

THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY,

28TH MAY, 2007, AT 10.30 A.M.:

CHAIRMAN: Good morning.

Today the Tribunal resumes public hearings in the Quarryvale II Module following its adjournment, initially in November 2005 because of judicial review litigation and more recently, on the 30th of April following the calling of the General Election.

Shortly, Mr. Des O'Neill, Senior Counsel will read a supplemental opening statement, primarily dealing with information relevant to this Module of which the Tribunal has become aware in the period since November 2005.

This supplemental opening statement should be read in conjunction with and as an addendum to the original lengthy opening statement which was read into the record over two days on November the 29th and the 30th 2005.

Copies of the transcript of this original opening statement are available on a table close to the entrance doors and fresh copies will be available over the next few days or from Mr. Kavanagh, Registrar to the Tribunal.

The transcript of the opening statement can also be accessed on the Tribunal's website.

Any party referred to in the supplemental opening statement will be afforded an opportunity to reply to it either today, following its conclusion, or tomorrow morning at 10.30. A reply is not mandatory and the absence of a reply is not nor is it ever taken, as an acknowledgement or agreement with what is contained in the opening statement.

10:43:34 1
2 A number of parties applied for and were granted limited legal representation
3 on the 30th of November 2005 and need not therefore reapply. Any other party
4 who wishes to apply for limited legal representation in this Module may do so
10:43:51 5 at the conclusion of the supplemental opening statement or indeed at any time
6 in the course of the public hearings.

7
8 Finally, I want to refer briefly to the fact of the unauthorised disclosure to
9 the media in recent weeks of material and information which had been
10:44:10 10 necessarily circulated to a limited number of parties in advance of the then
11 expected date of the recommencement of the Module, April 30th.

12
13 This material was circulated to those parties entitled to receive it. In
14 accordance with the Tribunal's own procedures and with due regard to the
10:44:28 15 decisions of the Superior Courts in the first Owen O'Callaghan judicial review
16 case. It was circulated on a confidential basis and for use only in the course
17 of the public hearings. The action of the person or persons who leaked or
18 facilitated the leaking of this information to the media is to be condemned and
19 is condemned in the strongest possible term.

10:44:52 20
21 The Tribunal has initiated its own investigation in an effort to identify the
22 source or sources of the disclosure and this is continuing.

23
24 Now, Mr. O'Neill.

10:45:03 25
26 MR. O'NEILL: Good morning Mr. Chairman and Members of the Tribunal.

27
28 Today's session marks the resumption of the public hearings into the Quarryvale
29 II Module of evidence after an interval of 18 months. The Tribunal was
10:45:18 30 restrained by order of the High Court made on the 8th of December 2005 from

10:45:24 1 continuing further investigations into the affairs of Mr. Owen O'Callaghan and
2 Mr. John Deane, pending the determination of judicial review proceedings
3 commenced by them.
4

10:45:34 5 These proceedings challenged the Tribunal's entitlement to conduct its
6 investigations involving them, on the grounds that the Tribunal members were
7 biased against them. Mr. O'Callaghan and Mr. Deane's evidence is central to
8 the matters under inquiry in this Module and accordingly, the Tribunal's
9 ability to continue with its public hearings in the Quarryvale II Module was
10:46:01 10 effectively stayed pending the court's determination on the merits of their
11 claim.
12

13 The case came for hearing before the High Court on the 28th of March 2006. At
14 the conclusion of the hearing judgement was reserved. On the 10th of October
10:46:17 15 2006 the judgement of the High Court was delivered refusing Mr. O'Callaghan and
16 Mr. Deane the relief they had sought and dismissing their claim.
17

18 On the 13th of October 2006 they gave notice to the Tribunal of their intention
19 to appeal the judgement to the Supreme Court. The Supreme Court hearing
10:46:43 20 commenced on the 22nd of January 2007. On the 30th of March 2007 the Supreme
21 Court delivered its judgement dismissing their appeal.
22

23 The Tribunal thereupon gave notice of its intention to resume these public
24 hearings on the 30th of April 2007. Following upon the calling of the General
10:47:00 25 Election on the 29th of April the proposed hearings were adjourned until today.
26

27 In her opening statement, delivered on the 29th and 30th of November 2005,
28 Counsel for the Tribunal outlined the matters which would be examined in the
29 course of this Module. The full contents of that opening statement are to be
10:47:21 30 found on the Tribunal website www.planningtribunal.ie. Days 603 and 604

10:47:33 1 contain that transcript and I do not intend to repeat the content of the
2 transcript today.

3
4 The Quarryvale Module is a complex and wide ranging inquiry dealing with the
10:47:44 5 redevelopment of certain lands at Quarryvale County Dublin upon which the
6 Liffey Valley Shopping Centre now stands. The inquiry will examine the
7 involvement of developers, politicians at national and local level, local
8 authority officials and lobbyists in the rezoning of these lands.

9
10:48:04 10 The inquiry is being conducted in order to determine whether any acts connected
11 with the planning process in relation to this development amounted to
12 corruption.

13
14 In advance of the opening of the Module in November 2005 the Tribunal had
10:48:21 15 circulated to affected parties a brief of documents, containing some 15,000
16 pages. Since that date, an additional 6,000 pages approximately have been
17 circulated. And of these, some 2,000 pages approximately relate to material
18 which has come into the possession of the Tribunal arising from its inquiries
19 made of Mr. Bertie Ahern, TD, An Taoiseach and others, in relation to monies
10:48:50 20 received by him and lodged to his bank accounts between December 1993 and
21 December 1995.

22
23 In today's opening I will confine myself to dealing with matters concerning
24 Mr. Bertie Ahern which were referred to in the opening, the original opening in
10:49:08 25 November 2005 and in respect of which further information has been obtained in
26 the course of the Tribunal's inquiries to date.

27
28 I wish to repeat the caution which is given at the opening of all Modules.

29
10:49:22 30 Counsel's opening is intended to assist the parties represented before the

10:49:27 1 Tribunal and the public generally, to identify the matters which will be
2 inquired into and the issues which may arise from the evidence which it is
3 proposed to call.

10:49:38 5 Counsel's opening is not intended to nor does it represent any conclusion
6 reached on the matters referred to and in particular, it does not reflect or
7 represent any conclusion by the Members of the Tribunal.

9 In order for the opening statement to achieve its purpose, it is necessary for
10 me to refer to specific aspects of the evidence it is proposed to hear and to
11 put that in its apparent context. This should not be taken as an indication
12 that this is the only interpretation of the facts that can be taken or that the
13 context in which these facts are put is the only context in which these facts
14 can be viewed. Put simply, nobody should draw conclusions from the contents of
10:50:25 15 this opening. Nobody should draw conclusions until all of the evidence has
16 been heard.

17
18 Allegations of payments to Mr. Bertie Ahern, TD.

19
10:50:35 20 One of the matters referred to in the opening statement of counsel on the 29th
21 and 30th of November 2005 as being a matter which would be the subject of
22 public inquiry in this Module was the allegation made by Mr. Tom Gilmartin that
23 he had been told sometime in 1992 by Mr. Owen O'Callaghan that Mr. Bertie Ahern
24 TD had been paid by Mr. O'Callaghan the sum of 80,000 pounds made up of 50,000
10:51:04 25 pounds in 1989 and 30,000 pounds on an unspecified date.

26
27 Mr. Gilmartin said that he was told by Mr. O'Callaghan that the 30,000 pounds
28 was paid to Mr. Ahern while he was Minister for Finance by Mr. O'Callaghan in
29 order to block the tax designation being sought by Green Properties Limited in
10:51:27 30 respect of its rival development at Blanchardstown, County Dublin.

10:51:32 1
2 The allegations of Mr. Gilmartin are emphatically denied by Mr. Ahern and by
3 Mr. O'Callaghan.

10:51:45 5 The nature of inquiries conducted by the Tribunal.

6
7 In this Module the Tribunal will inquire into whether the statement alleged to
8 have been made by Mr. O'Callaghan to Mr. Gilmartin to the effect that he had
9 paid 80,000 pounds to Mr. Ahern was in fact made by O'Callaghan. And if such a
10 statement was made by Mr. O'Callaghan, whether its contents were true. Such
11 inquiries is being conducted by the Tribunal pursuant to its current Terms of
12 Reference.

13
14 As part of the inquiries into the allegation that Mr. Ahern had been paid
10:52:17 15 monies by Mr. O'Callaghan, the Tribunal made written requests of Mr. Ahern for
16 information in relation to his financial records. This process involved
17 seeking information from Mr. Ahern and also from financial institutions. As a
18 result of these inquiries, the Tribunal has determined that as part of this
19 Module Mr. Ahern's operation of his bank accounts and the acquisition of his
10:52:44 20 present dwelling house at No. 44 Beresford Avenue, Drumcondra, should be
21 inquired into in order to establish the source of the funds used to be lodged
22 to these accounts.

23
24 This process will involve the Tribunal, in detailed consideration of certain
10:53:04 25 financial dealings of Mr. Ahern, of Ms. Celia Larkin and also of a Mr. Michael
26 Wall.

27
28 Mr. Michael Wall is a Manchester based businessman who was the legal owner of
29 44 Beresford Avenue, Drumcondra, from March 1995 until September 1997 when he
10:53:24 30 sold the property to Mr. Ahern.

10:53:27 1
2 Detail of the Tribunal's initial inquiries and the identification of five
3 specific lodgements as meriting further inquiry.

10:53:37 5 The information which was provided by Mr. Ahern in response to the Tribunal's
6 initial inquiries indicated that Mr. Ahern had kept no personal records of
7 income or expenditure, nor had he operated any personal bank accounts from the
8 time of his de facto separation from his wife in 1987 until the conclusion of
9 his legal separation proceedings in December 1993.

10:54:06 10
11 This period encompassed the entire of the period in which the alleged payments
12 were said to have been made by Mr. Owen O'Callaghan. Mr. Ahern says that
13 during this period from 1987 to 1993 he saved approximately 50,000 pounds,
14 which he kept in cash in his safes at his ministerial office and in his
10:54:33 15 constituency office at St. Luke's, Drumcondra.

16
17 From December 1993 Mr. Ahern opened and operated bank accounts at Allied Irish
18 Bank, 37/38 O'Connell Street, Dublin. He did not prepare annual accounts of
19 his income or of his expenditure. The records of Mr. Ahern's financial
10:54:56 20 transactions which were made available to the Tribunal in respect of the period
21 between 1987 and 1995 were limited to the records of the financial institutions
22 into which funds were lodged from 1993 onwards.

23
24 The Tribunal sought discovery of the bank records of Mr. Ahern from 1993.
10:55:20 25 These inquiries led the Tribunal to seek specific information in relation to
26 five substantial cash lodgements, totalling 116,481.11 pounds made to the
27 accounts in the name of Mr. Ahern and in one instance to an account in the
28 names of his daughters, between December 1993 and December 1995.

29
10:55:47 30 Mr. Ahern indicated that his only sources of income were his earnings as an

10:55:54 1 elected representative and Government Minister and that his modus operandi had
2 been to cash his salary cheques and to meet his expenditure in cash.

3
4 The Tribunal's inquiries of Mr. Ahern involved seeking details of these
10:56:11 5 specific lodgements because the amounts involved in each were substantial in
6 the context of his known income and because no records were available to the
7 Tribunal showing the source of these funds.

8
9 The five lodgements initially queried are:

10:56:29 10
11 1. 22,500 pounds lodged to a specific savings account by Mr. Ahern on the 30th
12 of December 1993.

13
14 2. 30,000 pounds made up of 27,164.44 lodged to Mr. Ahern's special savings
10:56:54 15 account and 2,835.26 lodged to his current account, both made on the 25th of
16 April 1994.

17
18 3. 20,000 pounds lodged to a deposit account in the names of his daughters on
19 the 8th of August 1994.

10:57:16 20
21 4. 24,838.49 pounds lodged to a deposit account in the name of Mr. Bertie
22 Ahern on the 11th of October 1994 and

23
24 5. 19,142.92 pounds lodged to a deposit account in the name of Mr. Ahern on
10:57:40 25 the 1st of December 1995.

26
27 Mr. Ahern's explanation for the five lodgements.

28
29 Mr. Ahern's explanation for these lodgements was given to the Tribunal in April
10:57:56 30 2006 in correspondence from his solicitors, in particular, in the form of a

10:58:01 1 report from an accountant, Mr. Des Peelo.

2

3 The Tribunal was informed that

4

10:58:08 5 1. The sum of 22,500 pounds lodged on the 30th of December 1993 was a goodwill
6 loan from personal friends made following Mr. Ahern's legal separation from his
7 wife which was intended to assist with his legal expenses.

8

9 For ease of reference, I will call this the first goodwill loan lodgement.

10:58:34 10

11 2. The sum of 30,000 pounds lodged on the 25th of April 1994 represented part
12 of the 50,000 pounds savings which had been accumulated by Mr. Ahern between
13 1987 and 1993 in cash.

14

10:58:53 15 I will refer to this lodgement as the first savings lodgement.

16

17 3. The sum of 20,000 pounds lodged on the 8th of August 1994, represented the
18 balance of Mr. Ahern's 50,000 pounds cash savings, accumulated during the
19 period 1987 to 1993.

10:59:16 20

21 I will refer to this lodgement as the second savings lodgement.

22

23 4. The sum of 24,838.49 pounds lodged on the 11th of October 1994 was made up
24 as follows:

10:59:33 25

26 One, a goodwill loan in the sum of 16,500 pounds made from a separate group of
27 friends, made to assist Mr. Ahern in acquiring a house, combined with a sum of
28 approximately 8,000 pounds Sterling which represented an unsolicited
29 presentation made to Mr. Ahern following a dinner in Manchester about that
10:59:59 30 time.

11:00:00 1
2 I will refer to this lodgement as the second goodwill loan and Manchester
3 donations lodgement.
4

11:00:07 5 5. The sum of 19,142.92 pounds lodged on the 1st of December 1995, represented
6 a relodgement of unspent funds which had already been accounted for in the
7 lodgements already referred to above.
8

9 The relodgement is said to have arisen in circumstances where Mr. Ahern had
11:00:34 10 given 50,000 pounds to Ms. Larkin to be spent on the refurbishment of 44,
11 Beresford Avenue. It was not spent by her on refurbishment and the unspent
12 balance was relodged to Mr. Ahern's account.
13

14 I will refer to this lodgement as the unspent funds lodgement.

11:00:54 15

16 The explanation given by Mr. Ahern in relation to the sources of the funds used
17 to make these five lodgements was that:
18

19 1. 50,000 pounds represented personal cash savings accumulated over a period
11:01:11 20 of approximately seven years between January 1987 and December 1993.
21

22 2. 39,000 pounds represented the total proceeds of two goodwill loans made by
23 two separate groups of his personal friends in December 1993 and October 1994.
24

11:01:32 25 3. The remainder was the Irish punt equivalent of approximately 8,000 pounds
26 Sterling given to him in Manchester following the dinner attended by Manchester
27 Irish businessmen.
28

29 On Mr. Ahern's explanation the total involved -- the total fund involved in
11:01:52 30 these lodgements was 97,338.49 pounds. The last lodgement of 19,142.92 pounds

11:02:04 1 was in effect a double entry.
2
3 Extension of the Tribunal's inquiry into three accounts opened in the name of
4 Ms. Celia Larkin.

11:02:14 5
6 Between December 1994 and June 1995 Ms. Larkin opened three accounts at AIB
7 Bank, 37/38 O'Connell Street in her own name. Ms. Larkin herself had no
8 beneficial interest in any of the money lodged to these accounts.
9

11:02:37 10 1. In response to the Tribunal's inquiries it was stated that on the 5th of
11 December 1994 the sum of 50,000 pounds was transferred from Mr. Ahern's
12 accounts to Ms. Celia Larkin's account.
13

14 The Tribunal was informed that on the 5th of December 1994, 50,000 pounds was
11:02:59 15 debited by means of two withdrawals from two accounts of Mr. Ahern in the sums
16 of 28,000 pounds and 22,000 pounds respectively.
17

18 The Tribunal was told that these sums were then lodged as one amount to an
19 account opened for that purpose by Ms. Celia Larkin at Allied Irish Bank,
11:03:22 20 O'Connell Street, Dublin on the same day.
21

22 These funds were intended by Mr. Ahern to be utilised by Ms. Larkin on the
23 refurbishment of a property 44, Beresford Avenue, Drumcondra which was in the
24 process of being purchased by Mr. Michael wall. In the event none of the
11:03:42 25 50,000 pounds given by Mr. Ahern on the 5th of December 1994 was expended by
26 Ms. Larkin at that time.
27

28 Ms. Larkin's AIB bank statements record that on the 19th of January 1995 the
29 50,000 pounds which had been given to her on the 5th of December 1994 was
11:04:06 30 transferred from Ms. Larkin's deposit account to her cash save account. And on

11:04:13 1 the 27th of January 1995 the entire amount was withdrawn from that account in
2 cash.

3
4 Ms. Larkin believes that this sum was returned in full and in cash to Mr. Ahern
11:04:29 5 at that time. Her explanation for the return of the money was that Mr. Ahern
6 preferred to deal in cash. She has no personal recollection of withdrawing the
7 sum of 50,000 pounds cash or of giving it to Mr. Ahern in January 1995.

8
9 She is reliant upon Mr. Ahern's recollection that she did so.

11:04:53 10
11 The 50,000 pounds returned to Mr. Ahern in January 1995 is said to have been
12 the source from which the 19,142.92, that is the unspent funds lodgement, was
13 made by Mr. Ahern on the 1st of December 1995.

14
11:05:13 15 2. The inquiries made of Ms. Larkin indicate that on the 5th of December 1994,
16 the same day as she had received 50,000 pounds from Mr. Ahern, she had also
17 opened a second account at Allied Irish Bank, O'Connell Street, Dublin into
18 which the sum of 28,772.90 pounds was lodged by her.

19
11:05:42 20 Ms. Larkin's explanation for this lodgement was that Mr. Michael Wall had asked
21 her to facilitate him in relation to the expenditure which he intended to incur
22 in relation to the property at 44, Beresford Avenue and that the 28,772.90
23 pounds was lodged by her to an account in her name with the intention that this
24 money would be used by her to pay for structural works and also to pay the
11:06:15 25 stamp duty payable in relation to the purchase of this property.

26
27 Ms. Larkin indicated that she believed that this amount of 28,772.90 pounds
28 represented the Irish punt equivalent of a Sterling sum which had been given to
29 her in cash.

11:06:38 30

11:06:38 1 I will refer to this as the Larkin Wall lodgement.
2
3 The Larkin Wall lodgement of 28,772.90 pounds was withdrawn from that account
4 in stages between the 15th of May 1995 and the 19th of June 1995 as follows:
11:06:59 5
6 1. 8,442 pounds was used to pay the stamp duty on the purchase price of 44,
7 Beresford Avenue on the 15th of May.
8
9 2. A further 20,050.91 was withdrawn on the 19th of June 1995 from which
11:07:25 10 approximately 8,000 pounds was expended on a conservatory, approximately 2,000
11 pounds was spent in brown Thomas, leaving a balance of 9,684.71 pounds.
12
13 3. The unspent balance of the Larkin Wall lodgement amounting to 9,684.71 was
14 then used to open a third deposit account in the name of Ms. Larkin on the 22nd
11:07:59 15 of June 1995.
16
17 The sum of 9,684.71 and a further of sum of 11,743.74 were lodged to open this
18 account.
19
11:08:17 20 The sum of 11,743.74 is said to represent a sum in cash given to her by
21 Mr. Ahern. Whereas Ms. Larkin had dealt separately with the monies provided
22 for by Mr. Ahern and the monies of Mr. Wall when dealing with the first and
23 second accounts, the money in this third account represented monies provided in
24 part by Mr. Wall and in part by Mr. Ahern. This third account, however, was
11:08:50 25 one administered by her solely for Mr. Ahern's benefit.
26
27 A further sum of 9,655 pounds was provided by Mr. Ahern to Ms. Larkin and was
28 lodged to this account on the 24th of July 1995 and all of these monies were
29 expended by her on fitting out 44, Beresford Avenue. The sums of 9,655 pounds
11:09:19 30 and 11,743.74 are said to have been funded from the 50,000 pounds cash returned

11:09:28 1 to Mr. Ahern by Ms. Larkin on the 27th of January 1995.
2
3 Mr. Ahern's expenditure on 44, Beresford Avenue made through the third account
4 in the name of Ms. Larkin amounted to 21,398.74 represented by the cash
11:09:51 5 payments of 11,743.74 and 9,655 pounds lodged on the 22nd of June 1995 and the
6 24th of July 1995.
7
8 Mr. Wall's 9,684.71 pounds balance from Ms. Larkin's second deposit account was
9 also expended through the third account but this was not expended on structural
11:10:24 10 work or on stamp duty.
11
12 Tracing the sources of the funds lodged to the accounts in the name of
13 Ms. Larkin.
14
11:10:32 15 The Tribunal endeavoured to trace the sources of the funds used to make the
16 deposits to the three accounts in the name of Ms. Larkin which had been opened
17 with funds provided by Mr. Ahern and by Mr. Wall.
18
19 1. The initial lodgements to Mr. Ahern's accounts comprising 22,500 pounds on
11:10:55 20 the 30th of December 1993. That is the first goodwill loan lodgement.
21
22 The 30,000 pounds on the 25th of April 1994. That is the first savings
23 lodgement.
24
11:11:09 25 And the 24,838.49 on the 11th of October 1994, the second goodwill loan and the
26 Manchester donation lodgement, provided the funds lodged to Mr. Ahern's special
27 savings account and to his deposit account from which the payment of 50,000
28 pounds to Ms. Larkin was made on the 5th of December 1994. 28,000 pounds was
29 withdrawn from Mr. Ahern's special savings account. The balance of 22,000
11:11:45 30 pounds from his deposit account.

11:11:48 1
2 2. Mr. Michael wall was interviewed by the Tribunal legal team in relation to
3 the Larkin Wall lodgement of 28,772.90 made to Ms. Larkin's account on the 5th
4 of December 1994.

11:12:06 5
6 He indicated that he had given the sum of 30,000 pounds Sterling in cash to
7 Mr. Bertie Ahern at his constituency office on the Saturday prior to the
8 lodgement of these funds by Ms. Larkin on the 5th of December 1994.
9

11:12:24 10 This money was handed over by him to Mr. Ahern in furtherance of their
11 agreement under which Mr. Wall was to buy the property at 44, Beresford Avenue,
12 Drumcondra.
13

14 Mr. Ahern was to reside there as was Mr. Wall on his visits to Dublin. The
11:12:46 15 expenditure in relation to refurbishing and fitting out the property was
16 intended to be shared between them roughly on the basis that Mr. Wall would pay
17 for the structural work, whereas Mr. Ahern would pay for the furnishing and fit
18 out of the premises. Mr. Wall indicated that he brought the 30,000 pounds cash
19 in Sterling from Manchester to Dublin in a briefcase. He said that it
11:13:14 20 represented cash accumulations made by him in the course of his business in the
21 UK.
22

23 Mr. Wall indicated that there were no contemporaneous documents recording the
24 facts that he had that sum available to him at that time. He did not seek or
11:13:32 25 receive a receipt from Mr. Ahern for the 30,000 pounds Sterling. He believes
26 the money was placed in the safe at St. Luke's, Drumcondra by Mr. Ahern
27 immediately after he had given him that sum.
28

29 On the basis of Mr. Wall's account of events, no underlying documentation was
11:13:53 30 created at the time which was capable of confirming the source of the Larkin

11:13:58 1 Wall lodgement of 28,772.90 as having been 30,000 pounds Sterling in cash,
2 provided by Mr. Wall from his UK cash funds.

3
4 3. The funds in the third account opened by Ms. Larkin on the 22nd of June of
11:14:20 5 1995 comprise 9,684.71 pounds which can be established to have been sourced
6 from the account which he had opened with the Larkin wall lodgement on the 5th
7 of December 1994. The additional sum of 11,743.74 is said to have been given
8 to her -- is said to have been cash given to her by Mr. Ahern in June 1995.
9 This 11,743.74 is said by Mr. Ahern to represent part of the 50,000 pounds cash
11:15:02 10 returned to him on the 27th of January 1995 by Ms. Larkin and retained by him
11 in his safe at St. Luke's.

12
13 There is no documentary evidence establishing the source of the 11,743.74
14 lodged to the third deposit account opened by Ms. Larkin.

11:15:25 15
16 This is the Beresford fit out lodgement.

17
18 There is no documentation available establishing the source of the final
19 lodgement of 9,655 pounds to this account on the 24th of July 1995, also said
11:15:44 20 to be part of the 50,000 pounds given to Ms. Larkin on the 5th of December 1994
21 and returned by her on the 27th of January 1995.

22
23 Tracing the source of the lodgements to Mr. Ahern's accounts.

24
11:16:02 25 The Tribunal sought to obtain confirmation of payments and sight of underlying
26 documents from the contributors of the first and second goodwill loans of
27 22,500 pounds and 16,500 pounds which were made to Mr. Ahern in December 1993
28 and October 1994 respectively.

29
11:16:28 30 All surviving donors were contacted and details were sought from them of the

11:16:35 1 sources of their individual contribution to the funds which were paid to
2 Mr. Ahern. All but one of the surviving donors confirmed to the Tribunal that
3 they had made their contribution on the basis of it being a goodwill loan. In
4 almost all instances the monies were said to have been paid in cash and no
11:16:59 5 contemporaneously prepared documents were available recording either the fact
6 of such payments, the purpose for which the payments were made or the source
7 from which such cash had been obtained by the donors.

8
9 No written acknowledgments or receipts were given to the donors at the time by
11:17:20 10 those who had organised the collection of these funds, nor was any written
11 acknowledgement of such loans given by Mr. Ahern at the time to the donors.

12
13 1. In relation to the first goodwill loan lodgement of 22,500 pounds,
14 contemporaneous documentation exists only in respect of 7,500 pounds of this
11:17:47 15 total sum.

16
17 This documentation comprises a cheque made payable to cash drawn upon the
18 account of a company called Willdover Limited in the sum of 2,500 pounds and a
19 bank draft in the amount of 5,000 pounds drawn upon the account of the bank of
11:18:10 20 Ireland at Montrose, Dublin made payable to Des Richardson.

21
22 Neither document makes reference to the payment being for the benefit of
23 Mr. Ahern.

24
11:18:22 25 The bank draft was endorsed by Mr. Richardson prior to being lodged to the
26 account of Mr. Ahern as part of the first goodwill loan lodgement.
27 Mr. Richardson informed the Tribunal that he and the late Mr. Gerry Brennan
28 organised the first goodwill loan and that the Willdover cheque for 2,500
29 pounds cash represented Mr. Richardson's individual contribution to the loan.

11:18:55 30

11:18:55 1 He said that the bank draft in the sum of 5,000 pounds, endorsed by him,
2 represented the contribution to the loan made by Mr. Pdraig O'Connor. The
3 Willdover Limited bank account was maintained at Bank of Ireland, Montrose
4 branch. The cheque for 2,500 pounds and the bank draft for 5,000 pounds were
11:19:18 5 both dated the same date, the 22nd of December 1993.

6
7 The bank draft was probably purchased by Mr. Richardson, according to him, but
8 the manner in which the 5,000 pounds payment was made by the donor and utilised
9 to acquire the bank draft is not clear to him.

11:19:39 10
11 Willdover Limited is a company which issued invoices to Fianna Fail for
12 fundraising services which were provided to the party by Mr. Richardson.

13
14 Mr. Richardson is neither a shareholder nor a director of Willdover Limited.
11:19:58 15 The money lodged to the Willdover bank account originated from the account of
16 Fianna Fail and was paid by cheque to Willdover Limited to meet invoices raised
17 by Willdover Limited.

18
19 Whereas Mr. Richardson has indicated that the 5,000 pounds draft represented a
11:20:19 20 personal contribution made by Mr. Pdraig O'Connor to the goodwill loan to be
21 made to Mr. Ahern, Mr. O'Connor has informed the Tribunal that he was never
22 asked by Mr. Richardson to contribute 5,000 pounds towards a personal loan
23 which was intended to be made to Mr. Ahern, whether in relation to meeting his
24 legal costs or otherwise. Nor did he do so.

11:20:54 25
26 Mr. O'Connor indicated to the Tribunal that he was asked in his capacity as
27 Managing Director of NCB Stockbrokers Limited to make a contribution to
28 Mr. Ahern's constituency expenses by Mr. Richardson, who he understood to be a
29 Fianna Fail fundraiser. He agreed to do so on behalf of NCB group. He
11:21:12 30 understood from Mr. Richardson that similar requests were being made of other

11:21:16 1 like institutions.
2
3 In order to maintain the confidentiality of this payment it was decided that
4 the payment would not be made directly to Mr. Ahern but that it would be paid
11:21:29 5 through Mr. Richardson.
6
7 Discovery of the NCB accounts and bank documentation made on foot of Tribunal
8 Orders established that a payment was made by NCB Stockbrokers Limited by
9 cheque payable to a company called Euro Workforce Limited in the amount of
11:21:52 10 6,050 pounds. This payment was referable to an invoice generated by that firm
11 for the sum of 5,000 pounds, together with VAT in the sum of 1,050 pounds.
12
13 The invoice was ostensibly in respect of remuneration to Euro Workforce Limited
14 for a health and safety survey carried out upon the premises of NCB
11:22:21 15 Stockbrokers Limited at Lower Mount Street, Dublin, by Euro Workforce Limited.
16
17 NCB group confirm that no such survey was ever in fact carried out upon its
18 premises. Mr. O'Connor believes that the payment of 6,050 pounds, made on foot
19 of the invoice raised by Euro Workforce Limited was the payment made by NCB in
11:22:48 20 response to Mr. Richardson's request for a contribution towards Mr. Ahern's
21 constituency expenses.
22
23 Mr. Richardson denies having sought or received either the sum of 5,000 pounds
24 or 6,050 pounds from NCB as a contribution towards constituency expenses for
11:23:12 25 Mr. Ahern. He believes that the 5,000 pounds was received by him as a personal
26 contribution made by Mr. O'Connor towards the loan to be made to Mr. Ahern by
27 his friends.
28
29 Mr. Richardson says that Mr. Ahern was unaware that the 22,500 pounds was being
11:23:35 30 raised for him by Mr. Richardson and by the late Mr. Gerard Brennan, who was at

11:23:41 1 the time Mr. Ahern's solicitor. Mr. Brennan himself was not a contributor to
2 this fund. And both men were personal friends of Mr. Ahern.

3
4 Mr. O'Connor states that the question of the 5,000 pounds payment in 1993 was
11:23:59 5 the subject of two later meetings which had been arranged by Mr. Richardson.
6 These meetings took place in the summer of 2005 and in the summer of 2006.

7
8 At each meeting he informed Mr. Richardson, in response to queries raised by
9 him, that the payment of 5,000 pounds was made by NCB and not by him
11:24:23 10 personally.

11
12 Mr. Richardson says that he subsequently informed Mr. Ahern, on a date unknown
13 in the autumn of 2006, that Mr. O'Connor was maintaining that the payment of
14 5,000 pounds was made by NCB and not by him personally.

11:24:43 15
16 Documentation referable to the loan of 22,500 pounds made to Mr. Ahern in
17 December 1993 includes the cheque for 2,500 pounds drawn upon the account of
18 Willdover Limited payable to cash. The draft for 5,000 Irish pounds drawn on
19 the Bank of Ireland, Montrose payable to Des Richardson and the lodgement
11:25:11 20 docket with AIB Bank, O'Connell Street evidencing the lodgement of 22,500
21 pounds including 15,000 pounds in cash to the special savings account in the
22 name of Mr. Ahern, which was opened on the 30th of December 1993.

23
24 No contemporaneously generated documentation exists in relation to the 22,500
11:25:40 25 pounds representing the first goodwill loan lodgement which makes reference to
26 the existence of a loan to Mr. Bertie Ahern.

27
28 The Tribunal is reliant upon the recollection of the surviving organiser of the
29 loan, Mr. Richardson, and the surviving donors for details of the loan.

11:25:58 30

11:25:58 1 2. The 30,000 pounds lodged to Mr. Ahern's account on the 24th of April 1994,
2 the first savings lodgement, is said to be the first lodgement made to a bank
3 account from the 50,000 pounds cash saved by Mr. Ahern between 1987 and 1993.
4 A period during which no personal accounting records were kept by Mr. Ahern.

11:26:32 5
6 The only documentation generated at the time of the lodgement was the lodgement
7 docket completed by the AIB bank official who collected the sum of 30,000
8 pounds in cash from Mr. Ahern, by appointment, at his office at St. Luke's.
9

11:26:46 10 This docket records the fact of the lodgement but does not assist in tracing
11 the source of the funds lodged. The Tribunal is reliant upon the information
12 provided by Mr. Ahern as to the source of this lodgement.
13

14 3. The 20,000 pounds lodged on the 8th of August 1994, the second savings
11:27:10 15 lodgement, is said to have had the same origins as the 30,000 pounds, namely,
16 the 50,000 pounds accumulated cash savings made between 1987 and 1993 in
17 respect of which no documentary records exist except the lodgement docket
18 completed by the AIB bank official who received this cash.
19

11:27:34 20 4. The sum of 16,500 pounds lodged in October 1994 as part of the second
21 goodwill loan and Manchester donation lodgement of 24,838.49 pounds is said by
22 Mr. Ahern and the surviving donors to be the total of four individual
23 contributions towards the second goodwill loan which was made in cash.
24

11:28:04 25 None of the donors has any contemporaneous documentation evidencing the fact
26 that such payments were made by them or that such payments were made as a loan.
27 They have no documents indicating the sources from which the cash given by them
28 was raised by them.
29

11:28:27 30 The paper trail for this loan commences with the documentation obtained from

11:28:32 1 Allied Irish Bank, O'Connell Street, Dublin indicating that a lodgement in the
2 sum of 24,838.49 was made on the 11th of October 1994 to a deposit account in
3 the name of Mr. Ahern.
4

11:28:50 5 The lodgement docket bears the stamp of the foreign exchange desk of Allied
6 Irish Bank, O'Connell Street but there is nothing on the face of this document
7 to indicate that the lodgement comprised an Irish pound amount of 16,500 pounds
8 in cash together with the balance in Sterling or any foreign currency. It
9 shows one amount only, 24,838.49 pounds.

11:29:20 10
11 Mr. Ahern has informed the Tribunal that there was a foreign exchange element
12 to this transaction. And that it was represented by the exchange of
13 approximately 8,000 pounds Sterling, the proceeds of which when added to the
14 16,500 pounds cash make the total lodgement of 24,838.49 pounds.

11:29:50 15
16 There is no contemporaneous documentation available to the Tribunal from
17 Mr. Ahern or any other person evidencing the payment to Mr. Ahern or the
18 receipt by Mr. Ahern of the sum of 16,500 pounds in cash in October 1994.
19

11:30:09 20 In relation to the remaining balance of approximately 8,000 pounds Sterling,
21 Mr. Ahern indicates that the presentation of the Sterling element of the
22 lodgement to him at the end of the Manchester dinner was not accompanied by any
23 documentation from the donors. No written acknowledgement of the receipt of
24 these monies was subsequently given by Mr. Ahern to those who had presented the
11:30:39 25 8,000 pounds Sterling cash to him.
26

27 There is no contemporaneous documentation available to the Tribunal evidencing
28 the payment of a sum of approximately 8,000 pounds Sterling or any Sterling sum
29 to Mr. Ahern or that such sum formed part of the second goodwill loan and
11:31:03 30 Manchester donation lodgement made on the 11th of October 1994.

11:31:09 1
2 5. The 19,142.92 pounds lodgement to Mr. Ahern's account on the 1st of
3 December 1995, that is the unspent funds lodgement, is said by Mr. Ahern to
4 have been sourced from the 50,000 pounds given by him to Ms. Larkin a year
11:31:32 5 earlier in December 1994 and returned by her in cash to Mr. Ahern on the 27th
6 of January 1995.

7
8 This portion of that money is said to have been kept in Mr. Ahern's safe at St.
9 Luke's from that date until its relodgement to his account ten months later on
11:31:53 10 the 1st of December 1995.

11
12 The sources of this money are said to be the accounts of Mr. Ahern into which
13 the first and second goodwill loans, together with the first savings lodgement
14 and the Manchester dinner funds had been lodged between December 1993 and
11:32:12 15 October 1994.

16
17 50,000 pounds was withdrawn and paid to Ms. Larkin on the 5th of December 1994.
18 No documentation exists which identifies the sum of 19,142.92 pounds as having
19 its origin in this withdrawal of funds. The Tribunal is reliant upon the
11:32:35 20 information provided by Mr. Ahern as to the source of this lodgement.

21
22 Foreign exchange transactions and lodgements to the accounts of Mr. Ahern and
23 Ms. Larkin.

24
11:32:48 25 The relatively high proportion of transactions appearing to involve foreign
26 exchange desk of Allied Irish Bank, O'Connell Street caused the Tribunal to
27 examine in detail the following transactions conducted through the accounts of
28 Mr. Ahern and the accounts in the name of Ms. Larkin, all of which bore the
29 stamp of the foreign exchange desk at 37/38, Allied Irish Bank, O'Connell
11:33:18 30 Street.

11:33:18 1
2 1. The lodgement of 24,838.49 pounds made to a deposit account of Mr. Ahern on
3 the 11th of October 1994. That is the second goodwill loan and Manchester
4 donation lodgement.

11:33:35 5
6 2. The lodgement of 28,772.90 pounds made to the deposit account of Ms. Celia
7 Larkin on the 5th of December 1994. That is the Larkin Wall lodgement.
8
9 3. The lodgement of 11,743.74 pounds made to the account of Ms. Larkin on the
11:33:57 10 15th of June 1994 -- sorry '95. The Berraway fit out lodgement.
11
12 4. The lodgement of 19,142.92 pounds made to the deposit account of Mr. Ahern
13 on the 1st of December 1995, the unspent funds lodgement.
14

11:34:18 15 As part of this exercise, the Tribunal requested Allied Irish Bank to provide
16 the Tribunal with the rates of exchange which applied to foreign exchange
17 transactions conducted through Allied Irish Banks, O'Connell Street, foreign
18 exchange desk on each of the dates specified above. Namely, the 11th of
19 October 1994. The 5th of December 1994. The 15th of June 1995 and the 1st of
11:34:49 20 December 1995.
21

22 The information provided by Allied Irish Bank showed the rates of exchange
23 varied according to the categories of foreign exchange transaction involved.
24 There was the buy rate and the sell rate. A distinction was drawn between the
11:35:09 25 foreign note rate and the commercial rate. And in each of these two categories
26 there were subcategories for dealing with transactions in which the rate varied
27 according to the value of the transaction being conducted.
28
29 The buy rates in relation to Sterling transactions were for transactions up to
11:35:30 30 a value of 500 Irish punts, for transactions up to a value of 2,500 Irish punts

11:35:39 1 and for transactions up to a value of 10,000 Irish punts.

2

3 For example, where a customer wanted to change a Sterling amount into Irish

4 punts the rate of exchange varied according to the value of the Irish punt

11:35:55 5 equivalent of the Sterling amount. So if a customer wished to change 7,500

6 pounds Sterling into Irish punts this meant that the bank was buying the

7 Sterling amount from the customer and the appropriate rate of exchange was that

8 applicable to a transaction having a value of between 2,500 and 10,000 Irish

9 punts.

11:36:22 10

11 The Tribunal understands that in relation to transactions of a value over

12 10,000 pounds the bank procedure was that a rate of exchange would be sought by

13 the branch from the Treasury Department of AIB.

14

11:36:40 15 Foreign exchange transactions also carried commission charges for the customer.

16 These charges amounted to 1% commission with a minimum of one pound per

17 transaction and a maximum charge of five pounds per transaction.

18

19 The bank procedures provided that this commission could be waived at the

11:37:03 20 discretion of the branch.

21

22 The application of the Sterling rates of exchange applicable at AIB branches on

23 the respective dates to these four lodgements provides the following

24 information:

11:37:16 25

26 1. The amount of the second goodwill loan and Manchester donation lodgement of

27 24,838.49 pounds made to the account of Mr. Ahern on the 11th of October 1994,

28 equates precisely to the amount in Irish punts which a customer who had

29 exchanged exactly 25,000 pounds Sterling would have received if the teller had

11:37:45 30 applied the rate of exchange appropriate to a Sterling note transaction to a

11:37:54 1 value up to 2,500 punds and had charged the five pounds maximum commission
2 chargeable on the transaction.
3
4 2. The amount of the Larkin Wall lodgement of 28,772.90 pounds made to the
11:38:11 5 account of Ms. Larkin on the 5th of December 1994 does not equate to the Irish
6 punt amount which a customer who had exchanged exactly 30,000 pounds Sterling
7 would have received in return.
8
9 3. The Beresford fit out lodgement of 11,743.74 pounds made to the account of
11:38:36 10 Ms. Larkin on the 15th of June 1995 comprised two components; 9,743.74 pounds
11 and 2,000 pounds.
12
13 The 9,743.74 figure equates precisely to the sum in Irish punts which a
14 customer would have received in exchange for 10,000 pounds Sterling in cash if
11:39:10 15 the teller had applied the appropriate rate of exchange for Sterling notes on
16 that date and had not charged the five pounds commission.
17
18 4. The unspent -- sorry, the amount of the unspent funds lodgement of
19 19,142.92 pounds to the account of Mr. Ahern on the 1st of December 1995
11:39:36 20 equates precisely to the amount in Irish punts which a customer would have
21 received in exchange for 20,000 pounds Sterling if the teller had applied the
22 rate of exchange appropriate to a transaction having a value of up to 10,000
23 punts and had charged the five pounds commission on the exchange.
24
11:39:57 25 Revisiting these four lodgements in the light of this information indicates the
26 following:
27
28 1. The amount of the second goodwill loan and Manchester donation lodgement of
29 24,838.49 made on the 11th of October 1994 is the amount in Irish punts which a
11:40:23 30 customer who had exchanged exactly 25,000 pounds in Sterling notes would have

11:40:29 1 received in exchange on that day.
2
3 If a transaction involving an exchange of 25,000 Sterling on the 11th of
4 October 1994 had resulted in the customer receiving 24,838.49 this would
11:40:51 5 necessarily have involved the teller applying the rate of exchange applicable
6 to transactions having a value of up to 2,500 punts to a transaction having a
7 value of 24,838.49 punts. This would appear to be an incorrect application of
8 the then current rates.
9
11:41:19 10 Examination of the bank documentation relating to the other three lodgements
11 which involved foreign exchange indicates that on another occasion, that is the
12 unspent funds lodgement of 19,142.92 on the 1st of December 1995 the rate of
13 exchange applicable to a transaction of a value of up to 10,000 Irish pounds
14 was applied to a transaction involving a sum in excess of that amount.
11:41:52 15
16 However, in his initial correspondence with the Tribunal this lodgement is said
17 by Mr. Ahern to represent the combination of the second goodwill loan of 16,500
18 pounds in Irish cash together with the proceeds of approximately 8,000 pounds
19 Sterling cash received in Manchester by him.
11:42:15 20
21 On Mr. Ahern's account of events the Sterling cash element of the second
22 goodwill loan and Manchester donation lodgement of 24,838.49 pounds was
23 represented by the Sterling amount which when translated into Irish currency
24 was the difference between 16,500 Irish pounds and 24,838.49 Irish pounds.
11:42:49 25
26 The difference between 16,500 pounds and 24,838.49 pounds is 8,338.49.
27
28 The amount of Sterling actually required to be exchanged in order to produce
29 the 8,338.49 punts needed to be added to 16,500 to make up the lodgement of
11:43:24 30 24,838.49 punts was 8,333.49 Sterling pounds or 8,328.48 Sterling pounds,

11:43:44 1 depending on whether the discretionary commission of five pounds was applied to
2 the transaction.

3
4 At interview Mr. Ahern said that the Manchester dinner money lodged by him in
11:43:58 5 Sterling at AIB on O'Connell Street was represented by large Sterling notes.
6 No coins were tendered by him as part of this transaction.

7
8 From consideration of the AIB branch exchange rates for Sterling applicable
9 that day, it would appear that a transaction involving the purchase by the bank
11:44:27 10 of Sterling cash could not be carried out so as to produce the Irish punt
11 amount of 8,338.49 pints in Irish currency without the bank accepting a
12 fraction of one pound Sterling in cash.

13
14 The bank did not accept fractions of one pound Sterling in conducting Sterling
11:44:48 15 transactions. It appears, therefore, that the lodgement of 24,838.49 pounds
16 could not have been made up of 16,500 pounds Irish and the Sterling equivalent
17 of 8,338.45 Irish.

18
19 Mr. Ahern also stated that the sum involved was 8,000 pounds Sterling exactly.

11:45:22 20
21 A customer exchanging exactly 8,000 pounds Sterling on the 11th of October 1994
22 at the AIB branch rates of exchange would have received 8,004.61 if the
23 discretionary commission of five pounds was charged and 8,009.61 if the
24 commission was not charged.

11:45:49 25
26 The sum of 16,500 pounds and either of those figures, that is the 8,004.61 or
27 8,009.61, depending on whether or not the five pounds commission was charged,
28 makes a total of either 24,509.61 pints or 24,504.61 pints.

11:46:16 30 These amounts are 328.88 pints and 333.88 pints respectively short of the sum

11:46:29 1 actually lodged, namely, 24,838.49 pounds.

2

3 It appears, therefore, that a lodgement of 16,500 Irish pounds and the proceeds

4 of a 8,000 pounds Sterling conversion to Irish currency could not result in the

11:46:53 5 sum of 24,838.49 being available for lodgement that day.

6

7 The bank records of foreign exchange transactions involving the exchange of

8 Sterling notes at AIB, 37/38 O'Connell Street branch on the 11th October 1994

9 show that Sterling notes to a value in Irish punts of 27,491.95 punts were

11:47:32 10 exchanged for Irish currency in the branch that day.

11

12 This figure records the total value in Irish punts of all Sterling note

13 purchases made by the branch that day but does not show the amount of the

14 individual transactions which make up this total.

11:47:52 15

16 These figures allow for a single transaction involving the exchange of 25,000

17 pounds Sterling to have taken place at the O'Connell Street branch of AIB on

18 the 11th of October 1994 and for other Sterling exchanges to a value of

19 2,653.46 punts to have taken place also.

11:48:16 20

21 2. The Larkin Wall lodgement of 28,772.90 pounds made to the account of

22 Ms. Larkin on the 5th of December 1994 is said by Mr. Ahern to represent the

23 lodgement by Ms. Larkin of the proceeds of the 30,000 pounds Sterling in cash

24 which had been given to him by Mr. Wall at his office at St. Luke's days

11:48:47 25 earlier and thereafter given by him to Ms. Larkin to be lodged to the account

26 opened by her in Allied Irish Bank, O'Connell Street.

27

28 The sum of 28,772.90 pounds does not represent the Irish punt amount which a

29 customer who had exchanged 30,000 pounds cash would have received on the 5th of

11:49:14 30 December 1994 using the AIB branch rates of exchange for Sterling applicable on

11:49:21 1 that date.

2

3

The bank documents available to the Tribunal indicate that on occasion the branch applied the exchange rates applicable to transactions involving sums up to 10,000 Irish punts to transactions involving sums greater than 10,000 Irish punts.

11:49:33 5

6

7

8

If the branch exchange rates appropriate to a transaction having a value of up to 10,000 Irish punts were applied to a transaction in which 30,000 pounds Sterling was presented for exchange on the 5th of December 1994, this would have resulted in the customer receiving an Irish punt amount of 30,159.85 or 30,154.85, depending on whether the teller applied the discretionary five pounds commission or not.

11:49:53 10

11

12

13

14

11:50:20 15

The up to 10,000 pounds rate of exchange for Sterling on that day was 0.9947.

16

17

In order for a sum of 28,772.90 to result from a foreign exchange transaction involving 30,000 Sterling cash, a division by a figure of 1.042466515 or 1.042647769 would have to be applied to the transaction.

18

19

11:51:08 20

21

If the teller applied the discretionary five pounds commission, the division figure would be 1.0446615. If the teller waived the five pounds commission the division figure would be 1.04264779.

22

23

24

11:51:30 25

Foreign exchange transactions, however, are calculated on the basis of an exchange rate taken to the first four decimal points only and not to the eight decimal points necessary to achieve a figure of 28,772.90 pounds from a division of the sum of 30,000 pounds Sterling.

26

27

28

29

11:51:56 30

The application of exchange rates limited to the first four decimal points of

11:52:05 1 these divisions does not allow for 30,000 pounds Sterling to convert to the sum
2 of 28,772.90 punts.

3
4 If the first four decimal point figures, that is 1.0424, or 1.0426 were used to
11:52:31 5 divide the sum of 30,000 pounds Sterling, the resultant figures would not be
6 28,772.90 but rather the sum of 28,779.74 and 28,774.22 respectively.

7
8 This indicates that the actual lodgement of 28,772.90 does not represent an
9 exchange of a Sterling sum of 30,000 pounds on that date.

11:53:14 10
11 The consideration of the rates of exchange applicable at AIB Bank, O'Connell
12 Street on the 5th of December 1994 indicates that a rate of exchange of 1.0424
13 would be considerably worse than the lowest rate of exchange for Sterling
14 applicable that day.

11:53:36 15
16 A customer presenting exactly 45,000 US Dollars for exchange into Irish
17 currency on the 5th of December 1994 would have received exactly 28,772.90
18 pounds in exchange, applying the AIB rate appropriate to a US dollar
19 transaction to a value of up to 2,500 Irish punts with a deduction of the
11:54:09 20 discretionary five pounds commission.

21
22 Mr. Ahern states that he was not involved in any substantial US dollar
23 transaction.

24
11:54:20 25 The Tribunal has been provided with the available records of all foreign
26 exchange transactions conducted within AIB Bank at 37/38, O'Connell Street,
27 Dublin on the 5th of December 1994. These records are not transactions
28 specific. In other words, there is no specific record of each individual
29 foreign exchange transaction conducted in the branch that day.

11:54:52 30

11:54:52 1 What is recorded is the total value expressed in Irish punts of all foreign
2 bank notes exchanged by all customers that day. That is the foreign currency
3 bought by the bank and the total value of all foreign currency given out to all
4 customers that day, that is the foreign currency sold by the bank.

11:55:18 5
6 All these records are expressed in Irish punts, although the individual
7 transactions involved are a range of foreign currencies. A distinction is made
8 in the records, however, between those transactions involving Sterling and
9 those foreign exchange transactions involving currencies other than Sterling.

11:55:43 10
11 The records for the 5th of December 1994 show that the total value in Irish
12 punts of the Sterling notes exchanged for Irish currency on that day amounted
13 to 1,921.55 punts.
14

11:56:07 15 The bank records do not show any exchange of 30,000 pounds Sterling or of any
16 sum greater than 1,921.55 having been conducted at AIB O'Connell Street on that
17 day.
18

19 These records indicate that on the 5th of December 1994 no transaction
11:56:32 20 involving Sterling bank notes having a value in Irish punts greater than
21 1,921.55 punts took place.
22

23 The bank records also show that the bank exchange foreign bank notes other than
24 Sterling notes to an Irish punt value of 28,969.34. This total sum may have
11:57:04 25 been a combination of a number of transactions involving different foreign
26 currencies but excluding Sterling.
27

28 These records indicate that a single foreign exchange transaction was or a
29 number of foreign exchange transactions were conducted involving the bank
11:57:27 30 purchasing foreign bank notes other than Sterling to a value in Irish punts of

11:57:41 1 28,969.34.
2
3 These records allow for a transaction involving the exchange of 45,000 US
4 Dollars to have been conducted in Allied Irish Bank, O'Connell Street on the
11:57:51 5 5th of December 1994 and for other non-Sterling exchanges to a value of 196.44
6 punts to have taken place.
7
8 At this time the Tribunal does not have details from Allied Irish Bank of the
9 foreign currencies other than Sterling which make up the total of 28,969.34
11:58:17 10 pounds representing currency other than Sterling purchased by the bank that
11 day.
12
13 3. The Beresford fit out lodgement of 11,743.74 made to the account of
14 Ms. Larkin on the 15th of June 1995 is said by her to be cash given to her by
11:58:44 15 Mr. Ahern to refit 44, Beresford Avenue.
16
17 In giving her account of this event Ms. Larkin did not indicate that any part
18 of this sum of 11,743.74 was given to her in Sterling cash.
19
11:59:03 20 The bank lodgement docket showing the lodgement of 11,743.74 to her account
21 showed that it comprised two separate components; 9,743.74 pounds and 2,000
22 pounds.
23
24 The 9,743.74 figure equates precisely to the sum in Irish punts which a
11:59:30 25 customer would have received in exchange for 10,000 pounds Sterling cash,
26 exchanged at the foreign exchange desk of Allied Irish Bank, O'Connell Street
27 on the 15th of June 1995 if the teller had applied the appropriate rate of
28 exchange for Sterling notes on that day and had not charged the five pounds
29 discretionary commission.
11:59:52 30

11:59:52 1 The unspent --
2
3 4. The unspent funds lodgement of 19,142.92 made to the account of Mr. Ahern
4 on the 1st of December 1995 is said by him to represent the unspent balance of
12:00:11 5 the 50,000 pounds which had been initially given to Ms. Larkin to meet
6 Mr. Ahern's anticipated expenditure on 44, Beresford Avenue.
7
8 He said this 50,000 pounds had been returned to him by Ms. Larkin in January
9 1995 in cash and was therefore retained in his safe at St. Luke's.
12:00:32 10
11 The sum of 19,142.92 equates precisely to the amount in Irish punts which a
12 customer would have received in exchange for 20,000 pounds Sterling exchanged
13 at AIB O'Connell Street on the 1st of December 1995 if the teller had applied
14 the rate of exchange appropriate to a transaction having a value of up to
12:00:58 15 10,000 punts and had charged the five pounds commission on the exchange.
16
17 In seeking information from Mr. Ahern in relation to this transaction and
18 others, correspondence passed between the Tribunal and Mr. Ahern's advisors
19 between October 2005 and March 2007. In this correspondence no indication was
12:01:22 20 given to the Tribunal that this 19,142.92 lodgement represented the net
21 proceeds of a 20,000 pounds cash foreign exchange transaction conducted in
22 Allied Irish Banks on the 1st of December 1995.
23
24 The correspondence indicated that the 50,000 punts in cash which had been
12:01:50 25 returned to Mr. Ahern in January 1995 was kept in the safe in St. Luke's until
26 a portion of it was used to fund the lodgements to Ms. Larkin's deposit
27 accounts from which the costs of refurbishing 44, Beresford Avenue were met and
28 that the 19,142.92 punts was the unspent balance of that 50,000 punts.
29
12:02:18 30 At his interview with Members of the Tribunal legal team, which took place on

12:02:24 1 the 5th of April 2007, Mr. Ahern indicated, for the first time, that the 50,000
2 punts in cash which had been returned to him by Ms. Larkin in January 1995 was
3 used by him in part to purchase a sum of 30,000 pounds Sterling in cash from
4 AIB Bank, O'Connell Street, Dublin in either January, February or March 1995.

12:02:54 5
6 He said that this 30,000 pounds Sterling was then kept in his safe at St.
7 Luke's until 10,000 pounds Sterling in cash from that sum was given to
8 Ms. Larkin on the 15th of June 1995. This Sterling sum was converted to the
9 9,743.74 punts which was lodged with a further 2,000 punts to make the
12:03:28 10 11,743.74 punts Beresford fit out lodgement to the third deposit in the name of
11 Ms. Larkin.

12
13 Mr. Ahern said that the balance of the 30,000 pounds Sterling amounting to
14 20,000 pounds Sterling in cash remained in his safe for a further five and a
12:03:48 15 half months and was then lodged by him to his account in December 1995 as Irish
16 punts following a foreign exchange transaction. This is said to represent the
17 unspent funds lodgement of 19,142.92 punts made on the 1st of December 1995.

18
19 It is acknowledged by Mr. Ahern that he was involved in a number of
12:04:17 20 transactions, under inquiry, in which foreign exchange amounts were involved.
21 Only one transaction involved the purchase of Sterling, this was the purchase
22 by him of 30,000 pounds Sterling. His explanation for this was that it had
23 been his initial intention to repay the sum of 30,000 pounds Sterling to
24 Mr. Wall so as to allow Mr. Wall to carry out the necessary works on 44,
12:04:45 25 Beresford Avenue but he subsequently decided not to do so.

26
27 Mr. Ahern does not have any documents recording the purchase by him of 30,000
28 pounds Sterling in 1995.

29
12:05:00 30 The Tribunal's inquiries of Allied Irish Bank have not yet produced any

12:05:06 1 documentation in relation to such transaction. Inquiries of the bank are
2 continuing.

3
4 Mr. Ahern's acknowledged involvement in transactions involving the receipt of
12:05:17 5 Sterling or the lodgement of the proceeds of Sterling include:

6
7 1. The acceptance by him of 8,000 pounds Sterling in cash in Manchester at the
8 end of September or the beginning of October 1994. And the lodgement of these
9 funds together with 16,500 pounds in Irish currency by him on the 11th of
12:05:40 10 October 1994, being the second goodwill loan and Manchester donation lodgement
11 of 24,838.49 pounds.

12
13 2. The receipt of 30,000 pounds Sterling from Mr. Michael Wall at his office
14 at St. Luke's on the 3rd of December 1994 and the lodgement of these funds as
12:06:06 15 the Larkin Wall lodgement by Ms. Larkin on the 5th of December 1994.

16
17 3. The provision of 10,000 pounds Sterling cash by him to Ms. Larkin which was
18 lodged by her as part of the 11,743.74 punts Beresford fit out lodgement made
19 on the 15th of June 1995

12:06:29 20
21 4. The lodgement of 20,000 pounds Sterling cash by him to his account at AIB,
22 O'Connell Street on the 1st of December 1995 as the unspent funds lodgement.

23
24 5. The receipt of the purchase of 30,000 pounds Sterling by him.

12:06:49 25
26 As has already been indicated, the application of the then current AIB branch
27 rates applicable to Sterling cash transactions does not allow for the
28 translation of 30,000 pounds Sterling into 28,772.90 punts nor does the
29 conversion of either 8,000 pounds Sterling or any other round sum Sterling
12:07:17 30 figure allow for the sum of 8,338.49 to be realised upon the exchange of

12:07:26 1 Sterling cash on the 11th of October 1994 using AIB's branch rates of exchange.
2
3 As part of this Module, the Tribunal will inquire into whether the second
4 goodwill loan and Manchester donation lodgement of 24,838.49 punts was composed
12:07:50 5 of a loan of 16,500 punts from friends and a balance in Sterling from a
6 Manchester dinner presentation.
7
8 In examining the Larkin Wall lodgement of 28,772.90 punts made to Ms. Larkin's
9 account, the Tribunal will seek to establish the source and nature of the funds
12:08:15 10 used to make this lodgement and whether such lodgement was the result of a
11 foreign exchange transaction involving funds which had been provided by
12 Mr. Wall.
13
14 The Tribunal will inquire into the sources of the Sterling sums of 10,000
12:08:32 15 pounds Sterling and 20,000 pounds Sterling used to make the Beresford fit out
16 lodgement to the account in Ms. Larkin's name and the unspent funds lodgement
17 in the account of Mr. Ahern.
18
19 CHAIRMAN: Should we take a break possibly? Break for it ten minutes?
12:08:54 20
21 MR. O'NEILL: Very good.
22
23 CHAIRMAN: And then I expect the remaining part of the opening statement will
24 take possibly about another 50 minutes or an hour.
12:09:02 25
26 MR. O'NEILL: Yes. Thereabouts.
27
28 CHAIRMAN: All right.
29
12:09:04 30

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK

AND RESUMED AS FOLLOWS:

12:09:04 1
2
3
4 MR. O'NEILL: The provision of information by Allied Irish Bank relating to
12:43:08 5 the lodgements queried by the Tribunal.

6
7 In addition to making inquiries of Mr. Ahern in relation to the five lodgements
8 made to his account the Tribunal also sought information from Allied Irish
9 Bank, the institution where each of these transactions was conducted.

12:43:09 10
11 In response to the Tribunal's specific inquiries made on the 16th of November
12 2005 seeking details of the composition of the lodgements made to Mr. Ahern's
13 accounts, including information as to the identity of the person who made the
14 lodgements and copies of the underlying documents in relation to the accounts,
12:43:09 15 the bank responded by informing the Tribunal that to the best of their
16 knowledge based upon the information available to them, each of the five
17 transactions related to cash.

18
19 They stated that the lodgement docket did not identify the person making the
12:43:10 20 lodgement and that no further documentation other than that which had already
21 been furnished to the Tribunal was held by the bank.

22
23 This response seems to have been premised upon the basis that these
24 transactions were cash lodgements made in Irish currency.

12:43:10 25
26 If the information provided by the bank in this response was accurate, the
27 paper trail which was being followed by the Tribunal at that time ended with
28 the documents which had already been produced by the bank to the Tribunal.

29
12:43:11 30 The details contained in those documents had not allowed for the underlying

12:43:12 1 source of funds used to make these lodgements to be confirmed.

2

3 However, two of these five lodgements are now known to have involved foreign
4 exchange transactions.

12:43:12 5

6 It is acknowledged by Mr. Ahern that the second goodwill loan and Manchester
7 donation lodgement of 24,838.49 and the unspent funds lodgement of 19,142.92
8 pounds both contained the proceeds of foreign exchange transactions involving
9 Sterling amounts which were conducted contemporaneously with the lodgement of
10 these Irish punt sums to these accounts.

12:43:13 10

11

12 He says that part of the 24,838.49 pounds was Sterling and that all of the
13 19,142.92 pounds was Sterling.

14

12:43:13 15

16

17 No foreign exchange connection was identified by the bank in its considered
18 response to the Tribunal of the 30th of November 2005 and no documents
19 generated in the foreign exchange transactions were produced to the Tribunal.

18

19 When the Tribunal queried the source of the 11,743.74 lodged to the third
12:43:14 20 deposit account in the name of Ms. Larkin it received a response in similar
21 terms, although it now transpires that this also was the result of a foreign
22 exchange transaction which was not adverted to.

23

24 The first reference to there being a foreign exchange element in any of the
12:43:15 25 queried lodgements made to Mr. Ahern's account was contained in a report
26 prepared for Mr. Ahern by Mr. Des Peelo and provided to the Tribunal on the
27 20th of April 2006.

28

29 In that report, the only reference to any Sterling element in these lodgements
12:43:16 30 was confined to stating that the lodgement of 24,838.49 included the Sterling

12:43:16 1 amount of approximately 8,000 pounds Sterling which was said to represent the
2 proceeds of the Manchester dinner presentation.
3
4 Two reports prepared by Mr. Peelo were provided to the Tribunal, neither of
12:43:17 5 which made reference to Mr. Ahern's purchase of 30,000 pounds Sterling or to
6 the fact that the unspent funds lodgement of 19,142.92 represented the proceeds
7 of a 20,000 pounds Sterling foreign exchange transaction.
8
9 Mr Peelo's report was limited to dealing with the Tribunal enquiries relating
10:43:17 10 to Mr Ahern's accounts and not to the lodgements in the -- sorry, to the
11 accounts in the name of Ms Larkin.
12
13 The information that the 11,743.74 pounds lodgement to the third deposit
14 account opened by Ms. Larkin did contain 10,000 pounds Sterling in cash and
12:43:18 15 that the 19,142.92 lodgement did comprise 20,000 pounds Sterling in cash was
16 first given to the Tribunal by Mr. Ahern at interview on the 5th of April 2007.
17
18 These Sterling transactions had involved AIB bank in transactions which
19 preceded the Irish punt lodgements in respect of which the bank had stated that
12:43:19 20 no further documentation existed as the Tribunal's had commenced with the
21 deposit of Irish cash.
22
23 Sterling exchanges conducted at the branch did involve the creation of
24 contemporaneous documents which were not referred to in the bank's response to
12:43:19 25 the Tribunal presumably as the bank believed that there was no foreign exchange
26 element to the original documents -- lodgements I should say.
27
28 The sources of information available to the bank which may have allowed it to
29 establish the actual nature of the queried lodgements made in its branch in
12:43:24 30 O'Connell Street in 1994 and 1995 included such information as remained in

12:43:24 1 their written or electronic records. The bank also had the facility of making
2 inquiries from the bank personnel who had actually dealt with Mr. Ahern's
3 accounts at the time of the original lodgements and who were still employees of
4 the bank.

12:43:25 5
6 Unlike the three other queried lodgements to Mr. Ahern's accounts, that is the
7 lodgements in the sums of 22,500 pounds, 30,000 pounds and 20,000 pounds.
8 Neither the second goodwill loan and Manchester donation lodgement of 24,838.49
9 pounds nor the unspent funds lodgement of 19,142.92 were for round sum amounts.

12:43:26 10
11 Cash lodgements of this magnitude involving uneven pound sums and therefore
12 involving the acceptance of coins would be most unusual.

13
14 It was apparent from the stamps on the lodgement dockets that the queried
12:43:27 15 lodgements of 24,838.49 pounds and the 19,142.92 pounds were both processed at
16 the foreign exchange desk at AIB, O'Connell Street. The combination of these
17 facts was sufficient to alert the Tribunal to the possibility which has now
18 been confirmed as the reality that these lodgements were the proceeds of
19 foreign exchange transactions.

12:43:27 20
21 Prior to responding to the Tribunal's query in November 2005 in relation to the
22 unspent funds lodgement of 19,142.92 which is now known to have involved 22,000
23 pounds Sterling, the bank had available to it the following information which
24 could have assisted the persons preparing the bank's response to the Tribunal's
12:43:28 25 specific inquiries to conclude that the 19,142.92 represented the proceeds of a
26 Sterling transaction and not a stand alone deposit of Irish cash.

27
28 1. The bank lodgement docket relating to the transaction bore the stamp of the
29 foreign exchange desk at AIB O'Connell Street.

12:43:29 30

12:43:29 1 2. Consideration of the Sterling rates of exchange applicable at the branch on
2 the 1st of December 1995.

3
4 And the application of those rates to the amount shown on the docket would show
12:43:29 5 that the 19,142.92 represented the precise sum which would have resulted from a
6 20,000 Sterling cash exchange being carried out on that day using the rate
7 applicable to a transaction to a value up to 10,000 pounds.

8
9 3. Examination of the lodgement docket would also show that the 19,142.92
10 figure shown on the lodgement docket had been substituted for an earlier
11 written entry of 19,002.79 pounds which had then been struck out.

12
13 Consideration of the Sterling rates of exchange applicable that day would show
14 that the 19,002.79 figure which had been deleted also represented an amount
12:43:31 15 which a 20,000 pound Sterling cash exchange could have produced in this
16 instance if the teller had used the Sterling exchange rate applicable to a
17 transaction to a value up to 2,500 punts rather than the rate applicable to a
18 transaction to a value of up to 10,000 Irish punts which produced the figure
19 19,142.92.

12:43:31 20
21 4. Consideration of the foreign exchange records for that day would show that
22 the bank purchased Sterling notes to a total Irish punt value of 19,734.04,
23 indicating that a single transaction involving the exchange of Sterling to a
24 value of 19,142.49 could have taken place on that day.

12:43:32 25
26 Although the bank official who had been involved in processing the original
27 lodgement of 19,142.92 punts on the 1st of December 1995 was also involved in
28 providing the details contained in the bank's response to the Tribunal's
29 queries in 2005, the connection between the Sterling exchange and the Irish
12:43:33 30 pound lodgement was not adverted to in the reply.

12:43:34 1
2 The Tribunal's endeavours to obtain further documentation from the bank in
3 relation to the foreign exchange transactions conducted at the branch on the
4 dates in question are ongoing.

12:43:34 5
6 The Tribunal will inquire into the circumstances in which the information in
7 relation to the accounts of Mr. Ahern and Ms. Larkin was provided to the
8 Tribunal by the bank.

12:43:34 10 The purposes for which the sums queried by the Tribunal were originally lodged
11 and later expended.

12
13 In addition to trying to establish the sources from which the funds lodged to
14 the accounts of Mr. Ahern had emanated by examining the circumstances of the
12:43:35 15 lodgements themselves, the Tribunal has also sought to establish the reasons
16 why this money may have been needed by Mr. Ahern at that time.

17
18 The Tribunal has enquired into how such funds were used by him and has sought
19 to identify any assets acquired by him and/or liabilities which were discharged
12:43:36 20 by him with these funds as part of his process.

21
22 1. Legal expenses. A significant area of expenditure by Mr. Ahern in 1994 and
23 1995 included payment of legal expenses. Mr. Ahern had incurred a liability in
24 respect of legal costs arising from his matrimonial proceedings. He met this
12:43:36 25 liability with the proceeds of a bank loan which he obtained from Allied Irish
26 Bank in December 1993 in the sum of 19,115.97 pounds.

27
28 This bank loan was raised for the specific purpose of meeting his legal costs.

29
12:43:37 30 The first of the goodwill loans made to Mr. Ahern by friends is said to have

12:43:37 1 been made for the purpose of meeting legal costs liabilities. However, the
2 entire of their goodwill loan money was lodged to a special savings account in
3 the name of Mr. Ahern on the 30th of December 1993.

12:43:38 5 This is the first goodwill loan lodgement of 22,500 pounds.

7 This money was not applied by Mr. Ahern to meet his legal costs when he
8 received it in December 1993.

12:43:38 10 At interview in April 2007 Mr. Ahern said that he accepted this money on the
11 basis that he intended it to be used by him to acquire a residence rather than
12 to be used towards paying legal costs.

14 Mr. Ahern had indicated in Mr. Peelo's report of April 2006 that the money from
12:43:39 15 friends was used to meet the repayment of the loan taken out by Allied Irish
16 Bank, taken out from Allied Irish Bank.

18 Examination of Mr. Ahern's bank statements shows that the repayment of this
19 bank loan commenced in June 1995 and that the loan was discharged in full by
12:43:41 20 January 1996 from the funds which had originally been lodged to the special
21 savings account.

23 These funds amounted to 50,000 pounds of which 27,164.44 pounds had been
24 sourced from savings and 22,500 from the first goodwill loan lodgement.

12:43:42 25
26 The attribution of the goodwill loan money to the repayment of the bank loan in
27 Mr. Peelo's report appears to be contradicted by Mr. Ahern's account given in
28 April 2007.

12:43:42 30 2. Educational expenses. The second area of substantial expenditure by

12:43:42 1 Mr. Ahern was in the provision of funds for his daughter's education.
2 Mr. Ahern has informed the Tribunal that his payment of 20,000 pounds into an
3 account in the name of his daughters on the 8th of August 1994 via the second
4 savings lodgement was for this purpose. Mr. Ahern said this was funded from
12:43:43 5 the balance of the 50,000 pounds cash savings he had made between 1987 and
6 1993.
7
8 3. 44 Beresford Avenue.
9
12:43:44 10 The third area of expenditure by Mr. Ahern arose in connection with the
11 dwelling house at 44 Beresford Avenue, Drumcondra where Mr. Ahern has resided
12 since 1995.
13
14 The inquiries which were made by the Tribunal of Mr. Michael Wall and Ms. Celia
12:43:44 15 Larkin initially arose through the Tribunal's inquiries into the withdrawal of
16 the 50,000 pounds from Mr. Ahern's account on the 5th of December 1994 which
17 was attributed to his intended expenditure in relation to this premises.
18
19 The second goodwill loan from friends of 16,500 pounds on the 11th of October
12:43:45 20 1994 and the opening of the accounts by Ms. Larkin with the funds of Mr. Ahern
21 and Mr. Wall in December 1994 and June 1995 all arise in connection with this
22 property.
23
24 This expenditure on 44 Beresford Avenue had its origins in the change in
12:43:46 25 Mr. Ahern's domestic circumstances which followed upon his separation from his
26 wife in 1987. Between that date and the conclusion of his matrimonial
27 proceedings at the end of 1993, Mr. Ahern did not purchase a dwelling house for
28 himself. He resided at various locations, including in an apartment above his
29 constituency offices at St. Luke's, Drumcondra. St. Luke's had been purchased
12:43:47 30 by his friends and political supporters and was owned in trust for Fianna Fail.

12:43:48 1 Mr. Ahern had the use of the apartment located above the constituency offices.
2
3 Initially in 1994 Mr. Ahern was actively seeking to acquire a dwelling house in
4 the Drumcondra area. Subsequently in the latter part of 1995 he came to reside
12:43:48 5 at 44 Beresford Avenue, Drumcondra and ultimately, he purchased this property
6 some two years later in 1997.
7
8 As part of its inquiries into the lodgement of the funds by Mr. Ahern in the
9 1993 to 1995 period the Tribunal sought information in relation to Mr. Ahern's
10 occupation and subsequent purchase of this property.
11
12 The Tribunal has been told by Mr. Ahern and by Mr. Wall that they had been
13 friends for a number of years prior to 1994. In mid 1994 an informal
14 arrangement was entered into between them whereby Mr. Wall would purchase a
12:43:50 15 house in the Drumcondra area which would be occupied by Mr. Ahern and which
16 would be used by Mr. Wall as a residence when he visited Dublin on business.
17
18 Mr. Wall was the proprietor of a coach business in Manchester where he resided.
19 He intended to set up an Irish operation in the Drumcondra area and for that
12:43:51 20 reason he would require to visit Dublin on a more frequent basis than
21 theretofore. As part of this arrangement, Mr. Ahern would pay Mr. Wall for his
22 occupation of the property. He would not have exclusive possession of the
23 house or any part of it. Mr. Wall would buy the house. Mr. Wall could occupy
24 the house as and when he wished. This would involve sharing the house with
12:43:52 25 Mr. Ahern on the occasion of Mr. Wall's visits to Dublin.
26
27 He intended to visit Dublin on a frequent basis while setting up his Irish
28 coach business. In the event he did not do so, as he was involved in a serious
29 road traffic accident in April 1995, and he abandoned his plan to set up an
12:43:53 30 Irish coach business.

12:43:53 1
2 As part of their agreement Mr. Wall agreed that in the event that he decided to
3 sell the property at a subsequent date Mr. Ahern would have an option to
4 purchase it at a price, to be agreed at that time between them.

12:43:53 5
6 The general terms of this agreement were reached in mid 1994 before any
7 specific property had been identified as being suitable for their needs. The
8 house which was eventually chosen was 44 Beresford Avenue, Drumcondra.
9

12:43:54 10 Funding of the acquisition of 44 Beresford Avenue by Michael Wall and payments
11 made through Ms. Larkin and through Mr. Gerry Brennan.
12

13 It seems 44, Beresford Avenue had been initially identified as a suitable
14 property by Ms. Celia Larkin who then provided the details of the property to
12:43:55 15 Mr. Wall. This was a relatively new house, situated in a small residential
16 estate in Drumcondra. Mr. Wall was happy to purchase the property and he did
17 so for 138,000 pounds. Negotiations with estate agents for the vendors of the
18 house commenced at the end of November 1994 through Mr. Gerry Brennan, now
19 deceased.

12:43:56 20
21 A booking deposit was paid in early December 1994. The legal contracts were
22 exchanged between the vendors and the purchaser's solicitors in January 1995.
23 And the sale was completed on the 30th of March 1995.
24

12:43:57 25 Mr. Wall financed the purchase with a building society loan of 96,600 pounds
26 and with 41,400 pounds from personal funds which were paid through the account
27 of Walls Coaches, Manchester.
28

29 Mr. Gerry Brennan received Mr. Wall's contribution from his personal funds in
12:43:57 30 three payments; a cheque dated the 29th of November 1994 in the sum of 3,000

12:43:58 1 pounds Sterling was received to fund the booking deposit of 3,000 punts.

2

3 A cheque in the sum of 10,800 pounds Sterling made payable to the vendor's

4 solicitors was sent on the 26th of January 1995 to meet the contract deposit of

12:44:07 5 10,800 punts.

6

7 His personal contribution to the balance of the purchase price amounting to

8 27,595 punts was transferred from Nat West, Manchester on the 30th of March

9 1995 to Mr. Brennan's solicitor client account.

12:44:30 10

11 In addition to receiving Mr. Wall's contributions of these personal funds

12 towards the purchase price of the house, Mr. Brennan also received a cheque in

13 the sum of 2,000 pounds Sterling on the 26th of January 1995 and a further

14 payment of 6,000 punts on the 20th of March 1995 from Mr. Wall.

12:44:56 15

16 These additional funds may have been used by Mr. Brennan to pay an agreed sum

17 of 7,000 pounds Sterling for the furniture and carpets which were sold

18 separately to the house itself.

19

12:45:08 20 Mr. Wall's personal payments made through Mr. Brennan towards the purchase were

21 circa 49,500 punts and all but 6,000 of these funds were shown in Mr. Brennan's

22 file as having originated in Manchester. The balance of the purchase price was

23 represented by the building society loan of 96,600 pounds taken out by Mr. Wall

24 in Ireland.

12:45:47 25

26 The Tribunal has been told that prior to the purchase Mr. Ahern and Mr. Wall

27 had agreed that the property would benefit from the addition of a conservatory

28 to be built from the rear reception room and from a refit or refurbishment. It

29 was agreed in principle between them that the structural work would be funded

12:46:02 30 by Mr. Wall and the fit out or refurbishment would be funded by Mr. Ahern. No

12:46:09 1 specific sums were agreed as being their respective contributions but it was on
2 foot of this agreement that the 50,000 pounds given of Mr. Ahern's funds were
3 given to Ms. Larkin on the 5th of December 1994, who then opened the account in
4 her name at AIB bank with this money. The Larkin Wall lodgement of 28,772.90
12:46:35 5 of Mr. Wall's funds received as 30,000 pounds Sterling was used to open the
6 second account in her name on the same day, the 5th of December 1994.

7
8 Ms. Larkin says that the funds from both sources were received by her so as to
9 facilitate Mr. Ahern and Mr. Wall in the payment for the intended structural
12:46:58 10 works and refurbishment of the property.

11
12 In addition, she was to pay for the stamp duty on the purchase from Mr. Wall's
13 funds.

14
12:47:08 15 Mr. Wall told the Tribunal legal team at interview that he was not aware that
16 Mr. Ahern had provided Ms. Larkin with 50,000 pounds to open an account in her
17 name to fund Mr. Ahern's expenditure on the house.

18
19 At the time of the payment of Mr. Wall's funds to Ms. Larkin, Mr. Wall already
12:47:30 20 had a solicitor in Ireland, Mr. Gerry Brennan, who was also a friend of
21 Mr. Ahern. Mr. Wall already had his own Irish bank accounts in Galway and he
22 was a monthly visitor to Dublin. The lodgement of 28,772.90 of Mr. Wall's
23 money to Ms. Larkin's account was made four months before the property was
24 assigned to Mr. Wall by the vendors. Ms. Larkin's first expenditure in
12:48:02 25 relation to the property from Mr. Wall's funds commenced with the payment of
26 stamp duty of 8,442 pounds six months after the date upon which the monies were
27 paid to Ms. Larkin.

28
29 It's not clear as to why Mr. Wall chose to give money to Ms. Larkin to meet
12:48:21 30 stamp duty liabilities rather than to provide this sum to his solicitor when

12:48:26 1 the requirement for stamping legal documents arose.
2
3 Documents relating Mr. Ahern's occupation of 44, Beresford Avenue from 1995.
4
12:48:37 5 The Tribunal has been told that no part of the agreement between Mr. Ahern and
6 Mr. Wall in relation to the acquisition of 44, Beresford Avenue was reduced to
7 writing by them. No formal receipt or other written acknowledgement of the
8 receipt of funds were either sought from or issued by either Mr. Ahern or by
9 Ms. Larkin to Mr. Wall.
12:49:06 10
11 The interests of both Mr. Wall and Mr. Ahern in 44, Beresford Avenue were
12 represented by the same solicitor, Mr. Gerry Brennan.
13
14 Mr. Brennan died on the 24th of May 1997.
12:49:19 15
16 The Tribunal has been provided with a copy of the file maintained by him in
17 relation to the property. This file does not contain any reference to the
18 existence of any agreement made by Mr. Wall and Mr. Ahern prior to the purchase
19 of 44, Beresford Avenue under which both Mr. Ahern and Mr. Wall were to occupy
12:49:44 20 the property.
21
22 There is no reference on file to any agreement under which Mr. Ahern was to pay
23 for the refurbishing of Mr. Wall's house, nor any reference to Mr. Ahern having
24 an option to purchase the property in the event of Mr. Wall deciding to sell.
12:50:02 25
26 The solicitor's file does not contain any copy lease or tenancy agreement under
27 which Mr. Ahern was to pay for his occupation of the property in 1995. The
28 file does contain reference to Ms. Larkin being informed by Mr. Brennan that
29 450 pounds per month was to be paid to Mr. Wall's account at Bank of Ireland,
12:50:26 30 starting in July 1995.

12:50:29 1
2 The first reference to Mr. Ahern's occupation of the property being as tenant
3 occurs in 1996 when Mr. Brennan prepared documentation for registration of 44,
4 Beresford Avenue as a rental property under the Housing Registration of Rented
12:50:53 5 Houses Regulations 1996.
6

7 In this document it was stated that Mr. Ahern was a tenant of a property at a
8 rent of 450 pounds per month. The following year a similar form was returned
9 to Dublin Corporation in which it was stated that Mr. Ahern was a tenant of the
12:51:07 10 property at a rent of 600 pounds per month. This increase in rent is not
11 reflected in the bank records of Mr. Wall's account which shows that the
12 payments remained unchanged at 450 pounds per month.
13

14 The only legal document on the solicitor's file recording the terms of
12:51:27 15 Mr. Ahern's occupation of Mr. Wall's property was a lease of the property
16 prepared in May 1997 by Mr. Brennan, which is signed by both Mr. Wall and
17 Mr. Ahern.
18

19 This lease provided that the property was to be let to Mr. Ahern for a period
12:51:48 20 of three years, commencing on the 1st of July 1997, at an initial rental of 650
21 pounds per month for the first year of the term commencing on the 1st of July
22 1997.
23

24 Neither Mr. Wall nor Mr. Ahern are in a position to indicate why this lease was
12:52:10 25 entered into at this time.
26

27 Within two weeks of the lease having been entered into Mr. Brennan died
28 suddenly and in July 1997 Mr. Wall and Mr. Ahern, acting through two different
29 firms of solicitors, entered into a written agreement for the sale of the
12:52:29 30 property by Mr. Wall to Mr. Ahern for the sum of 180,000 pounds.

12:52:36 1
2 It is not clear as to what caused the parties to change the plans agreed in May
3 under which Mr. Ahern was to have been Mr. Wall's tenant until July 2000.
4

12:52:49 5 The sale of 44, Beresford Avenue to Mr. Ahern in 1997.
6

7 In agreeing to sell at 180,000 pounds Mr. Wall suffered an overall financial
8 loss on the transaction. His total expenditure on the property from the time
9 of acquisition exceeded 208,000 pounds when stamp duty, legal fees and
12:53:12 10 repayments on the mortgage are taken into account. Mr. Wall has indicated to
11 the Tribunal that the acquisition of this property was never intended to be an
12 investment and that he was happy to sell the property to Mr. Ahern at that
13 price.
14

12:53:28 15 After the repayment of the sum borrowed from the building society to finance
16 the original purchase Mr. Wall had a balance of 89,865.87 available to him.
17 This sum was lodged to his account in Galway on the 5th of November 1997 by his
18 solicitors who had handled the sale of 44 Beresford Avenue. One month later
19 the sum of 50,000 pounds in cash was withdrawn by Mr. Wall from that account.

12:54:03 20
21 Mr. Wall has been asked to explain why this sum was removed in cash and where
22 it was expended. He informs the Tribunal that the money was taken out in cash
23 so that it might be used to purchase machinery at an auction, which was to take
24 place in January 1998.

12:54:20 25
26 In the event he did not use it for that purpose, and he brought it back to
27 Manchester in cash, where he kept it in his safe. This fund was expended over
28 time, no receipts or records of this expenditure were kept by Mr. Wall.
29

12:54:41 30 The bequest of Mr. Wall of 44 Beresford Avenue to Mr. Ahern or his daughters.

12:54:47 1
2 At the time when Mr. Brennan's file in relation to 44, Beresford Avenue was
3 being considered by the Tribunal legal staff, it was noted that there was an
4 attendance on file from Mr. Brennan's apprentice to Mr. Brennan dated the 29th
12:55:02 5 of May 1996. This showed that he was seeking advice from the probate office on
6 the question of whether or not it was possible for a person who had already
7 made a will dealing with all of his assets in both England and Ireland to make
8 a second will dealing exclusively with a recently acquired asset in Ireland.

9
12:55:25 10 This attendance was marked in manuscript in Michael Wall's file, Beresford
11 Avenue, Drumcondra.

12
13 The Tribunal considered that this memorandum may have relevance in determining
14 the relationship between Mr. Ahern and Mr. Wall and the beneficial as opposed
12:55:42 15 to the legal ownership of the house in which Mr. Ahern was then residing in
16 1996.

17
18 In July 2006 the Tribunal sought a narrative statement from Mr. Wall in which
19 he was asked to set out the history of his dealings with 44, Beresford Avenue.
12:56:07 20 His dealings with the accounts opened by Ms. Larkin in her name and with any
21 will or instructions for a will given in relation to 44, Beresford Avenue.

22
23 This request did not produce the required narrative from Mr. Wall and an Order
24 for Discovery was made directing Mr. Wall to make discovery to the Tribunal of
12:56:35 25 documentation relating to a will or to the instructions taken for a will.

26
27 The discovery affidavit subsequently sworn by Mr. Wall in purported compliance
28 with the Tribunal's order did not contain any reference to a will or to
29 instructions for taking a will.

12:56:49 30

12:56:49 1 Mr. Wall was asked to attend at a private interview with the Members of the
2 Tribunal legal team which initially he agreed to do but no such meeting took
3 place until January 2007 when a summons was issued by the Tribunal requiring
4 the attendance of Mr. Wall at a public hearing of the Tribunal. Despite
12:57:08 5 Mr. Wall's failure to discover any documents relating to a possible will, it
6 transpires that Mr. Wall had executed a new will on the 6th of June 1996. The
7 Tribunal obtained this will which was signed by Mr. Wall and witnessed by
8 Mr. Gerry Brennan, solicitor, and his secretary, on foot of an Order for
9 Discovery directed to his present solicitors.

12:57:35 10
11 The terms of this will conform with the will contemplated in the attendance of
12 the 29th of May 1996, in that it deals with one asset only, namely 44,
13 Beresford Avenue, Drumcondra.
14

12:57:50 15 The will provides that Mr. Wall's previously made will remained intact and
16 unchanged as regards all his other assets, both in Ireland and in England.
17 Under the terms of this second will, Michael Wall bequeathed 44, Beresford
18 Avenue to Mr. Bertie Ahern on his death. And in the event that Mr. Ahern
19 predeceased him, he bequeathed the property to Mr. Ahern's daughters.

12:58:21 20
21 On being questioned as to why he had not discovered this will to the Tribunal,
22 Mr. Wall indicated that he was unaware that he had made such a will. He later
23 indicated that he would have wanted Mr. Ahern to have the property in the event
24 of his death because of Mr. Ahern's input in the property. He says that he had
12:58:41 25 not discussed this with Mr. Ahern.
26

27 In the event that Mr. Wall had died while he was still the legal owner of 44,
28 Beresford Avenue, the property would have passed to Mr. Ahern and would have
29 been the subject of a separate Grant of Probate to his other assets. Mr. Ahern
12:58:59 30 indicates that he was unaware of any such will having been made by Mr. Wall and

12:59:04 1 that he was amazed to learn that Mr. Wall had done so.

2

3 This will become mute once Mr. Wall sold the house in 1997 to Mr. Ahern as he
4 was no longer the legal owner of the property once that sale was completed.

12:59:23 5

6 The Tribunal will inquire into the circumstances surrounding the acquisition,
7 the ownership and refurbishment of 44, Beresford Avenue and the subsequent
8 contract for the sale to Mr. Ahern in order to ascertain the origins of the
9 funds used in connection with this property between 1994 and 1997.

12:59:44 10

11 Mr. Ahern's purchase of the legal interest in this property in 1997 was
12 furnished with the benefit of an Irish Permanent Building Society mortgage in
13 the sum of 150,000 pounds and with the proceeds of his building society deposit
14 account.

13:00:03 15

16 In conclusion.

17

18 As stated earlier, both Mr. O'Callaghan and Mr. Ahern deny any payment by
19 Mr. O'Callaghan to Mr. Ahern. It should be noted that the inquiries of the
13:00:16 20 Tribunal outlined above have not revealed any documentation evidencing a link
21 between any funds of Mr. O'Callaghan and the monies, the subject of these
22 lodgements, to the accounts of Mr. Ahern.

23

24 Mr. Ahern's dealings with the lodgements of funds to his accounts, his payments
13:00:36 25 to Ms. Larkin and his involvement with 44, Beresford Avenue are set out in
26 detail in this opening in order that witnesses in this Module and the public
27 may follow the lines of inquiry being pursued by the Tribunal and which are the
28 subject of an additional circulation of approximately 2,000 pages commencing at
29 page 17804 of the Quarryvale brief.

13:01:02 30

13:01:02 1 These documents do not form part of the brief originally circulated in November
2 2005. The matter is being dealt with in the detail which is set out above
3 because of the volume and complexity of the material which is deemed relevant
4 to these transactions which are under scrutiny.

13:01:20 5
6 I have endeavoured in this opening to present what is a multi-faceted inquiry
7 in a comprehensible and digestible format.

8
9 References to matters being facts are made on the basis of the statements made
13:01:35 10 by witnesses to the Tribunal and upon the Tribunal legal team's appreciation
11 and understanding of the material which has been provided to the Tribunal.
12 References to these facts in this opening should not be taken as meaning that
13 the Tribunal has found these facts to be proven. Findings of fact will be made
14 by the Tribunal only, on the basis of the evidence which it will hear in the
13:02:01 15 course of its public hearings.

16
17 Consequently, no conclusion should be drawn by listeners based solely upon this
18 opening.

19
13:02:09 20
21 CHAIRMAN: Thank you, Mr. O'Neill.

22
23 Are there any parties here who wish to apply for limited, grants of limited
24 representation and who have not done so in November of 2005?

13:02:24 25
26 MR. MCKEOWN: Sir, can you hear me?
27

28 CHAIRMAN: Yes. You might just identify yourself and the solicitor.

29
13:02:33 30 MR. MCKEOWN: I am Paul McKeown and I represent Seamus Maguire, instructed by

13:02:37 1 Seamus Maguire & Co. solicitors. I seek limited representation on his behalf.

2

3

CHAIRMAN: Granted.

4

13:02:42 5 MR. MCKEOWN: Obligated.

6

7

MR. MAGUIRE: Chairman, just for the purposes of confirmation. I believe that

8

an application of the type which you mentioned was made on behalf of Mr. Ahern.

9

13:02:53 10 CHAIRMAN: All right.

11

12

MR. MAGUIRE: Just in case there is any doubt about it. I am reasserting that

13

application.

14

13:02:58 15 CHAIRMAN: Okay. I'll make that order.

16

17

CHAIRMAN: People can make applications as well during -- in the course of the

18

public inquiry.

19

13:03:06 20 MR. O'SIOCTHCHAIN: Mr. Chairman.

21

22

MR. O'SIOCTHCHAIN: A Matter of clarification. I'm not sure if representation

23

was made in November. However, we would like to make representation on behalf

24

of James Fahy

13:03:20 25

26

CHAIRMAN: Can you just identify yourself.

27

28

MR. O'SIOCTHCHAIN: William Hackett & Co. solicitors

29

13:03:26 30 CHAIRMAN: Very good. I make that order.

13:03:29 1
2 MR. JOHNSTON: Mr. Chairman, my name is Ciaran Johnston from BCM Hanby Wallace
3 solicitors. I act for Dermot Carew and I too would like to make an
4 application for limited representation.

13:03:39 5
6 CHAIRMAN: On behalf of?

7
8 MR JOHNSTON: Dermot Carew.

9
13:03:40 10 CHAIRMAN: Very good. Granted.

11
12 MR. MILLER: Mr Chairman, Hugh Miller of Crowley Miller on behalf of Celia
13 Larkin. I'm in the same boat as Mr. Maguire. In case there's any doubt about
14 my application I wish to renew it on her behalf

13:03:53 15
16 CHAIRMAN: I make it.

17
18 MR MONTGOMERY: Mr Chairman, David Montgomery of Thomas Montgomery and Son on
19 behalf of the family Cyril Gallagher deceased. Similarly, I'm not sure whether
20 a previous application.

13:04:01 21
22 CHAIRMAN: Very good. I make the order.

23
24 CHAIRMAN: Anyone mentioned in the opening, in the supplemental opening
13:04:10 25 statement is entitled to formally reply to it if they wish to do so, either
26 now -- well now would be two o'clock. Or tomorrow at half ten. Is there
27 anyone who wishes to?

28
29 MR. MAGUIRE: On behalf of Mr. Ahern, I intend to respond to the opening
13:04:28 30 statement. I am prepared to do so at two o'clock when the Tribunal resumes.

13:04:33 1

2 CHAIRMAN: All right. Very good. All right. Well we'll say 2:15 then. All
3 right.

4

13:04:54 5

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

6

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2:15 P.M.:

13:04:57 1
2
3
4
14:18:04 5 CHAIRMAN: Now, maybe we're a bit early. I think we better rise.
6
7 JUDGE KEYS: We're five minutes early.
8
9 CHAIRMAN: Mr. Maguire isn't here. I think we're slightly ahead of time. So
14:18:21 10 I'll -- we'll just rise for a few minutes.
11
12

13 **Brief adjournment.**
14

14:20:57 15
16 CHAIRMAN: Mr. Maguire, do you want to ?
17
18 MR. MAGUIRE: Chairman, I understand the Tribunal came out at an earlier stage.
19
14:21:06 20 CHAIRMAN: No, I think that was our fault. Well it was somebody's fault. Not
21 yours.
22
23 MR. MAGUIRE: Mr. Chairman, this is the response to the Tribunal's opening on
24 behalf of Mr. Ahern.
14:21:23 25
26 My client was first given notice of the allegation that he received the sums of
27 50,000 pounds and 30,000 pounds from Mr. Owen O'Callaghan by the Tribunal's
28 letter of the 15th of October 2004.
29
14:21:45 30 These sums were allegedly in return for blocking Green Properties plc from

14:21:56 1 obtaining special tax designation for Blanchardstown.

2

3 In a subsequent letter of the 3rd of November 2004 the Tribunal stated that Mr.

4 Gilmartin had claimed that he was told by Mr. O'Callaghan that the payment of

14:22:07 5 50,000 pounds was made in 1989 and that the 30,000 pounds was paid sometime

6 later.

7

8 It is to be noted that elsewhere it is stated that the 30,000 pounds was paid

9 between the 1st of January 1989 and the 31st of December 1992.

14:22:27 10

11 As the Tribunal is aware, my client has always denied unequivocally these

12 allegations. I want to make two things very clear to the Tribunal.

13

14 Firstly, Mr. Ahern has stated and will repeat will before this Tribunal, that

14:22:44 15 he never at any time received money from Mr. Owen O'Callaghan or from anybody

16 on Mr. O'Callaghan's behalf.

17

18 Secondly, he never at any stage intervened in relation to any tax designation

19 to assist Mr. O'Callaghan.

14:23:03 20

21 Mr. Ahern has given the Tribunal all his records for the period. This includes

22 all his bank records, all financial details, copies of his diaries and details

23 of the purchase of his house.

24

14:23:19 25 He has made discovery of everything which the Tribunal has requested. There

26 has been a huge level of intrusion by the Tribunal's inquiries into his

27 personal and family affairs.

28

29 In answering the Tribunal's inquiries and requests for information, Mr. Ahern

14:23:38 30 and those close to him have had to go into the most minute detail about their

14:23:45 1 personal and financial affairs. The unpleasantness of having to open all of
2 one's private financial, family and domestic affairs to public scrutiny can
3 surely be understood by everybody. What makes the experience that Mr. Ahern
4 and those close to him have had to endure all the more unpalatable is the
14:24:06 5 knowledge that all of these inquiries arise by reason of outlandish allegations
6 by a man whose credibility is already in shreds.

7
8 The source of the allegations which it is intended to investigate, namely,
9 Mr. Thomas Gilmartin, has been demonstrated to be wholly unreliable and to be
14:24:26 10 willing to make the most damaging and unfounded allegations in public against
11 third parties.

12
13 Dealing with the incredible and the unfounded allegations.

14
14:24:40 15 Amongst the incredible and unfounded allegations made by Mr. Gilmartin are the
16 following:

17
18 That Mr. Ahern held the sum of 15 million pounds in an account in the Bank of
19 Ireland in Jersey. That Mr. Ahern held bank accounts in Jersey, Liechtenstein,
14:25:01 20 the Dutch Antilles and England. Other more solacious allegations concerning
21 other public representatives, which I do not intend to dignify by repeating
22 during this response.

23
24 The Tribunal clearly did not regard any such allegations as credible and it is
14:25:19 25 not going to investigate these wild allegations in public hearing --

26
27 MR. RYAN: Chairman, can I just interrupt?

28
29 CHAIRMAN: Just let Mr. Maguire conclude his reply.

14:25:30 30

14:25:31 1 MR. RYAN: If it is a formal reply to the opening statement, Judge, but it
2 seems to be going outside the remit of merely being a formal response to the
3 opening statement
4

14:25:40 5 CHAIRMAN: I still think he should be allowed to continue.
6

7 MR. RYAN: Thank you.
8

9 MR. MAGUIRE: The Tribunal is also aware that the accounts given by Mr.
10 Gilmartin in relation to various matters have changed significantly on
11 different occasions. Some examples of these are referred to in the course of
12 the Supreme Court judgement of Mr. Justice Hardiman of the 9th of March 2005 in
13 the case of O'Callaghan versus Mahon.
14

14:26:07 15 That judgement also referred to a number of clearly untrue statements made by
16 Mr. Gilmartin. The following are a few glaring examples.
17

18 MR. RYAN: Chairman --
19

14:26:20 20 MR. MAGUIRE: In sworn evidence.
21

22 MR. RYAN: Chairman, I beg your pardon. I don't wish to interrupt, but,
23 however, I understood that this was to be a formal response to the opening
24 statement by Mr. O'Neill, not an opportunity to deal with accusations against
14:26:38 25 my client which can be dealt with in the course of the Tribunal.
26

27 CHAIRMAN: Well, I mean, the purpose of the reply, Mr Maguire, is to deal with
28 issues that have been raised in the opening statement, which really is what was
29 stated by Mr. O'Neill this morning rather than a reply which encompasses all of
14:27:13 30 the information arising possibly from the earlier and more extensive opening

14:27:13 1 statement. I can't recall whether in fact you elected to reply to the opening
2 statement back in November 2005. I don't think you did.

3
4 MR. MAGUIRE: Chairman, I think, first of all, that it's inappropriate that
14:27:25 5 there should be an interruption of what is essentially a formal reply.

6
7 Secondly, the important aspect of this, from my client's point of view, is that
8 the context in which he has to be represented here arises from the matters
9 which I am dealing with and which in turn are the basis, one would assume, of
14:27:45 10 the proceedings of the Tribunal, including the opening of Mr. O'Neill.

11
12 As far as my client is concerned, he is entitled to vindicate his name and his
13 reputation and he is entitled to have a proper response set in context. And I
14 do no more than that.

14:28:04 15
16 MR. RYAN: Well, Judge, ...

17
18 CHAIRMAN: All right.

19
14:28:13 20 MR. RYAN: Judge, can I just make one --

21
22 CHAIRMAN: No, we're going to let Mr. Maguire finish and then we'll give you a
23 right of response to that if you want it, to deal with issues which you feel
24 ought to be dealt with at this stage, even though Mr. Gilmartin will be giving
14:28:32 25 evidence tomorrow. So he'll have an immediate opportunity to deal with many of
26 the issues that Mr. Maguire may touch upon. I think it's preferable.

27 Mr. Maguire I think, his position is that the context in which the opening, the
28 supplemental opening statement was made this morning is in the overall detail
29 which the Tribunal has to deal with in this particular Module and I think his
14:29:01 30 position is that it would be impossible to deal with it other than dealing with

14:29:06 1 the basis in which the Tribunal has decided to investigate Mr. Ahern's
2 finances.

3
4 MR. RYAN: I understand that, Judge, but the objection which I have, and I
14:29:17 5 don't wish to interrupt overly, is just that the formal response which is an
6 opportunity afforded by the Tribunal to Mr. Maguire on behalf of his client,
7 cannot be used as an opportunity to blagger my client in public.

8
9 CHAIRMAN: No but Mr. Maguire I think can deal with the basis on which the
14:29:34 10 Tribunal has indicated to everyone, including yourselves, the reasons why
11 Mr. Ahern's finances are being investigated.

12
13 It's based on allegations which arise from statements and evidence given by
14 your client.

14:29:50 15
16 MR. RYAN: Very good, Judge.

17
18 MR. MAGUIRE: To continue and I was referring to the judgement of Mr. Justice
19 Hardiman in Callaghan and Mahon. That judgement also referred to a number of
14:30:02 20 clearly untrue statements made by Mr. Gilmartin and the following are a few
21 glaring examples.

22
23 In sworn evidence to the Tribunal, Mr. Gilmartin recounted a conversation he
24 allegedly had with Mr. Owen O'Callaghan on the 7th of December 1988. He said
14:30:18 25 that on that occasion Mr. O'Callaghan told him that he had just come from a
26 dinner for the launch of the Lee Tunnel and he had had the line of the tunnel
27 altered so as to suit a named site, the Mahon site, that he owned. This was
28 manifestly untrue. The decision to construct that tunnel was not made until
29 1991, work did not commence until 1995 and the tunnel did not open until 1999.

14:30:45 30

14:30:45 1 Again, in sworn evidence to the Tribunal, in relation to Mr. Gilmartin's
2 allegation that 5 million pounds had been demanded from him after a meeting at
3 Leinster House, Mr. Gilmartin said that he had at a house party informed Mary
4 Harney of that allegation some years before.

14:31:03 5
6 This allegation could not have been true as the house party at which Mr.
7 Gilmartin met Ms. Harney happened before the date of the alleged events in
8 Leinster House. When this was pointed out to Mr. Gilmartin he withdrew the
9 allegation in respect of Ms. Harney.

14:31:18 10
11 It is against this background that the allegations of Mr. Gilmartin now being
12 inquired into by the Tribunal must be considered.

13
14 Mr. Owen O'Callaghan and the alleged payments of 30,000 pounds and 50,000
14:31:31 15 pounds.

16
17 On the 15th of October 2004 my client was informed that an allegation had been
18 made concerning an alleged payment to him on behalf of Mr. O'Callaghan. The
19 Tribunal in its letter of the 15th of October 2004 stated that Mr. Gilmartin
14:31:51 20 had provided a statement to the Tribunal in which he stated that in or around
21 1992 Mr. Gilmartin was informed by Mr. Owen O'Callaghan that Mr. O'Callaghan
22 had paid the sums of 50,000 pounds and 30,000 pounds to my client.

23
24 He further stated that he was informed by Mr. O'Callaghan that the latter
14:32:16 25 payment of 30,000 pounds was paid to my client for his role in the blocking of
26 Green Properties plc from obtaining special tax designation for the development
27 in Blanchardstown. The Tribunal sought a narrative statement in connection
28 with this matter. My client provided that statement categorically denying the
29 allegations. The Tribunal did not at that time advert to the fact that Mr.
14:32:40 30 Gilmartin had been involved in a long sequence of communications with the

14:32:45 1 Tribunal and that different allegations, and in particular about the 50,000
2 pounds, had been made at different points in time after Mr. Gilmartin's first
3 communications with the Tribunal.

14:32:58 5 For example, although Mr. Gilmartin's first communication with the Tribunal of
6 which we were aware was a telephone conversation with Counsel for the Tribunal
7 on the 5th of February 1998. The first mention of the 50,000 pounds allegation
8 was in a telephone conversation with Counsel for the Tribunal on the 25th of
9 November 1999.

14:33:22 10
11 In the intervening 21 and a half months there were more than 30 recorded
12 communications with and statements from Mr. Gilmartin and the allegation in
13 respect of the 50,000 pounds was not made in any of them.

14:33:38 15 This information only emerged following delivery of a book containing Mr.
16 Gilmartin's prior statements furnished to Mr. Ahern in late 2005 and then only
17 as a result of the Supreme Court decision in the O'Callaghan and Mahon case, in
18 which judgement was given on the 5th of March 2005.

14:33:59 20 On being made aware of these allegations, my client sought clarification in
21 relation to when these payments were alleged to have been made. He was
22 informed by the Tribunal on the 3rd of November 2004 that Mr. Gilmartin alleged
23 that he recalled Mr. O'Callaghan telling him in or around 1992 that he, Mr.
24 O'Callaghan, had given 50,000 pounds to my client in 1989 and a further 30,000
14:34:30 25 pounds sometime later.

26
27 This second payment was alleged to have been made between the 1st of January
28 1989 and the 31st of December 1992. My client provided a detailed statement to
29 the Tribunal on the 4th of November 2004 rejecting these allegations.

14:34:52 30

14:34:52 1 Let me be very clear about this. Notwithstanding all of these exhaustive
2 inquiries by the Tribunal into my client's affairs, there is no evidence
3 whatsoever to support these false allegations by Mr. Gilmartin.

14:35:06 5 In the opening statement the Tribunal has focused on a number of lodgements in
6 my client's bank account and that of his then partner, Celia Larkin, in late
7 1994 and 1995.

8
9 The Tribunal has postulated theories in respect of those lodgements and has
10 engaged in speculation and hypothesis based on inappropriate foreign exchange
11 rates for the sums of money involved.

12
13 The Tribunal have no documentary or other evidence from the bank to support
14 these hypothesis and they did not even put some of these suggestions to the
14:35:44 15 bank witnesses during the interviews which have been circulated.

16
17 The lodgement of 24,838.48 on the 11th of October 1994.

18
19 In questions at the private hearing the Tribunal has suggested to my client
14:36:03 20 that this amount equated to 25,000 pounds Sterling on that date, but the
21 question was couched in the following terms "albeit using the wrong rate of
22 exchange". That, of course, seems to be a contradiction in terms. If the
23 appropriate rate were used by the Tribunal -- if the appropriate rate were
24 used, the Tribunal calculation would be out not by pounds but by hundreds of
14:36:36 25 pounds. The rate appropriate to 25,000 pounds Sterling has not been furnished
26 to us. However, it must have been more favourable than the rate of the sums up
27 to 10,000 pounds which was then 0.9988 and which would have produced a sum of
28 25,030.04 Irish. In other words, a sum of more than 191 pounds more than the
29 lodgement on that day.

14:37:07 30

14:37:07 1 The difference would obviously have been even greater if the appropriate rate
2 for 25,000 pounds was used although we have not been given that figure.

3
4 My client has told the Tribunal and will give evidence that the sum was made up
14:37:22 5 up by approximately Sterling 8,000. He doesn't know the precise amount and
6 16,500 in cash from contributions from four of his friends.

7
8 The lodgement of 28,772.90 on the 5th of December 1995 into the account of
9 Celia Larkin.

14:37:51 10
11 In cross-examination of my client during private hearing, the Tribunal put
12 forward the theory that this lodgement relates to a sum of US Dollars 45,000 at
13 the applicable rate of exchange on the day. This was a completely fanciful
14 suggestion made without any sporting evidence and without any allegation to
14:38:09 15 that effect having been made to the Tribunal.

16
17 My client was extremely surprised at the suggestion and denied categorically
18 that he had ever received such a sum. He will also deny this emphatically in
19 the public hearings of the Tribunal.

14:38:25 20
21 It's quite extraordinary that the Tribunal should first think fit to make this
22 type of suggestion at the private hearing and then think it fit to proceed to
23 circulate the transcript of those questions, in circumstances where there is
24 not a shred of evidence to support the proposition. And all of the time
14:38:45 25 knowing that it was very likely that once circulated this suggestion would make
26 its way into the media.

27
28 What makes the situation all the more unacceptable is the fact that the figure
29 does not add up when applying the appropriate rate of exchange to the sum
14:39:02 30 mentioned using the exchange rates sheet furnished to us by the Tribunal for

14:39:07 1 that date.

2

3 In order to reach the figure lodged using a sum of 45,000 dollars it is

4 necessary to use the lowest rate, namely, that for buying up to 2,500 Irish

14:39:20 5 pounds. However, the appropriate rate for such an amount of dollars would be

6 much more favourable. The remit rate, for instance, on that sum would produce

7 a sum of 29,247.37 Irish. In other words, a sum nearly 500 pounds higher than

8 that which was lodged.

9

14:39:42 10 Extraordinarily, the Tribunal never put to the relevant bank officials that

11 this lodgement might be made up of a dollar amount during their private

12 examination. The transcripts of which have been circulated to us.

13

14 There is absolutely nothing to corroborate the Tribunal's hypothesis. Once

14:40:02 15 again, the Tribunal is attempting to fit square pegs into round holes in

16 pursuit of a fanciful hypothesis.

17

18 Allegations regarding 44, Beresford Avenue.

19

14:40:13 20 During the course of the election my client issued a very detailed statement in

21 relation to his renting and subsequent purchase of 44, Beresford Avenue. And I

22 would refer the Tribunal to that statement.

23

24 I would also remind the Tribunal that the necessity for the issue of that

14:40:30 25 statement arose because of leaking of the documentation circulated by the

26 Tribunal very shortly prior to the election. Based on past experience, once

27 the documentation was circulated, it was inevitable that it would be leaked to

28 the media. The Tribunal was warned that this would happen after it had

29 indicated its intention to proceed with circulation.

14:40:55 30

14:40:55 1 Notwithstanding those warnings, the Tribunal went ahead with the circulation
2 and as we all know, the inevitable happened.

3
4 Why did the Tribunal rush to circulate? The question can reasonably be asked
14:41:09 5 is why the Tribunal appeared so determined to rush to circulate the documents
6 and to proceed to public hearing when it knew that an election was very
7 imminent.

8
9 The suggestion that the circulation of the material was justified having regard
14:41:24 10 to the Tribunal's obligation to conduct its affairs with expedition is
11 untenable. The Tribunal's hearings have been delayed for the past 18 months
12 not by any action on behalf of my client but for other reasons.

13
14 A further delay of a few weeks would have made no material difference,
14:41:45 15 particularly when it was obvious that the Tribunal would not be proceeding
16 during the election campaign. It has no answer to say at the time. The
17 documents were circulated, the election date had not been announced. Everyone
18 knew the election was imminent.

19
14:42:02 20 The elections of the Tribunal in rushing to commence its public hearings and in
21 circulating the documents at such a time was bound to create a serious risk of
22 an interference with the democratic process. The Tribunal itself implicitly
23 recognised the danger of intrusion into the democratic process in its decision
24 to adjourn the recommencement of this Module on the 30th of April last.

14:42:29 25
26 It is very difficult to understand how one can reconcile that acceptance of the
27 risk of intrusion into the democratic process with the decision to circulate
28 not much more than a week previously.

29
14:42:44 30 This is not a question of using the benefit of hindsight to criticise the

14:42:56 1 actions of the Tribunal. All of this was submitted in detail to the Tribunal
2 when the Tribunal's intention to circulate was notified to us. The Tribunal
3 rejected our submissions on this in a very cursory manner.
4

14:43:05 5 Dealing with the malicious and false allegations against Bertie Ahern.
6

7 These allegations by Mr. Ahern are part -- by Mr. Gilmartin are part of a
8 pattern of malicious and false allegations made against Bertie Ahern over the
9 past seven years. The Tribunal is aware from detailed and lengthy
14:43:26 10 correspondence of the very serious concerns my client has expressed concerning
11 the exercise of a malicious -- the existence of a malicious campaign against
12 him and the use of the Tribunal by third parties for that purpose.
13

14 Despite these concerns, the Tribunal has failed either to adequately respond to
14:43:47 15 my client or to take any steps to investigate these matters. It has further
16 refused to provide my client with documentation and information which he has
17 consistently requested.
18

19 Furthermore, the Tribunal has never provided any explanation to my client as to
14:44:07 20 how highly confidential information has apparently ended up in the hands of
21 third parties and his complaints in that regard have not been confined to the
22 much publicised breaches of confidentiality in September last year.
23

24 At this point I should comment that it seems somewhat extraordinary for the
14:44:28 25 entire of this supplemental opening to concern itself solely with the affairs
26 of my client, Mr. Ahern.
27

28 It is even more extraordinary that this should happen when it is admitted by
29 Mr. O'Neill, Counsel for the Tribunal, at the end of his opening that the
14:44:45 30 inquiries of the Tribunal have not revealed any documentation evidencing any

14:44:51 1 link between Mr. O'Callaghan and the lodgements into the accounts of Mr. Ahern.
2
3 Notwithstanding this fact, it is clear from the opening this morning that the
4 Tribunal has put enormous efforts into embarking on an entirely separate
14:45:08 5 excursion well removed from the central aspects of Quarryvale -- of the
6 Quarryvale II Module. The sole purpose of this excursion would appear to delve
7 into the most minute detail possible of Mr. Ahern's financial affairs and to
8 justify this on the basis of an allegation for which there is no credible
9 evidence.

14:45:30 10
11 The examination of Mr. Ahern's financial affairs seems now to have become an
12 end in itself. Has any other witness been subjected to this type of treatment
13 by the Tribunal?
14

14:45:42 15 It must be stated also that the Tribunal's counsel seemed only interested in
16 referring to evidence in support of the hypothesis put forward in relation to
17 Mr. Ahern and made no reference to the considerable evidence which contradicts
18 that hypothesis.
19

14:46:00 20 On the opening -- an opening statement should endeavour to treat all witnesses
21 fairly and to present all the evidence in a balanced way. My client is simply
22 a witness at this Tribunal, who has co-operated with the Tribunal in every way
23 he can and who has issued instructions to his solicitors and agents to fully
24 co-operate with the Tribunal and to provide all relevant documentation to it.

14:46:31 25
26 Notwithstanding this co-operative stance, my client finds himself in the
27 impossible position that he does not know, with any precision, what the
28 Tribunal is investigating other than the allegations concerning the 50,000
29 pounds and the 30,000 pounds. As already explained, this lack of basic
14:46:51 30 information is impeding his attempts to clear his good name.

14:46:55 1
2 Further, as I will outline shortly, very damaging and demonstrably false
3 allegations have repeatedly been made against him to the Tribunal apparently
4 without any criticism or censure of those who have made these allegations. A
14:47:10 5 review of the nature and content of these allegations renders inexplicable the
6 failure of the Tribunal to investigate a concerted effort to damage my client.

7
8 The following are examples of some of the wild and groundless allegations made
9 against my client.

14:47:29 10
11 Mr. Denis Starry O'Brien. On the 8th of May 2000 the Tribunal wrote to my
12 client informing him that a Mr. Denis starry O'Brien had stated that in the
13 period July to September 1989 inclusive he was involved in certain events which
14 included the payment to him in or about September 1989 of a sum of 50,000
14:47:53 15 pounds. This payment was alleged to be made by Mr. O'Brien on behalf of Mr.
16 O'Callaghan. My client not only rejected these allegations but provided the
17 Tribunal with details of both his personal accounts and accounts of -- with his
18 name arising from his political activity within the Fianna Fail party in order
19 to disprove the same.

14:48:18 20
21 My client also provided the Tribunal with details of all investment and asset
22 acquisitions during the period 1st of July 1989 to 31st of December 1989. He
23 swore an affidavit on the 12th of November 2000 which demonstrated
24 unequivocally that there was no basis whatsoever for these allegations. He
14:48:39 25 brought Circuit Court defamation proceedings against Mr. Denis O'Brien and
26 demonstrated that Mr. O'Brien had not only made false allegations but also had
27 falsified documents in an attempt to support them.

28
29 The fact that such serious allegations have been proved to be false should have
14:48:59 30 alerted the Tribunal of the possible existence of a co-ordinated malicious and

14:49:03 1 damaging campaign against him.
2
3 500,000 pounds and Mr. Joe Burke.
4

14:49:08 5 On the 10th of March 2004 the Tribunal furnished Mr. Ahern's solicitors with a
6 copy of a document headed "Evidence of Thomas Gilmartin" and which Mr.
7 Gilmartin alleged that Mr. Joe Burke had requested that Mr. Gilmartin pay
8 500,000 pounds to Mr. Burke or to Mr. Ahern in return for assisting Mr.
9 Gilmartin in relation to purchasing lands at Quarryvale.

14:49:34 10
11 The Tribunal did not inform Mr. Ahern's solicitors, however, that Mr. Gilmartin
12 had never previously made this allegation in the sequence of communications
13 going back to the 20th of May 1998 in which Mr. Burke had been mentioned as
14 giving assistance to Mr. Gilmartin in relation to the purchase of lands. It
15 remains to be established why my client was not informed of the previous
16 inconsistent statements of Mr. Gilmartin and in particular a statement in a
17 telephone conversation with Counsel for the Tribunal on the 26th of January
18 1999 that he, Mr. Burke, did not overtly refer to money.
19

14:50:15 20 It should be noted that this statement of so-called evidence was made several
21 days after Mr. Gilmartin had commenced his oral testimony at the Tribunal.
22
23 Mr. Owen O'Callaghan, Golden Island, 150,000 pounds and foreign bank accounts.
24

14:50:32 25 On the 21st of April 2005 my client was informed of a another false allegation
26 made against him. On this occasion it was alleged by the Tribunal that it had
27 received information that my client, and this is a quotation "may have in or
28 around March 1994 received monies indirectly from Mr. Owen O'Callaghan in
29 respect of Golden Island Shopping Centre, Athlone".
30

14:51:03

14:51:03 1 And then the Tribunal went on to say further. "The members understand that
2 some 150,000 pounds may have been paid to a third party and that your client
3 may have received a share of these monies".
4

14:51:19 5 The letter sought information concerning the same and further informed my
6 client that the members had received "information that your client may have
7 held accounts in the following jurisdiction, Jersey, Liechtenstein, Dutch
8 Antilles, England".
9

14:51:37 10 My client was appalled by those allegations and they were rejected emphatically
11 by a letter to the Tribunal of the 22nd of April 2005.
12

13 In that letter my client pointed out that the allegations in the Tribunal's
14 letter of the 21st of April were unattributed and that the source of the
14:51:55 15 information was not specified. The letter also brought to the Tribunal's
16 attention a number of matters which demonstrated a pattern of conduct of false
17 and malicious allegations against my client.
18

19 The 15 million pounds.

14:52:09 20
21 By letter of the 12th of May 2005 the Tribunal informed my client of another
22 unattributed allegation against my client. Namely, an allegation that he "has
23 or holds the sum of 15 million pounds in an account in Bank of Ireland in
24 Jersey and that a substantial proportion of this amount was channelled through
14:52:34 25 Allied Irish Banks, O'Connell Street, Dublin 1".
26

27 These allegations were immediately rejected by my client in a letter of the
28 24th of May 2005. Precise particulars with regard to the allegations were
29 sought. Those particulars have never been furnished.

14:52:50 30

14:52:50 1 It should be emphasised that none of these allegations with the exception of
2 the alleged payment of 30,000 pounds and 50,000 pounds were contained in Mr.
3 Gilmartin's comprehensive and detailed statement of the 25th of May 2001.
4

14:53:12 5 My client was subsequently informed by the Tribunal on the 30th of March 2006
6 that it had "not decided to conduct a public inquiry into the allegation that
7 my client held or holds the sum of 15 million in an account in the Bank of
8 Ireland in Jersey or that my client may have held accounts in Jersey,
9 Lichtenstein, Dutch Antilles or England".

14:53:34 10
11 It can only be concluded that the Tribunal regards the allegations not being
12 investigated as incredible. Nevertheless, it continues to investigate my
13 client without limit as to subject matter. It continues to investigate my
14 client without giving notice as to what matter the investigation relates. All
14:53:52 15 of these investigations originate from allegations made by one source. The
16 same source that was responsible for the outlandish allegations I have referred
17 to earlier. And that source is Mr. Tom Gilmartin. This is anomalous to say
18 the least.
19

14:54:08 20 For some considerable time Mr. Ahern has pointed out to the Tribunal his belief
21 and the grounds therefore that the Tribunal's proceedings are being availed of
22 by third parties for the purpose of making false and malicious allegations
23 against him. There have been deliberate efforts to manufacture false evidence
24 against him. This fact has been clear since Easter Sunday 2000 when Mr. Frank
14:54:33 25 Connolly published the untrue allegations and forged documentation produced by
26 Mr. Denis Starry O'Brien.
27

28 This fact has been underlined by subsequent events such as the frequently
29 changing and inconsistent evidence of Mr. Gilmartin and the production of a
14:54:53 30 fraudulent letter purporting to show my client attempting to open offshore bank

14:54:58 1 accounts. These matters go back over at least seven years.

2

3 Apart from other cogent evidence demonstrating the falsity of the allegations,

4 the very fact that such false allegations have been made in itself cast very

14:55:12 5 serious doubts on the allegations that the Tribunal is now intent on

6 investigating in public, particularly given the undoubted links between the

7 Gilmartin allegations and the original discredited Starry O'Brien story

8 published by Frank Connolly.

9

14:55:29 10 It is remarkable that notwithstanding the clear exposure of Mr. Gilmartin as an

11 unreliable, untruthful witness, the Tribunal has nonetheless continued to

12 investigate his preposterous allegations. The Tribunal is about to provide

13 this malevolent and mendacious witness with a further platform to advance his

14 undoubted vendetta against Mr. O'Callaghan and anyone else, such as Mr Ahern,

14:55:50 15 who he imagines is to blame for his business failures.

16

17 It is also clear that Mr. Gilmartin has become a puppet for others --

18

19 MR. RYAN: Judge, I must object to that description.

14:56:01 20

21 MR MAGUIRE: To see an opportunity to inflict political damage on Mr. Ahern.

22 The Supreme Court held in the first O'Callaghan decision that the

23 constitutional rights of parties appearing before the Tribunal were violated by

24 the refusal to make available to those parties the earlier statements of Mr.

14:56:22 25 Gilmartin for the purpose of cross-examination.

26

27 Mr. Gilmartin previously made allegations against my client in Quarryvale I

28 Module of the Tribunal. He was cross-examined by me in March 2004. The

29 cross-examination was hampered however because the Tribunal refused to furnish

14:56:40 30 copies of previous statements made by Mr. Gilmartin to the Tribunal. Even

14:56:44 1 though these were specifically requested of the Tribunal at the time.

2

3 Such documents were deemed by the Supreme Court to be absolutely essential in

4 order to allow for a worthwhile cross-examination. Accordingly, Mr. Ahern was

14:56:56 5 unlawfully prevented from conducting a full cross-examination of Mr. Gilmartin

6 through me, his Senior Counsel, in Quarryvale I Module.

7

8 This constitutional wrong should have been remedied as a matter of priority. I

9 should have been allowed to complete the cross-examination of Mr. Gilmartin in

14:57:15 10 relation to the Quarryvale I issues. The Tribunal is now intent on commencing

11 the Quarryvale II Module and allowing Mr. Gilmartin to give further evidence

12 without allowing the parties, who were deprived of the right to

13 cross-examination in Quarryvale I, an opportunity to complete those

14 cross-examinations.

14:57:35 15

16 The importance of being able to conduct such cross-examinations prior to the

17 Tribunal conducting further public inquiry is manifest in circumstances where

18 the documentation now furnished provides at the very least an objectively

19 credible basis for challenging Mr. Gilmartin's credibility in relation to the

14:57:54 20 allegations already made.

21

22 If, as Mr. Ahern confidently believes, Mr. Gilmartin's latest allegations will

23 be demonstrated to be false, he will have suffered completely needless, unfair

24 publicity.

14:58:09 25

26 The Tribunal's role is to inquire into definite matters of urgent public

27 importance. It must hear evidence and adjudicate on that evidence. In

28 conducting its hearings the Tribunal must be outcome neutral. It must

29 endeavour to treat all witnesses fairly. The Tribunal's counsel are merely

14:58:27 30 agents of the Tribunal. Their role is to lead the evidence and to

14:58:31 1 cross-examine.
2
3 In the Quarryvale I Module the Tribunal's counsel led Mr. Gilmartin's evidence
4 but failed to conduct any cross-examination or at the very least any vigorous
14:58:43 5 cross-examination of Mr. Gilmartin. This was despite the fact, unbeknownst to
6 any of the other legal representatives present, that the Tribunal had in its
7 possession prior inconsistent statements from Mr. Gilmartin.
8
9 Let me be very clear about this. A similar approach will not suffice on this
14:59:02 10 occasion. The Tribunal counsel must, in fairness, deal with Mr. Gilmartin in a
11 similar way to other witnesses. There are glaring contradictions in Mr.
12 Gilmartin's evidence. He has manifestly made prior inconsistent statements.
13
14 The Tribunal has already concluded that some of his allegations are untrue. In
14:59:22 15 these circumstances, the Tribunal's counsel must conduct a vigorous and
16 thorough cross-examination of Mr. Gilmartin. Otherwise the Tribunal runs the
17 real risk of a perception that it is not outcome neutral. That it has a
18 preferred outcome in mind and that not all witnesses will be treated equally
19 and that Mr. Gilmartin is, for some reason, being accorded preferential status.
14:59:48 20
21 That concludes the response to the opening on behalf of Mr. Ahern.
22
23
24 CHAIRMAN: Do you want to?
14:59:56 25
26 MR. O'NEILL: I don't believe that it's appropriate for Tribunal counsel at
27 this point in time to engage further in what in effect was an opening as to
28 what the Module would involve. In other words, the response as I see it of my
29 friend Mr. Maguire has extended somewhat further than addressing the issues
15:00:17 30 which were initially opened. I don't intend to make a point on that.

15:00:20 1
2 There are just one or two points that do arise there. And that is where there
3 has been reference to the Tribunal having reached a conclusion on the evidence
4 of other witnesses, and in particular Mr. Gilmartin, and that it is determined
15:00:33 5 that Mr. Gilmartin's evidence is incredulous in certain areas. That is as a
6 fact untrue. The Tribunal has not reached any conclusions as to the
7 credibility of Mr. Gilmartin or any other witness. Except those in respect of
8 whom it has delivered reports. And there has been no report dealing with the
9 credibility of Mr. Gilmartin.

15:00:57 10
11 References to Judges in other locations commenting, in the course of their
12 judgement, that the evidence heard before the Tribunal do not necessarily
13 reflect any view formed by the members of this Tribunal.
14

15:01:12 15 It seems to have been, to some extent used, as a foundation for a further
16 elaboration by Mr. Maguire. And it's on that very narrow point that I do feel
17 that it's appropriate to correct that at this point in time. Particularly as
18 Mr. Gilmartin will be a witness over the next number of weeks. And he should
19 not be questioned either by the Tribunal or by others on the basis that the
15:01:36 20 Tribunal has reached any determination about his credibility or otherwise.
21
22

23 CHAIRMAN: All right. Do you wish to?
24

15:01:44 25 MR. RYAN: Just to add to that, Judge. I believe it is wholly inappropriate
26 that Mr. Maguire would have used a formal response -- the opportunity afforded
27 by the Tribunal to him, in an effort to impugn the character of my client at
28 this stage.
29

15:01:59 30 It is wholly open to Mr. Maguire to cross-examine my client in his evidence at

15:02:03 1 any point in the future.

2

3 I add my comments to those of Mr. O'Neill.

4

15:02:08 5 And it is my view that the -- that a formal response in this way should merely
6 deal with the opening statement and I believe that that was not done today by
7 Mr. Maguire. And I believe that he had ample opportunity to test the
8 credibility of my client if he wished to under cross-examination, Judge.

9

15:02:27 10 That's purely all I wish to say.

11

12 CHAIRMAN: All right.

13

14 Well, I just want to say this.

15:02:34 15

16 The essential purpose of the invitation extended to Mr. Maguire to reply to the
17 opening statement was to deal with the issues which were raised in that opening
18 statement.

19

15:02:46 20 Mr. Maguire has chosen to make a number of comments and statements which are
21 directed at the Tribunal itself. And which amount in reality to allegations of
22 bias and improper conduct on the part of the Tribunal. And the manner in which
23 it has conducted its affairs to date, specifically insofar as Mr. Ahern is
24 concerned.

15:03:10 25

26 Needless to say, these are absolutely and categorically rejected as being -- as
27 being fair by any consideration of the issues which have occurred to date.

28

29 But given the severity of some of these comments and statements, I think it

15:03:33 30 might be appropriate if my colleagues and I were to discuss the matter this

15:03:38 1 afternoon and we will -- we may decide to respond to it in the morning at half
2 ten.

3

4

All right?

15:03:46 5

6

So half ten tomorrow.

7

8

MR. NESBITT: Mr. Chairman, perhaps I could make an intervention. Richard

9

Nesbitt on behalf of Allied Irish Banks.

15:03:55 10

11

CHAIRMAN: Yes.

12

13

MR. NESBITT: I've had the opportunity of reading the additional opening

14

submission which was made this morning.

15:04:01 15

16

I am just concerned that due to the casualness of the language in some respects

17

it could be mistakenly taken as suggesting some criticism of my clients in

18

relation to the provision of evidence and information to the Tribunal.

19

15:04:15 20

21

My clients are simply witnesses of fact who have made every attempt to assist

22

the Tribunal as best they may.

23

I am just concerned that some casual glance and reading of the submission might

24

suggest that there was some criticism being levelled against them. I don't see

15:04:32 25

26

how that could be.

27

Secondly, we did apply for representation some time ago. I haven't been able

28

to put my hand on the record of that. Auto if I'm wrong about that, I would be

29

making an application for representation.

15:04:44 30

15:04:44 1 CHAIRMAN: We make the order for representation.

2

3 MR. NESBITT: Thank you very much.

4

15:04:47 5 CHAIRMAN: Half ten tomorrow.

6

7 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**

8 **TUESDAY 29TH MAY 2007.**

9

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