checked  
5 with the bank in that record and the bank had no records to assist him.

6 Q.309I take it that he reassured you everything was all right and you were in good  
7 and capable hands and that the monies would always be accounted for when your  
8 day of reckoning came and his day of reckoning came to sort out all your  
9 affairs?

10 A. I have never had any reason to doubt Mr. Bullock's honesty and I have no reason  
11 as I sit here to doubt --

12 Q.310Whatever about his honesty, you truly have reason to doubt his book keeping  
13 ability when he wasn't able to tell you out of what account he brought this  
14 30,000, 10,000 and 20,000, etcetera?

15 A. Not at all. It is a long time ago. I know from experience that it's not  
16 always the case there are records available that far back.

17 Q.311Tell me, were there so many accounts that it wasn't quite possible to identify  
18 which one?

19 A. He speculated as to where the funds might have come from.

20 Q.312Then we all have. But can -- the question is: How many accounts were in  
21 existence that could conceivably have been the source of the funds?

22 A. Well, he thought that the payments might have come out of Paisley Park itself  
23 or have come out of a company called Silkeborg, and he wrote to the bank in  
24 relation to both those companies looking for bank accounts and there were none  
25 available.

26 Q.313The bank says, unfortunately, we don't keep records for more than six years?

27 A. So it is not possible to trace the source of the funds.

28 Q.314And Mr. Bullock kept no records of his own to be able to account to you for the  
29 funds that he had, that had been entrusted to him. Is that what you are  
30 telling the Tribunal?

1 A. No, records which are extant, which were available at the time in relation to  
2 funds from 1988.

3 Q.315I mean, surely if the lands in Carrickmines, for example, ever have to be sold,  
4 and somebody wants to retrieve some capital gains out of the gains that have  
5 been made, it will be necessary to show that that certain price was paid and  
6 what interest was paid and how did the matter was financed, all that sort of  
7 thing. That would be the normal information that one would expect to provide  
8 to the Revenue, to the revenue authorities so one can deduct the outlays and  
9 the costs and the additions and whatever else, from the actual top, the sale  
10 figures; isn't that right?

11 A. In relation to a sale of the lands from a capital gains tax point of view you  
12 would provide the Revenue with a computation in relation to the costs  
13 associated with it. The -- in relation to the, to these fund, the fact that  
14 you have a transfer which was with a third party and which shows that the  
15 consideration, shows the consideration on the face of the transfer would show  
16 that the, those 7 hundred -- whatever the figure was 700,000 pounds was paid.  
17 And that in itself would be sufficient for Revenue purposes. In addition to  
18 that you would look at the deed and see if there are stamp duties charged on  
19 the deed and add that to the cost of it.

20 Q.316The statement goes on, the letter goes on:

21 "Our client has no recollection of how the balance of 30,000 pounds of the  
22 deposit was paid."

23 Is that still your recollection, Mr. Caldwell?

24 A. That is still my recollection, yes.

25 Q.317Did you keep records of monies that were managed or controlled by Mr. Bullock  
26 in the Isle of Man?

27 A. No, I left everything to him.

28 Q.318So, you didn't have any record or account or note of what your potential assets  
29 or liabilities might be at any given time in the 1980s and '90s. Is that what  
30 you are saying?

1 A. I didn't keep records. I left everything to Martin Bullock to deal with all of  
2 those things.

3 Q.319 Did you not keep a note of what monies were going in, coming out or whatever,  
4 what liability he might leave with Mr. Bullock, or problems it might cause for  
5 him or what assets he might be holding indirectly on your behalf?

6 A. No. I mean I didn't keep a private file or anything like that in relation to  
7 it. Martin Bullock dealt with these matters it was, that was his job, that was  
8 the relationship and he dealt with them on a day and day basis. As I said I  
9 had the utmost trust in him and he continues to do it.

10 Q.320 Now, the relationship is such that neither of you can identify the bank account  
11 or accounts from which the monies we have just been referring to were drawn?

12 A. That's correct, yes.

13

14 JUDGE FAHERTY: Mr. Caldwell, did you pay Mr. Bullock for his services?

15 A. I paid him for services in terms that he would get director's fees and various  
16 other fees. And when a transaction took place he would get a fee at that  
17 stage, paid by the company.

18

19 JUDGE FAHERTY: Because he was administrating monies and assets belonging to you  
20 at the end of the day. Did he prepare bills for you?

21 A. He would charge the company his director's fees. He would, not issue a bill to  
22 me per se, in relation to any of the activities.

23

24 JUDGE FAHERTY: But did he account to you at all for what monies he was taking  
25 from these funds and in respect of the work he was doing, or to whom did he  
26 account?

27 A. I paid Martin on a reasonably regular basis in the Isle of Man and to travel to  
28 the Isle of Man quite often and he would -- I would know -- in general, in  
29 general terms, not specifics, all the time what he was doing. So if he was  
30 paying bills to exempt fees to the authorities in Isle of Man he would adopt

1 that from, deduct that from the fund that he had. If he was charging  
2 directorship fees he would deduct those. I never had any quarrel with him in  
3 relation to the level of fees that he charged for being a director.

4  
5 JUDGE FAHERTY: Have you, there must be then some paper trail as to the sort of  
6 monies he charged for his services? And a break down to you and to others  
7 indeed.

8 A. No, sorry, he didn't. I didn't get a paper trail from him. He would charge  
9 the company a fee for his director's fees and would deduct those, take them  
10 from the funds.

11  
12 JUDGE FAHERTY: Who sanctioned the payments to Mr. Bullock?

13 A. Well, I had an understanding with him as to the level of fees that he would  
14 charge in relation to the, acting as a director of the companies or whatever  
15 other capacity he was there. If it was secretary, for example -- so those  
16 level of fees were levels that I was happy with. In terms of any other fees  
17 that were paid to him that would be a matter that we would discuss in  
18 particular circumstances if it arose and he would charge that to the company.

19  
20 JUDGE FAHERTY: But there must be some paper record, Mr. Caldwell, of all of  
21 these matters? Because he was acting not just as a -- directors fees, that  
22 would come as a matter of course to him as a director, but over and above that,  
23 I understand Mr. Bullock was a chartered accountant --

24 A. No, Mr. Bullock was, had some accountancy --

25  
26 JUDGE FAHERTY: Yes --

27 A. I don't think he is a chartered accountant.

28  
29 JUDGE FAHERTY: Fair enough, but he had some accountancy, he was providing a  
30 service essentially for you and indeed, perhaps, for others.

1 A. Yes.

2

3 JUDGE FAHERTY: For that he wasn't doing it for the good of his health, he was  
4 expecting to be paid. There must be some structure in writing as to how that  
5 came about and what exactly was paid to him.

6 A. No, there was no -- there was no formal legal agreement with him in -- there  
7 was no letter or agreement which sets out any of the things that I have spoken  
8 about here today. What he did was on an individual company basis, he would  
9 charge his fees as a director and if the circumstances were there he might  
10 charge something else as an additional fee or if monies were on deposit indeed  
11 he might actually take the interest on the monies on deposit.

12

13 JUDGE FAHERTY: But he must account to the beneficial owners and to the people  
14 like yourself, who could distribute the control of these monies ultimately.

15 A. In terms of myself, the arrangement I have is a very loose arrangement. It was  
16 not one where I got from him schedules of "I did this today, that yesterday",  
17 and all this. I didn't have that sort of relationship with him and indeed I  
18 don't have that relationship with him today either.

19

20 JUDGE KEYS: Mr. Caldwell, could I just, so I understand the whole structure.  
21 Am I correct in saying that if, while you were resident in this country, it was  
22 to be held that you had a beneficial interest in monies lodged in these  
23 companies while you were resident here, that would make you liable to a capital  
24 gains tax in this jurisdiction?

25 A. It would depend on the circumstances.

26

27 JUDGE KEYS: Well, let's say there was a company, a company that buys a property  
28 like Carrickmines maybe, it's rezoned, it makes a huge profit, let's say and  
29 you have the structure in being that you have now created for 85 Development  
30 and the other companies. That structure was in place. If a court of law or if

1 the Revenue were to deem that you were, this was -- you had a beneficial  
2 interest in the gain that was made while you were resident in this  
3 jurisdiction, even though you are now residing in the Isle of Man that would  
4 make you liable in this jurisdiction to a capital gain on that gain; is that  
5 correct?

6 A. There is a couple of things to answer that. In terms of the company itself, it  
7 would be responsible for its own tax arising on the disposal. If it were a  
8 simple sale of, a one-off situation and there is a million pound in the  
9 company, the company pays its tax after the calculation that we spoke about.

10

11 JUDGE KEYS: But if you were to take the gain yourself personally?

12 A. If I was to take the gain personally given that it is Irish land, yes, I would  
13 be subject to tax.

14

15 JUDGE KEYS: Do I take it by virtue of the structure which you have set up, that  
16 you don't have that, so when the day of reckoning comes and you take it down  
17 you won't have any gain in this jurisdiction or tax to pay on it?

18 A. I would not have any tax, the company would not have any -- would have tax to  
19 pay but I don't.

20

21 JUDGE KEYS: So, your structure is simply where you can make huge, massive  
22 profits on that, on a transaction and the virtue of the structure you put in  
23 place and even though you were resident in this jurisdiction at the time, the  
24 gain was made or the transaction and deal went through and the time that the  
25 profit was made, because of the structure which you have put in place you will  
26 never have to pay a penny capital gains in this country when you take the  
27 benefit down personally yourself in the Isle of Man?

28 A. Personally when I take it down, if that were to happen.

29

30 JUDGE KEYS: Do I take it that was the sole purpose of setting up the structure?

1 A. Yes, it was, the principle reason for setting up was to structure from that tax  
2 perspective, to get that advantage for myself.

3

4 JUDGE KEYS: So that's why, I take it, you don't say when it is being put to you  
5 very strongly by Mr. Gallagher and also by my colleagues here and I suggest to  
6 you, that you did have a beneficial interest in these monies, you refute that?

7 A. I do.

8

9 JUDGE KEYS: For that purpose. Obviously if you admit it you would be libel for  
10 a capital gain when you take down the profit, isn't that correct?

11 A. You would to a number of things. One, you would put me in that situation and  
12 two, given that I have always taken this view in relation to this that I am not  
13 the legal and beneficial owner of it.

14

15 JUDGE KEYS: Even though you have control as actually stated in one of the  
16 letters, "power to control the use, sale etcetera of lands" i.e exercise via  
17 the structure all the powers and right of ownership of the lands.

18 A. That's correct.

19

20 JUDGE KEYS: That's the sort of power and you don't believe that that in itself  
21 constitutes a legal beneficial interest in those assets.

22 A. I do not.

23

24 JUDGE KEYS: You do not?

25 A. I do not.

26

27 JUDGE KEYS: Extraordinary. Thank you.

28 A. Thank you.

29

30 Q.321MR. GALLAGHER: Mr. Caldwell, I wonder might I just bring you back a little so

1 I understand or attempt to understand all of this. There was a time when  
2 didn't know Martin Bullock, isn't that right?

3 A. Yes.

4 Q.322And you met Martin Bullock.

5 A. Yes.

6 Q.323And you came to an arrangement, isn't that right?

7 A. Yes, I have known Martin Bullock from --

8 Q.324Okay. A stage was reached when you came to an arrangement with Martin Bullock,  
9 he was going to act on your behalf in the Isle of Man, isn't that right?

10 A. Yes, as I described it, yes.

11 Q.325Yes. And you agreed with him, I take it, that he would act as a director of  
12 company or companies that might be established at your request?

13 A. Yes.

14 Q.326And I take it you agreed with him that he would be paid for providing that  
15 service, the sum of money per year or a percentage basis or whatever, you  
16 agreed a remuneration package with him?

17 A. Well I -- not in the sense that I said to Martin Bullock, well, there is two  
18 per cent or three per cent or something like that. What we agreed and paid on  
19 an ongoing basis.

20 Q.327You pay his fees on an ongoing basis?

21 A. Yes.

22 Q.328All right. The fees were to be agreed on an ongoing basis, all right?

23 A. They were pretty much set and he charged the fees on an ongoing basis.

24 Q.329Now, Martin Bullock, I take it, was furnished with monies and assets by you in  
25 some way or other. You arranged for the transfer of monies into his account or  
26 into an account that he could operate or control?

27 A. On the same basis, as I have described, I would arrange for a company to be  
28 established to carry out whatever the transaction was.

29 Q.330All right. You put a company in place, and you arrange for that company to  
30 have a bank account?

1 A. Yes.

2 Q.331Now, where did that money come from that went into that bank account?

3 A. It could have come from any number.

4 Q.332It could have. But where did it come from?

5 A. Well, it came from payments, from dividend payments on shares that were held in  
6 companies, or it came from receipts in relation to transactions where there was  
7 some fee or percentage of the transaction to be paid. There were a number of  
8 sources.

9 Q.333Where would these transactions be carried out?

10 A. Some of the transactions were in Ireland and some of them in Northern Ireland.

11 Q.334And these transactions, the dividend payments shares, transactions -- I take it  
12 you mean property transactions?

13 A. No, not necessarily, some of them were computer software.

14 Q.335Computer software transactions. All right. The proceeds of these  
15 transactions, therefore, were transferred to a bank account in the Isle of Man,  
16 is that right?

17 A. Well, the company would be -- the company would, if you take it in the instance  
18 of computer software company. The company would be established and the company  
19 would hold an investment and usually in those situations a lot of these  
20 investments were done at a very early stage where it was a very small  
21 percentage, a very small cost associated with the investment. And the company  
22 would be the owner of those shares, Martin Bullock would be in the position I  
23 have described.

24

25 If the shares were subsequently realised by the business. The underlying  
26 company being sold, or by dividends being paid on the profits then those would  
27 be remitted to the company that Mr. Bullock ran.

28 Q.336In order to operate as a company and to be involved in transactions and  
29 investments and sales, and such like, the company had to have assets, had to  
30 get money somewhere?

1 A. Yes, it did.

2 Q.337Where did that money come from?

3 A. As I have described, the money was generated from transactions.

4 Q.338I know but you started off somewhere.

5 A. I am describing where I started off. I wasn't sitting, Mr. Gallagher, on 16  
6 million pounds in a bank account in the Isle of Man and saying to Mr. Bullock,  
7 here is the money, we are going to do this with it. I was in business with the  
8 opportunity of having business opportunities. And as I, as those business  
9 opportunities were there I structured them at various stages depending on what  
10 was the expeditious tax structure for them, in some cases it was Irish based  
11 and some cases it wasn't.

12 Q.339In doing that you arranged for monies to be transferred to bank accounts in the  
13 Isle of Man; is that right?

14 A. No, I would have transferred no monies into bank accounts in the Isle of Man  
15 from Ireland, if that's what you are asking.

16 Q.340Nowhere did you transfer them from?

17 A. The monies being transferred would largely have come out of transactions and  
18 would have accumulated as the gain or dividend or profit on that transaction.

19 Q.341From where?

20 A. An Irish software company.

21 Q.342So, it was a gain from an Irish software company which found itself in an Isle  
22 of Man bank?

23 A. Yes, that may well have been so, yes.

24 Q.343And it was in that way and through such transactions and transfers that you had  
25 a fund, if I may so describe it, you had monies which were, which became  
26 available to Mr. Bullock, is that right?

27 A. Yeah. The benefit of these transactions were accumulated in a corporate  
28 vehicle.

29 Q.344Into money and the money went into a bank account or bank accounts and  
30 Mr. Bullock had access to those monies?

1 A. Yes, he did.

2 Q.345Is that --

3 A. He would have been the signatory on the account.

4 Q.346Is that what happened?

5 A. Yes, that's what happened.

6 Q.347I see. And you arranged for the transfer of those monies into a bank account

7 or a number of bank accounts into the Isle of Man and you authorised

8 Mr. Bullock to deal with those monies as a signatory on the bank account?

9 A. I may -- I personally may not have transferred, have arranged for the transfer

10 of the fund., it may have been a situation where I was one of a number of

11 shareholders in a company, the shares were sold and the proportion which was

12 held through Mr. Bullock --

13 Q.348But you did it as an individual or as part, as a group, as one of a group?

14 A. Well, the structure which I had put in place would have made the investment and

15 Mr. Bullock was the person.

16 Q.349At the end of the day you got a certain amount of money as a result of a

17 particular transaction and you gave it to Mr. Bullock to deal with on your

18 behalf?

19 A. No. I mean -- I personally, I would not have received the money and said,

20 here, Mr. Bullock here is the money, deal with it.

21 Q.350You may not have personally received it, but you arranged for it to transferred

22 to an account?

23 A. If the transaction was for the payment of the dividend from a company, whoever

24 were the signatories on that, the directors would declare a dividend and the

25 dividend would be paid to the shareholders. And on the payment of that the

26 proportion of it which related to the company, which was the investment in that

27 particular company and which Mr. Bullock was the director of, would be in

28 receipt of those funds. And I may or may not have been a signatory on that

29 company's account, but if I was a signatory on that company's account I would

30 have been a signatory with other people who were directors on it.

1 Q.351 Because it was with your approval and consent that monies were transferred,  
2 whether through companies or otherwise, through the Isle of Man?

3 A. It isn't a question of in the incident I am describing of my consent, it is a  
4 function of having set up this legal structure as to the ownership in the  
5 initial situation and then if that venture was successful, as I said either as  
6 a result of the sale or as a result of some licensing arrangement or something,  
7 then the proceeds arising from that if they were distributed would fall into  
8 that structure.

9 Q.352 The proceeds eventually became available to Mr. Bullock to be used as you  
10 required him to use them?

11 A. Yes, that's right.

12 Q.353 And he had a fund or funds which he was able to use in that way?

13 A. Yes.

14 Q.354 And you are telling this Tribunal that Mr. Bullock isn't able to account for  
15 how he dealt with those funds or you can't account for how he dealt with those  
16 funds insofar as the Carrickmines lands were concerned?

17 A. I can't account for the particular source of the money which were used to do  
18 it, because I don't have, and Mr. Bullock doesn't have, access to the bank  
19 accounts which would enable us to do that.

20 Q.355 So, it may well be that the funds were generated or were secured in this  
21 jurisdiction, that they didn't come from the Isle of Man at all, isn't that an  
22 explanation?

23 A. No, anything that would have gone into the, this property transaction or any of  
24 these investments would have been religiously structured, so that the funds  
25 would have come from where they were supposed to come from, they would have  
26 come from the Isle of Man and they would have been paid from the Isle of Man  
27 into --

28 Q.356 But there is no record or document to show that they came from the Isle of Man,  
29 how can you say that they came from the Isle of Man? All you can say, for  
30 example 5,000 pounds came in from an unknown source, an unidentified source

1 into a client account of Binchy & Partners, there was 5,000 paid out of that  
2 account. You don't know who paid it in, on whose behalf it was paid in, where  
3 it came from, or anything else about it.

4 A. But I know the modus operandi, I know how the structure operated and I know how  
5 the structure was adhered to.

6 Q.357 You see, when you look at the statement that is provided on your behalf by  
7 Miley & Miley solicitors, they say, they make a number of statements. They  
8 say, thereafter further deposits of 10,000 and 5,000 were paid. They are  
9 statements of fact. They say "our client", that's you, arranged for all of  
10 these monies to be provided. That's a statement of fact.

11 A. Yes.

12 Q.358 And he thinks -- he thinks these initial sums totalling 20,000 were sourced  
13 through Martin Bullock.

14 A. Yes.

15 Q.359 You are not able to say they are, you are thinking through, doing the best you  
16 can, you can't state it as a fact.

17 A. As I said, I know the method, I know the modus operandi that applied in  
18 relation to these structures and I adhered to the structure. The dilemma that  
19 I had and discussed earlier this morning in relation to the ownership this  
20 morning is a function of adhering to the structure. I adhered to structure  
21 religiously. In this it would not have been a situation where funds were paid  
22 in Ireland into this other than in the instance where at the completion of this  
23 transaction, there was a shortage of funds in relation to it and at that point  
24 in time a family trust that I set up paid some monies in, but those were  
25 subsequently repaid out of funds from the Isle of Man.

26

27 CHAIRMAN: Mr. Gallagher, before lunch you started to read some correspondence  
28 and then you commenced then after lunch to continue to read that  
29 correspondence, a couple of the letters in question are very long. I wonder  
30 might it be more appropriate if you were to simply read them through into the

1 record, which will probably take until 4 o'clock and then tomorrow go back and  
2 ask whatever questions are appropriate and also give Mr. Caldwell an  
3 opportunity overnight to study the correspondence in somewhat more quiet  
4 surroundings.

5

6 MR. GALLAGHER: I will certainly do that, Sir.

7

8 Paragraph 3 -- sorry, just pass on from where I was.

9

10 "Due to a dispute the contract price was increased to 700,000 and the deposit  
11 increased to 50,000 pounds. Our client has no recollection of how the balance  
12 30,000 pounds of the deposit was paid. Our client believes these monies were  
13 sourced through Mr. Martin Bullock.

14

15 A dispute arose with Mr. Stanley who claimed a share in Paisley Park  
16 Investments Limited. This dispute was settled through Mr. Kennedy negotiating  
17 a 20 per cent interest in Paisley Park Investments Limited for Mr. Stanley or a  
18 company nominated on his behalf. Mr. Tracey consented to this. Xenon  
19 Investments Limited was the company nominated by Mr. Stanley for this purpose  
20 and shares were allotted to it in November 1988. This resulted in the share of  
21 each Maskani Management Limited and Renzenbrinck Investments Inc. in Paisley  
22 Park Investments Limited being reduced from 50 per cent each to 40 per cent  
23 each. A shareholders agreement which is contained in the Jackson book pages  
24 134 to 146 was entered into by all of the shareholding companies.

25

26 From information which our client received about 18 months later in early 1990  
27 and which originated from Mr. Tracey's estranged wife our client was made aware  
28 that Mr. Stanley, with the cooperation of Mr. Tracey, wished to buy the lands  
29 for himself or for others and sought to renege on the deal which he had  
30 negotiated with Mr. Kennedy. This resulted in Mr. Stanley sending a cheque for

1 the booking deposit of 5 thousand pounds to Mr. Tracey and with this cheque  
2 being returned to Mr. Tracey's bank marked "unpaid." The nonpayment of the  
3 cheque was apparently to be used as an excuse by Mr. Tracey to renege on  
4 540,000 pounds deal with Mr. Kennedy and to deal elsewhere. Inhibitions were  
5 registered on a regular basis on the folio until Mr. Tracey agreed to proceed  
6 with the transaction. Proceedings for specific performance were also  
7 threatened but our client cannot recall whether any such were actually issued  
8 or not.

9  
10 Our client only became aware of Mr. Stanley's complicity in Mr. Tracey's  
11 attempt to wriggle out of the transaction with Paisley Park Investments Limited  
12 following completion of the shareholder's agreement. When he became so aware  
13 he decided he no longer wished to have anything to do with Mr. Stanley who had  
14 cost Paisley Park Investments Limited an extra 160 thousand pounds on the  
15 purchase price apart altogether from the worry, bother and expense related to  
16 the matter over quite a long period of time.

17  
18 With a view to funding Paisley Park Investments Limited so that they could  
19 complete the purchase of the property the company resolved that the  
20 shareholders should subscribe for shares in it to provide the necessary monies.  
21 Xenon Investments Limited failed to put up its part of the money and in  
22 consequence the monies were provided equally by Maskani Management Limited and  
23 Renzenbrinck Investments Inc. this had the result of the share of Xenon  
24 Investment Limited reducing from 20 per cent to one per cent and the shares of  
25 Maskani Management Limited and Renzenbrinck Investments Inc. increasing to 49.5  
26 per cent each.

27  
28 Following the acquisition of the lands by Paisley Park Investments Limited and  
29 having regard to our client's determination to cease relationships with  
30 Mr. Stanley Paisley Park Investments Limited was put into liquidation and the

1 property was distributed in specie to Jackson Way Properties Limited, which was  
2 nominated by Maskani Management Limited and by Renzenbrinck Investments Inc.  
3 to hold the property as nominee on their behalf. A copy of the transfer made  
4 in 1993 in favour of Jackson Way Properties Limited and a copy of the  
5 Declaration of Trust entered into by Jackson Way Properties Limited is  
6 contained in the Jackson book pages 219 to 225. It will be noted that these  
7 set out the detail of the transaction. We have also included in the Jackson  
8 book pages 226 to 231 an agreement made between Pertland Limited and  
9 Renzenbrinck Inc. as mandators of the one part and Alan George Holland and  
10 Radovan Vuckovic as mandatories on the other part. This agreement is undated  
11 but our client believes it was completed between the 4th of June 1993 the date  
12 upon which Arriveclever Limited changed its name to Jackson Way Properties  
13 Limited and the 30th July 1993, which appears from the Declaration of Trust at  
14 page 224 of the Jackson book is the date upon which the transfer contained at  
15 page 219 of the Jackson book was completed. The agreement appears to have been  
16 abandoned as you will note from the transfer at page 219 of the Jackson book  
17 that the nominees are Maskani Management Limited and Renzenbrinck Investment  
18 Inc. and not Pertland Limited and Renzenbrinck Inc. Pertland Limited is  
19 involved in the manner as set out below at paragraph 9.

20  
21 Jackson Way Properties Limited has a sole director Mr. Alan Holland who is also  
22 the sole shareholder. This is of little consequence however as Jackson Way  
23 Properties Limited holds the property solely as nominee for Maskani Management  
24 Limited and Renzenbrinck Investments Inc. in equal shares.

25  
26 Maskani Management Limited is a company which our client believes is owned by  
27 Mr. RP Harker, chartered accountant of Court View, 12 Mount Havalock, Douglas  
28 Isle of Man, together with his wife Helen and in respect of which both of them  
29 are the sole directors. A letter of direction contained at page 217 of the  
30 Jackson book was completed by Mr. and Mrs. Harker and is dated 6th July 2001.

1 A Declaration of Trust dated 7th November 2001 was subsequently entered into by  
2 Mr. and Mrs. Harker in favour of Pertland Limited, a company incorporated in  
3 Liberia. A copy of this document will be sent to you as soon as it comes to  
4 hand. Until the letter of direction was completed our client had an  
5 arrangement with Mr. Harker and through him with his wife where our client had  
6 the power to direct the transfer of shares in the company coupled with an  
7 informal arrangement where Mr. and Mrs. Harker agreed not to transfer the  
8 shares without the consent of our client. This was a loose arrangement  
9 undocumented and based completely upon trust. It effectively gave our client  
10 control of the company until the arrangement ended a few months ago with the  
11 completion of the Declaration of Trust in favour of Pertland Limited. Our  
12 client believes that this company is associated with Mr. James Kennedy. Our  
13 client acknowledges that at any time prior to the completion of the Declaration  
14 of Trust in favour of Pertland Limited he would have used his arrangement with  
15 Mr. and Mrs. Harker as directed by Mr. James Kennedy. Our client never had any  
16 beneficial interest in this company.

17  
18 Renzenbrinck Investment Inc. is a company owned by Mr. Martin Bullock in  
19 respect of which he is the sole director. Our client has the power to direct  
20 the transfer of shares in this company and Mr. Bullock has agreed to not  
21 transfer the shares without our client's consent. Until recently this  
22 arrangement was undocumented and was based upon trust, but notwithstanding this  
23 our client considers himself to have effectively been the beneficial owner of  
24 this company at all material times. A letter of direction dated 3rd July 2001  
25 which documents this arrangement to some degree is contained at page 218 of the  
26 Jackson book.

27  
28 Having regard to the foregoing we answer your further questions as follows:  
29

30 1: Mr. Caldwell's interest in the lands is as mentioned above. He has however

1 always exercised complete control over Jackson Way Properties Limited in the  
2 sense that all of Mr. Harker, Mr. Bullock and Mr. Holland have conducted  
3 affairs in accordance with his instructions and/or left it to him to decide how  
4 affairs should be conducted. Mr. Kennedy has also left it to our client to  
5 decide how the affairs of Jackson Way Properties Limited should be conducted.  
6 We ourselves have taken our instructions from Mr. Caldwell in relation to  
7 Jackson Way Properties Limited with Mr. Holland facilitating the implementation  
8 of those instructions. We should say that it was only in conjunction with the  
9 taking of instructions for the purpose of this letter that we became aware of  
10 Mr. Kennedy's interest in the matter.

11  
12 The dates upon which the interests were acquired and altered are as set out  
13 above.

14  
15 The entitlement, dilution and termination of interests is as set out above. As  
16 will be apparent from the transfer contained in the Jackson book page 219 to  
17 223 and the liquidation accounts and correspondence which are also contained in  
18 the Jackson book pages 148 to 153 Mr. Stanley's company Xenon Investments  
19 Limited received cash from the liquidator. This amounted to 7,311.95 pounds  
20 sterling.

21  
22 Insofar as the 1993 Development Plan is concerned our client believes that Mr.  
23 Frank Dunlop was retained on behalf of Paisley Park Investments Limited to  
24 lobby the elected members of Dublin County Council to procure a rezoning of the  
25 lands. This resulted in failure in that none of the lands were rezoned even  
26 though it was recommended by planners that it should be rezoned. See pages 395  
27 to 400 of the Jackson book.

28  
29 Our client recollects a letter issued by Paisley Park Investments Limited to a  
30 company whose name he can not recall but which he thinks began with the

1 letter 'S' and which was a company nominated by Mr. Frank Dunlop. Apparently  
2 in this letter Paisley Park agreed to pay a fee of 200,000 pounds as far as our  
3 client can recall to that company in the event that Mr. Dunlop successfully  
4 lobbied the elected members of Dublin County Council and procured a rezoning of  
5 the lands. Our client is unable to locate a copy of this letter but as far as  
6 he can recall it was written on behalf of the Paisley Park Investments Limited  
7 by Mr. Bullock. Our client assumes he would have given Mr. Bullock  
8 instructions to write this letter and that he would have given those  
9 instructions on the basis of a request which he received from Mr. Kennedy.  
10 Our client has no memory of this but given the way in which the affairs of the  
11 company were conducted believes it is a reasonable assumption to make.

12  
13 Insofar as the 1998 Development Plan is concerned both ourselves and our client  
14 have a memory that the writer Mr. Stephen Miley was contacted by Mr. Dunlop who  
15 was either seeking the brief to act on behalf of Jackson Way Properties Limited  
16 or seeking confirmation that he was retained in the matter and that on our  
17 client's instructions, we wrote to Mr. Dunlop either with a view to retaining  
18 him or confirming his retainer in relation to the matter. Despite searching  
19 through our files we have been unable to find a copy of the letter and the  
20 writer now wonders whether such a letter was written at all or not. It may  
21 well be that there was only a phone conversation involved and no  
22 correspondence. As far as our client can recall Frank Finnegan and Ambrose  
23 Kelly were retained to make submissions on the rezoning of the lands and  
24 perhaps some others although our client cannot recall any others at present.  
25 Messrs. Brian Meehan & Company, planning consultants, and Frank Benson &  
26 Partners, planning consultants, were also involved in making submissions but  
27 these were primarily in relation to the Draft Action Plan and were made in  
28 conjunction with the adjoining landowners. These other adjoining landowners  
29 Messrs. Darragh, O'Halloran and Kilcoyne, together with Jackson Way Properties  
30 Limited made joint representations in relation to the rezoning of the lands.

1 Precise details of all of this are contained in the files of Miley & Miley  
2 Solicitors in respect of which you have taken copies. A copy of a letter dated  
3 29th October 1997 received by us from Brian O'Halloran & Associates, architect  
4 and project managers, together with a copy of their letter to Mr. Frank Dunlop  
5 of the 24th October 1997 with enclosures which is referred to therein as  
6 contained in the Jackson book pages 349 to 359. As best our client can recall  
7 the whole rezoning issue insofar as the 1998 Development Plan was concerned was  
8 lead by Mr. Brian O'Halloran on behalf of Jackson Way Properties Limited and  
9 the other adjoining owners and it is probable that Mr. O'Halloran initially  
10 retained Mr. Dunlop and that Mr. Dunlop's contact with us was for confirmation  
11 that he was retained by Jackson Way Properties Limited in addition to the other  
12 adjoining landowners.

13  
14 As the issue of solicitor client privilege in the context of the Tribunal's  
15 inquiry so far as it affects our client's personal involvement now appears to  
16 be moot, our client no longer has any option to the Chairman reviewing these  
17 files. Accordingly our client hereby formally agrees (on his behalf and on  
18 behalf of Jackson Way Properties Limited) to the copy of the files which are I  
19 in your custody and in respect of which privilege was claimed being reviewed by  
20 the Tribunal on a confidential basis. Our client is in possession of the  
21 Paisley Park Investments Limited files which were generated by Mr. Bullock's  
22 office together with the Binchy & Partners files and these can be made  
23 available to you for review if you so wish.

24  
25 Having regard to all the foregoing our client has not directly or indirectly  
26 and whether on his behalf or on behalf of any other person company, trust  
27 partnership, legal or other entity, provided any other monies or benefits to or  
28 for any person including Frank Dunlop and/or any of his companies, for the  
29 purposes of canvassing or making representations to any person, body,  
30 organisation, council or authority, in relation to the lands or any part there

1 of and whether in relation to attempts to secure rezoning, services, planning  
2 permission and/or compensation in relation thereto, or otherwise how so ever  
3 save as disclosed above or in the copy file which are in your possession. No  
4 payment was made to Mr. Frank Dunlop in relation to any services he may have  
5 provided in relation to the 1998 Development Plan. No account has been  
6 received from him nor has our client been made aware of what if anything  
7 Mr. Dunlop did in relation to the matter. What seems likely is that the part  
8 of the lands which were rezoned industrial were so rezoned because the  
9 adjoining lands were rezoned and to have omitted the Jackson Way lands would  
10 have been incongruous and inconsistent with good planning practice.

11  
12 We think it important at this stage to explain why our client adopted the  
13 attitude which he initially did with the Tribunal. He has had dealings over a  
14 long period of time with a number of people whose affairs you appear to be  
15 investigating and he felt if he got drawn into the matter as has now happened  
16 that he would have to devote an enormous amount of his time over a very long  
17 period in trying to remember and document their affairs. He wishes it avoid  
18 this if at all possible particularly in circumstances where he was not involved  
19 in any corrupt practices himself and was unaware of others who were so involved  
20 in relation to the procurement of rezoning, planning permission or otherwise.  
21 Before Tribunal issues arose our client, on medical advice was cutting back on  
22 his commitments and the last thing he wanted was to become involved in a hugely  
23 time consuming matter which would be stressful, time consuming, expensive and  
24 which might perhaps adversely effect his health.

25  
26 Our client did not consider himself to be unhelpful to the Tribunal as he  
27 firmly believed that he had no worthwhile contribution to make and in  
28 consequence adopted the course of action which he did in ease of his own  
29 position, his finance and his own health. Our client is and always has been a  
30 very private person, valuing his privacy highly and to a much greater degree

1 than most others would. And he took all legitimate steps which he thought he  
2 could, to maintain his privacy both in relation to his identity and in relation  
3 to his business involvements. He now acknowledges that he should not have  
4 adopted this approach and with benefit of hindsight very much regrets it.

5  
6 Our client confirms that he will assist the Tribunal quickly and expeditiously  
7 so that it may deal efficiently with any matters with which he may have an  
8 input.

9  
10 Our client believes but has no means of knowing whether he is correct that the  
11 information which the Tribunal says has come into it's possession and on foot  
12 of which the Tribunal has decided that an investigation into the land of  
13 Jackson Way Properties Limited is merited, came from Mr. Stanley. He also  
14 believes there is no substance whatever in any allegation which may have been  
15 made by Mr. Stanley to the Tribunal in relation to himself or in relation to  
16 Jackson Way Properties Limited concerning the question of corruption. If our  
17 client is correct in this belief, i.e. that Mr. Stanley made such allegations,  
18 our client believes such allegations were motivated not because there was any  
19 foundation to them but rather by way of revenge for having been excluded from  
20 part ownership of Paisley Park Investments Limited/Jackson Way Properties  
21 Limited and hence the land and any profit arising there from. If our client's  
22 believe is correct Mr. Stanley will have been responsible for wasting very  
23 substantial amount of the time of the Tribunal as well as causing our client  
24 great distress and damage in addition to Jackson Way Property Limited.

25  
26 Approximately two years ago Mr. Stanley made an attempt to contact our client  
27 through his secretary, Geraldine O'Shea, at Binchys. Our client was not in the  
28 office at the time and with some reluctance Ms. O'Shea gave Mr. Stanley our  
29 client's mobile phone number. Mr. Stanley then called our client on his mobile  
30 telephone and said that he had been called to appear in private before the

1 Tribunal and would be doing so shortly. Mr. Stanley used language to the  
2 effect that he could deal with the matter in one of two ways, either by  
3 fabricating events suggesting wrongdoing on of the part of our client and  
4 making life very difficult for him, which is what has happened; and/or  
5 Mr. Kennedy or in the alternative of saying truthfully that he was unaware of  
6 anything improper in relation to the efforts made to have the lands at  
7 Carrickmines rezoned. He further stated he would proceed in the former way  
8 unless he was cut in for a piece of the Carrickmines land.

9  
10 Our client told Mr. Stanley in no uncertain language that there was no question  
11 of his, our client, becoming involved with him, Mr. Stanley, in anyway  
12 whatsoever and in particular in relation to having any influence over the way  
13 in which he, Mr. Stanley, was responded to the requirement of the Flood  
14 Tribunal. Our client made it quite clear that this was a matter for  
15 Mr. Stanley himself and that he should deal with it himself. This ended the  
16 telephone conversation and our client has had no contact with him since.

17  
18 Our client, following the liquidation of Paisley Park Investment Limited had no  
19 contact with Mr. Stanley until he made the contact to which we have just  
20 referred.

21  
22 Charlie Bird, the RTE television news reporter to whom you refer in your letter  
23 told our client during their meeting together in the presence of Frank Dunlop  
24 that Mr. Tracey had caused a police investigation to be carried out into  
25 Mr. Stanley's conduct, related to a request by Mr. Stanley to Mr. Tracey for  
26 money to pay politicians to have the land rezoned for Mr. Tracey. This was the  
27 first time our client was made aware by anyone of such an allegation. Our  
28 client cannot recall Mr. Dunlop expressing a view in relation to what Mr. Bird  
29 had to say about Mr. Stanley.

30 Portion of the lands are required for construction of the South East Motorway.

1 The writer attended a public enquiry into the making of the motorway order on  
2 behalf of Jacksonway Properties some years ago and following there on when the  
3 Minister confirmed the motorway order proceedings issued in the High Court and  
4 were appealed to the Supreme Court challenging the making of the order on  
5 various grounds. This litigation was compromised on terms that the National  
6 Road Authority gave assurances in relation to the construction of a bridge over  
7 the motorway to link the two severed parts of the land. In June 2000 notice to  
8 treat were served on the company and the compensation claim has been pursued  
9 since then. This culminated in an injunction being granted by Mr. Justice  
10 O'Sullivan on Wednesday 23 inst restraining the property arbitrator from  
11 proceeding with the assessment of the claim. We understand that the Tribunal  
12 is fully appraised of the detail of these proceedings in that it had a  
13 stenographer take note of the entire proceedings. It is likely this issue will  
14 be appealed to the Supreme Court. Substantial fees have been incurred by  
15 Jackson Way Properties Limited in relation to legal representation for the  
16 various matters and in relation to the professional witness and other  
17 associated matters required for the proposed arbitration hearing which is now  
18 injuncted from proceeding for the present.

19  
20 Our client has no specific recollection as to from which account and from what  
21 branch monies were obtained to acquire the lands save with regard to the  
22 25,000 which was paid by our client's family, settlement in two tranches of  
23 10,000 and 15,000 pounds. The name of our client's family settlement is  
24 Diplomat Trust Company Limited (Caldwell number 3 settlement) We refer you to  
25 Section 4 of the Jackson Book. We also refer you to the correspondence related  
26 to accounting matters in the Jackson Book, the bank statements at page 81 to 91  
27 inclusive and to accounts at pages 50, 73 to 76 inclusive, 92, 93, 416 and 417.  
28 Of the amounts of money lodged to Binchy and Partner client accounts, see page  
29 74 of the Jackson Book, our client believes the position is as follows:

1 The sums of 10,000 and 15,000 pound were sourced from Diplomat Trust Company  
2 Limited.

3  
4 Our client cannot recall from where the 274 thousand were sourced but believe  
5 it was sourced through Mr. Bullock. Mr. Bullock told our client verbally that  
6 he can not recall the origin of these monies and he is, we understand, making  
7 enquiries ear with his bank to see whether the origin of the money can be  
8 identified.

9  
10 The sums of 10,000, 15,000 and 274 thousand pounds were used to fund Maskani  
11 Management Limited and subsequently used by them to fund their share  
12 acquisition in Paisley Park Investments Limited.

13  
14 The sum of 396,997.44 pounds was the Irish punt equivalent of 360 thousand  
15 pound sterling.

16  
17 Our client does not know the source of these monies. They were however used to  
18 fund Renzenbrinck Investments Inc who used the money to fund the acquisition of  
19 shares in Paisley Park Investments Limited. Our client believes that  
20 Mr. Kennedy should be able to explain the origin of these monies."

21  
22 Mr. Caldwell, can I stop there because I believe there may have been an error  
23 in that, and I think perhaps it is important to get it clarified at this stage.

24 A. Yes, that's correct, Mr. Gallagher.

25 Q.360Am I correct in thinking that there was a juxtaposition of the names Maskani  
26 and Renzenbrinck?

27 A. That's correct.

28 Q.361And that the statement, that the letter should have read as follows, correct me  
29 if you, if I misstate it in anyway:

30

1 "The sums of 10,000 and 15,000" Sorry, I go back to paragraph one.

2

3 "The sums of 10,000 pounds, 15,000 were sourced from Diplomat Trust Company  
4 Limited."

5 Is that correct?

6 A. That's correct.

7 Q.362"Our client cannot recall where the 274,000 pounds was sourced but believes it  
8 was sourced through Mr. Bullock. Mr. Bullock has told our client verbally that  
9 he can not recall the origin of these monies and he is, we understand, making  
10 inquiries with his bank to see whether the origin of the monies can be  
11 identified."

12 Is that correct?

13 A. At the date of the letter that's correct. He has since -- we will come to  
14 that.

15 Q.363I want to get the letter straight. So that paragraph is correct?

16 A. Yes.

17 Q.364The sums of 10,000 pounds, 15,000 pounds and 274 thousand pounds were used to  
18 fund Renzenbrinck Investment Incorporated and subsequently used by them to fund  
19 their share acquisition in Paisley Park Investments Limited?

20 A. That's correct.

21 Q.365That's how it should read?

22 A. That's how it should read, yes, correct.

23 Q.366"For the sum of 396,997.44 pounds was the Irish punt equivalent of 360 thousand  
24 sterling. Our client does not know the source of these monies. They were  
25 however used to fund Maskani Management Limited who used the monies to fund the  
26 acquisition of shares in Paisley Park Investments Limited. Our client believes  
27 that Mr. Kennedy should be able to explain the origin of these funds."

28 Is that correct?

29 A. Yes, that's correct.

30 Q.367In other words, Maskani is the company associated with Mr. Kennedy and his

1 interests, whatever, and Renzenbrinck is the company associated with you and  
2 your interests, is that correct?

3 A. That's correct.

4 Q.368Your letter continues:

5

6 "Our client also believes that the sum of 360,000 pounds referred to above was  
7 paid to Mr. Bullock and transmitted in addition to the sum of 274 thousand by  
8 him to Binchy & Partners, solicitors. Apart from the two sums of 10,000 and  
9 15,000 pounds mentioned above, our client believes that all of the monies  
10 provided in respect of the share of Maskani Management Limited were provided  
11 from outside the State. Our client does not have details of the monies paid  
12 directly to Reddy Charlton & McKnight, solicitors, from sources other than  
13 Binchy & Partners, solicitors. Messrs. Reddy Charlton & McKnight, solicitor,  
14 acted for Paisley Park Investment Limited in the purchase of the lands."

15

16 You have a hard copy in front of you.

17

18 "Our client is not aware whether any other person or persons or legal entity  
19 ever provided any money and/or benefit -- and whether directly or indirectly to  
20 or for any person including any politician or politicians and/or official or  
21 officials in a planning, rezoning or compensation context in relation to the  
22 lands other than in respect of professional fee as mentioned above.

23

24 As far as our client is aware neither Mr. Liam Lawlor, and/or (name) whether  
25 directly or indirectly or in any manner whatsoever has any beneficial, legal or  
26 equitable interest in the lands Folio 4940 County Dublin. Lands owned by  
27 Jackson Way Properties Limited at Carrickmines and/or the said company and/or  
28 in the assets or any part of the assets thereof. Insofar as our client is  
29 aware Mr. Kennedy is associated with Pertain Limited in the circumstances  
30 mentioned above."

1

2 I think that that perhaps should be --

3 A. Pertland.

4 Q.369Pertland?

5 A. Pertland, I think, yes indeed.

6 Q.370"Mr. Liam Lawlor did not directly or indirectly or in any manner what so ever  
7 have any beneficial, legal or equitable interest in the said lands Folio 4940  
8 County Dublin and/or Jackson Way Properties Limited or in the assets or any  
9 part of the assets thereof insofar as our client is aware. Mr. Kennedy has had  
10 interests in the foregoing in the manner mentioned above.

11

12 Please be kind enough to acknowledge receipt of this letter and our letters to  
13 you of the 28 of November last and the 20th ult. Please also let us hear from  
14 you in relation to the solicitor/client privilege issue. In addition please let  
15 us know whether anything further arises out of replies to Section 3 and 4 of  
16 your letter of the 16 of November last. On our part we hope to let you have a  
17 series of responses to the final section of your letter shortly with the next  
18 section, which appears from the press to be a section being dealt with by  
19 yourselves at present, dealing with Coolamber House, Newcastle, Lucan, owned at  
20 various times by Southfield Property Company Limited and Vino Properties  
21 Limited and our client's knowledge of Mr. Lawlor's involvement and his own  
22 involvement with it."

23

24 And then there is an index attached to that letter, which is an index of the  
25 documents in the Jackson Book, isn't that correct?

26 A. That's correct.

27 Q.371Now, I propose with your permission, Sir, just to read some other

28 correspondence and perhaps get through as much as we can. On the 5th of

29 February 2002 --

30

1 CHAIRMAN: What page is this?

2

3 MR. GALLAGHER: Page 677. This is Mr. Miley & Miley wrote to the Tribunal:  
4 "We refer to our letter of the 31st and in particular to the reference to the  
5 sum of 274 thousand pounds and the sum of 360 thousand sterling  
6 on page 7 of the letter. Following thereon we enclose copies of the following:

7

8 Our client's letter of the 31st ult to Martin Bullock enquiring about the  
9 source of the monies.

10

11 Martin Bullock's letter of the first inst to Standard Bank Offshore.

12

13 Letter of Standard Bank Offshore dated first inst to Martin Bullock.

14

15 Having regard to the foregoing we do not think there is anything further we can  
16 do to identify the origin of the two sums of money."

17

18 At page 879 on the 31st of January 2002, do you have this letter?

19 A. I do indeed, yes.

20 Q.372 You write to Martin Bullock from your address in Isle of Man and say:

21 "Dear Martin,

22 I refer to our telephone conversation. Binchy & Partner received 274 thousand  
23 pound which was lodged to its client account on the 5th of June 1991. It was  
24 credited as Irish pounds, it was part of the proceeds necessary to complete the  
25 purchase of the Paisley Park lands.

26

27 I would be obliged if you would please check with your bank and see if they can  
28 trace the source of this payment.

29

30 In addition 360,000 pounds sterling was telegraphically transferred into Binchy

1 & Partners account at AIB Bank in or around the same date, also being part of  
2 the purchase monies.

3

4 I would be obliged if you would please check with your bank if they have any  
5 information on the source of these funds.

6

7 Your assistance in this regard would be appreciated.

8 Yours sincerely, John Caldwell."

9

10 On the same date, sorry the 1st of February 2002, Mr. Bullock writes to - page  
11 880 to Michael, at Standard Bank Offshore, Circular Road, Douglas:

12

13 "A week or two prior to the 5th of June 1991 a draft was prepared by the bank  
14 for 274,000 pounds in favour of Binchys solicitors. It will probably have been  
15 drawn on either Paisley Park Investments Limited or Silkeborg Trust Co.

16

17 Do your records go that far back and if so can you let me know what you have?

18

19 With regards, your sincerely, Martin Bullock"

20

21 On the same date, 1st of February 2000 Standard Bank Offshore, 1 Circular Road,  
22 Douglas, replied to Mr. Bullock in the following terms.

23

24 "Dear Martin,

25 Thanks for your fax of this morning.

26

27 With reference to your request for concerning the draft issued in 1991, I  
28 regret to advise that we only hold such information for six years and we cannot  
29 therefore assist you in this matter.

30 Kind regards. Your sincerely,

1 Michael Clough, assistant manager."

2

3 And I am on the 11th of February 2002 at page 673, Mr. Miley wrote to the  
4 Tribunal referring to your letter of the 31st of January and in particular  
5 Clause 9 thereof at page 3 and say:

6

7 "We are now pleased to enclose a copy of the Declaration of Trust dated 7th  
8 November 2001 in favour of Pertland Limited.

9

10 This is a trust deed made on the 7th of November 2001 by Maskani Management  
11 Limited, of Court View, 12 Mount Havalock, Douglas, Isle of Man. Hereinafter  
12 called Maskani.

13 Whereas (A) by transfer date the 13th July 1993 and made between Paisley Park  
14 Investments Limited in liquidation and Jackson Way Properties Limited, the  
15 property known as part of the land at Carrickmines being all of those land  
16 comprised of Folio 4940 of the register of freeholders County Dublin  
17 hereinafter called the property was transferred to Jacksonway Properties  
18 Limited.

19

20 (B) By declaration of the trust made 4 of August 1993 by the said Jackson Way  
21 Properties Limited, Jackson Way declared that it held the property in trust for  
22 Maskani and Renzenbrinck Investments Inc as beneficiary as tenants in common in  
23 equal shares and that it agreed that it would at the request and cost of the  
24 said Maskani and Renzenbrinck Investments Inc transfer the property to such  
25 person or persons as such time and in such manner or otherwise deal with the  
26 same as the said Maskani and Renzenbrinck Investment Inc shall jointly direct  
27 or appoint.

28

29 Jackson Way continues to hold the property subject to the Declaration of Trust  
30 dated 4 of August 1993 free from any charge, lien or other encumbrance and

1 Maskani and said Renzenbrinck Investment Inc. have further agreed that the Land  
2 Certificate and deeds of the property shall remain in the procession of Jackson  
3 Way or it's appointees.

4  
5 Maskani hereby acknowledges that it has not charged, pledged or otherwise  
6 encumbered or parted with possession or dealt with any other part of its  
7 interest in the property and that this has no liabilities.

8  
9 Pertland Limited, is a company registered in Liberia whose registered offices  
10 is situated at 80 Broad Street, Monrovia, Liberia, hereinafter called the  
11 owner.

12  
13 Maskani holds the interest in the property pursuant to the said declaration of  
14 trust dated 4th of August 1993 and/or such right, title or interest as it holds  
15 under the general law as trustee for the owner as the trustee hereby  
16 acknowledges.

17  
18 The present directors and shareholders of Maskani are Mr. Roderick Peter Harker  
19 and Mrs. Helen Patricia Harker, both of Court View, 12 Mount Havalock, Douglas,  
20 here aforesaid, called the directors and shareholders, and confirm the  
21 undertakings and acknowledgement here in made.

22  
23 Now, this deed witnessth as follows:

24  
25 Maskani hereby declares that it holds all or any beneficial or other interest  
26 in the property on trust for the owner and that it will at the request and cost  
27 of the owner transfer and assign or procure the said Jackson Way to transfer or  
28 assign such interest in the property to or for the direction of the owner to  
29 such person or persons at such time and in such manner or otherwise deal with  
30 same as the said owner shall direct.

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Maskani further undertakes that it will not mortgage, charge, transfer, assign, lend, distribute or otherwise deal within in it's interest in the property or any proceeds for sale, monies derived from any compensation claim, proceeds of any loan raised by Jackson Way or Maskani or other monies, lands, rights or benefits, choses in action derived or arising from it's interest in the property, except with the written authority of or at the expressed direction of the owner, and undertakes and declares that it will hold the proceeds on trust for the owner and that it will at the request of Pertland transfer or assign all or any of such proceeds to or at the direction of Pertland to such person or persons at such time and in such manner or otherwise deal with the same as the said owner, that is Pertland, shall direct.

Maskani through it's directors and shareholders further undertakes not to issue any additional shares in Maskani to any person or persons except with the express written authority of the owner and undertakes not to sell, pledge, mortgage, encumber, create any security interest over or otherwise charge dispose of or deal with any share in Maskani except with the express written authority of the owner provided that such authority shall cease to be required immediately upon the transfer by Maskani of it's interest in the property in pursuance of the provisions of this trust deed.

Maskani, through its directors and shareholders further undertakes to remain in good standing and to prepare and file all necessary returns, accounts and other statutory documents, and to pay all applicable statutory disbursements or other fees payable in respect of Maskani and to procure that the directors and officers of Maskani do not incur any liability detrimental to the interests of the owner in the property, and that the said director and officers shall at all times comply with the lawful direction of the owner in relation to the owner's interest in the property and shall appoint such additional director to Maskani

1 as the owner, that is Pertland, shall direct.

2

3 The directors and shareholders of Maskani hereby confirm and agree the  
4 acknowledgement and undertakings herein before expressed by and for and on  
5 behalf of Maskani."

6

7 It is signed Mr. Roderick Harker, it is also signed by Mrs. Helen Harker, a  
8 Declaration of Trust, and it is witnessed, it appears to be dated 7 of November  
9 2001.

10

11 In summary, Mr. Caldwell, it appears that the interest in the lands in  
12 Carrickmines which was formally held on behalf of Maskani by Jackson Way has  
13 been transferred by Maskani in effect to Pertland.

14 A. The Declaration of Trust evidence is Pertland's interest in the land.

15 Q.373They're -- that's right. In other words it is for, it is a step removed if you  
16 like, a further step back.

17 A. It is.

18 Q.374From Jackson Way?

19 A. It is a further step back from Jackson Way, yes.

20 Q.375And my understanding of what you have said in your statement or the statement  
21 that I have just read out or the letter I have just read out more correctly is  
22 that Pertland is associated with Mr. Kennedy?

23 A. That's correct.

24 Q.376So the position as of now as I understand it is that you through Renzenbrinck,  
25 Mr. Kennedy through Pertland, control Jackson Way and the lands?

26 A. Well --

27 Q.377Through Renzenbrinck, Pertland and Jackson Way?

28 A. Through Renzenbrinck and Pertland the land is controlled. Through this  
29 Declaration of Trust, vis-a-vis Pertland and Maskani and through the interest  
30 that Renzenbrinck has in the land on foot of the Declaration of Trust, which

1           was done at the time that the land was transferred in the Jackson Way. So far  
2           as the company is concerned that's a different matter.

3 Q.378What Declaration of Trust is that you are referring to now?

4 A.    A Declaration of Trust I think 1993, is it?

5 Q.379We will come on to that. On the 15th of October 2002 on page 680 you refer to,

6           Mr. Miley refers to his letter of the 8th inst, he says:

7           "Mr. Caldwell has now informed me that he holds his interest in Jackson Way  
8           Properties through Renzenbrinck Investments Inc";

9           isn't that right?

10

11          Tell me, do you confirm the accuracy of the information that was conveyed to  
12          the Tribunal by Mr. Miley in his letter of the 30th of, 31st of January 2002,  
13          which I have just read with the variations that I have --

14 A.    The letter is largely correct. I mean, I would put a caveat on it in that it  
15          was done at that particular point in time, based on documents that were  
16          available and my recollection at that point in time, there would be nuances and  
17          some refinements of it, yes.

18 Q.380You furnished a narrative statement then to the Tribunal on the 20th of  
19          November 2002, or thereabouts, and that's to be found on page 707. This is a  
20          lengthy document. I don't know whether you wish me to start reading it now, it  
21          runs to 21 -- closely typed pages.

22

23          CHAIRMAN: All right. I think we'll have to leave that until tomorrow.

24

25          MR. GALLAGHER: I understand that the Tribunal intend to sit at 10 in the  
26          morning?

27

28          CHAIRMAN: 10 o'clock.

29

30          MR. GALLAGHER: Thank you.

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MR. FINLAY: Thank you, Chairman.

THE TRIBUNAL THEN ADJOURNED UNTIL FRIDAY, 10TH OCTOBER, 2003  
AT 10 AM

