

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,

7TH FEBRUARY 2008, AT 10:00 A.M:

09:39:27 1
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3
4 MS. DILLON: Before Mr. Dunlop resumes this morning, I think Mr. Redmond has
10:11:25 5 an application to you, Sir, arising out of yesterday's evidence.
6

7 MR. REDMOND: May it please you, Chairman. I have alerted Ms. Dillon to the
8 fact that I have a brief submission to make in relation to some of the
9 questioning which was conducted yesterday in respect of Mr. Dunlop. And I
10:11:40 10 raised this issue simply because it, I submit and I hope the Tribunal will
11 accept, that some of the questions arose from factual and legal inaccuracies
12 and therefore are not an appropriate matter for re-examination and are more
13 properly a matter for addressing the Tribunal before it proceeds.
14

10:11:58 15 Ms. Dillon has confirmed that she does have some further questions in respect
16 of the National Stadium agreement. And therefore, I say that it is appropriate
17 that they be addressed now, so that Ms. Dillon can incorporate these
18 observations in her further questioning.
19

10:12:15 20 The first matter that I wish to draw to the Tribunal arises from a conclusion
21 drawn in respect of the attendances kept by the three solicitors from Arthur
22 Cox in respect of the initial meeting with Mr. Dunlop.
23

24 And at question 422 Ms. Dillon said "So these were the instructions that you
10:12:36 25 gave to your solicitors at the very beginning and what you were advising them
26 was about setting up a company that was going to buy the lands, isn't that
27 right?".
28

29 Now, Mr. Dunlop in fact answered "yes". And that answer I would say first and
10:12:52 30 foremost will have to be corrected because the conclusion that is predicated in

10:12:56 1 the question is in fact incorrect. And in that regard I would refer the
2 Tribunal to the following.
3
4 If one looks briefly at the relevant notation the first is page 10106. And if
10:13:18 5 I could just refer to effectively what I describe as the last paragraph
6 beginning "Leisure West". You will see, Chairman, that it says "Leisure West
7 wishes to enter an agreement with Merrygrove". So it does not record any
8 agreement to acquire land and in fact doesn't record any extant agreement but
9 records the fact that Mr. Dunlop on behalf of the people he represents, wishes
10:13:44 10 to enter an agreement.
11
12 Now, if I go on then to refer to the next solicitor's note. Which is on page
13 10108. You will see from that notation that there are two continuous
14 statements, one of which is "Merrygrove owns land LW -- presumably Leisure
10:14:03 15 West -- agreement to take over site".
16
17 Now first and foremost, taking over the site is subject to a number of
18 interpretations and in any case is readily open to the suggestion that it would
19 merely be a management agreement. And therefore I say that it is not
10:14:18 20 indicative or conclusive in either event.
21
22 If we go onto the third and final notation, which is 10109. There is a side
23 note which says "John Deane is development solicitors". If we could just have
24 that section highlighted. And sorry, if we could move right across the page.
10:14:46 25 You will see here again "Leisure West". And I would submit on the basis of the
26 first solicitor's notation that the third word is more than likely "wish", it's
27 either "wish" or "want. "Leisure West wish to enter into an agreement whereby
28 will take over the site."
29
10:15:02 30 So yet again the three solicitors having made notes of the meeting are

10:15:06 1 recording a desire for an agreement rather than the fact of an agreement. And
2 therefore, I say that it was both factually and legally incorrect and unfair to
3 put to Mr. Dunlop that question in those circumstances. Now, I have been
4 careful about the manner in which I have put this submission and I am not in
10:15:25 5 any way anxious to discommode the three individual solicitors from
6 Messrs. Arthur Cox. It's a matter for Ms. Dillon to confirm whether or not she
7 agrees with what I have highlighted but I am simply saying that the clear
8 wording without the need to adduce evidence from the authors is such that it
9 records the desire for an agreement rather than the fact of an agreement.

10:15:45 10
11 Now, that's my first point, Chairman.

12
13 The second point I have to make relates to the suggestion by Ms. Dillon that
14 the letter from Mr. Dunlop, which Mr. Dunlop confirmed was actually drafted by
10:16:01 15 Mr. Lawlor, which is to be found at 10130. Effectively recounted the extant
16 agreement between Mr. Dunlop and Mr. O'Callaghan. Now, in particular paragraph
17 three which I say quite correctly Ms. Dillon brought to the attention of the
18 Tribunal as the appropriate paragraph reads:

19
10:16:24 20 "Put simply, legal effect is now required for the transfer of the 33 acres of
21 land in the ownership of Merrygrove at Cappagh, Neilstown, Clondalkin, Dublin
22 and similarly for the transfer of the option which Merrygrove holds on the
23 adjoining 28 acres."

24
10:16:39 25 That per se without an appropriate response would appear to record an extant
26 agreement for the transfer of land. However, if we refer to the reply which
27 came from Messrs. Deane Enright.

28
29 CHAIRMAN: Just if you go to the next paragraph. Sorry -- go back to.

10:16:58 30

10:16:58 1 MR. REDMOND: I am quite happy to do that. The same point will arise,
2 Chairman. "Agreement in principle has been reached regarding such a transfer
3 between the owners of Merrygrove Limited, chief of whom was Mr. Owen
4 O'Callaghan and the shareholders and principles of Leisure West represented by
10:17:11 5 myself."

6
7 Then if I could draw the Tribunal's attention to the letter from Deane Enright
8 as written by John Deane at 14088. The actual reply at paragraph four begins
9 "Owen is happy to grant the option referred to in your letter."

10:17:30 10
11 Now, I will say as a lawyer specialising in the area of property law that if I
12 was presented with that exchange of correspondence, I would say the parties ad
13 idem. There is no concluded agreement because you cannot respond to first and
14 foremost, an agreement in principle is an agreement to agree. The Hoffman test
10:17:49 15 says it is a thing writ on water and unenforceable.

16
17 If we go back to the previous paragraph that I referred to first which recorded
18 an agreement to transfer. In so far as there was a response to that which says
19 I am happy to give you an option. That's apples and oranges. You cannot say
10:18:05 20 we have an agreement and they be get confirmation by response saying that you
21 have an option.

22
23 So insofar as Ms. Dillon was putting to Mr. Dunlop, who does not have the
24 expertise to deal with these matters. That the letter of Mr. Deane is evidence
10:18:19 25 of a concluded agreement between Mr. O'Callaghan and Mr. Dunlop. I say legally
26 it cannot be and all the more so when the response is coming from a solicitor
27 with experience in property matters.

28
29 And I say that arising from that apples and oranges difficulty, I say that it
10:18:35 30 was an unfair question to put to Mr. Dunlop and that an appropriate response

10:18:40 1 would be that this letter does not evidence the agreement being argued for by
2 Ms. Dillon. Thank you.

3

4

MS. DILLON: I think the answer to that is this, Sir.

10:18:48 5

6

The correspondence does not argue for the agreement alleged by Mr. Dunlop. The

7

correspondence, whatever interpretation Mr. Redmond wishes to put on it, or

8

whatever his view of the legalities of the correspondence, the correspondence

9

does not substantiate the agreement that Mr. Dunlop said to you that he had

10:19:08 10

with Mr. O'Callaghan, Mr. Lawlor and Mr. Kelly in relation to the Stadium.

11

Because --

12

13

CHAIRMAN: I can see that.

14

10:19:16 15

MS. DILLON: Yes.

16

17

CHAIRMAN: The point that Mr. Redmond is making is that if it was put to,

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which I think it was but I can't recall without looking at the transcript.

19

10:19:26 20

MS. DILLON: Well if Mr. Redmond says it was put I accept it was put, there is

21

no question about that.

22

23

CHAIRMAN: If it was put to Mr. Dunlop that the correspondence that

24

Mr. Redmond has opened have the effect of, if you like, proving that an

10:19:43 25

agreement was in place and merely had to be finalised by the solicitors.

26

That's the point that you are making.

27

28

MS. DILLON: Uh-huh

29

10:19:52 30

CHAIRMAN: Then the correspondence doesn't necessarily suggest that, although

10:19:58 1 it seems that there perhaps is a different view on the part of Mr. Dunlop as
2 solicitors at the time than perhaps there was on the part of Mr. O'Callaghan's
3 solicitor. That's my understanding of the ...
4

10:20:13 5 MS. DILLON: Well it's likely I think in the course of this morning's evidence
6 on that issue with the balance of the correspondence that if I erred in any way
7 yesterday with Mr. Dunlop, I will avail of the opportunity to remedy that this
8 morning.
9

10:20:26 10 What I was suggesting to Mr. Dunlop and what I was attempting to convey to Mr.
11 Dunlop was that the evidence that he had given to you in relation to his
12 understanding of his agreement with Mr. O'Callaghan was not substantiated by
13 the correspondence that ensued between the solicitors following on Mr. Dunlop's
14 meeting with the three solicitors.

10:20:46 15
16 JUDGE FAHERTY: Are you saying, Ms. Dillon, that the issue that you -- whether
17 the agreement was in fact in being or intended.
18

19 MS. DILLON: Yes.

10:20:58 20
21 JUDGE FAHERTY: As suggested by Mr. Redmond from the notes.
22

23 MS. DILLON: Yes.
24

10:21:02 25 JUDGE FAHERTY: Where you and Mr, to put it like this, where you and Mr.
26 Dunlop differ, is the substance of the agreement, intended or otherwise.
27

28 MS. DILLON: Exactly. It is irrelevant, I would submit to you, whether there
29 was an actual agreement or an intended agreement because what is recorded in
10:21:19 30 the correspondence --

10:21:20 1
2 CHAIRMAN: Or an agreement in principle.
3
4 MS. DILLON: Or an agreement in principle. What is record in the
10:21:25 5 correspondence that passes between Messrs. Cox's and Deane is an agreement in
6 relation to the transfer or a suggested agreement in relation to the transfer,
7 or at its weakest a discussion about a transfer of the option that Merrygrove
8 held on the 33 acres. Which Mr. Dunlop tells you was never agreed and was
9 never part of his agreement with Mr. O'Callaghan. There was never any
10:21:46 10 agreement he tells you in relation to any disposition or agreement to transfer
11 any of the land. And that was my point yesterday and obviously I didn't make
12 it clearly enough to Mr. Dunlop but I am coming back to this topic today so I
13 will be able to revisit that with him.
14
10:22:03 15 CHAIRMAN: Okay. We can hopefully clear it up in the course of this morning
16 if there is an issue. All right.
17
18 MR. REDMOND: I am obliged, Chairman.
19
10:22:11 20 MS. DILLON: Mr. Dunlop, please.
21
22 **MR. FRANK DUNLOP, PREVIOUSLY SWORN, WAS QUESTIONED BY**
23 **MS. DILLON AS FOLLOWS:**
24
10:22:22 25 CHAIRMAN: Good morning, Mr. Dunlop.
26 A. Good morning, Chairman.
27
28 Q. 1 MS. DILLON: Good morning, Mr. Dunlop. Just we might as well deal with that
29 issue I suppose first, Mr. Dunlop, seeing as it's been raised and we already
10:22:38 30 dealt with the correspondence yesterday.

- 10:22:40 1 A. Yes.
- 2 Q. 2 But the matter I think came back to the discussed later in 1994. And I think
- 3 if we can look at 11176 please. And this is an extract from your diary. And
- 4 you will see there that on the 29th of June 1994, that you were recorded as
- 10:22:58 5 having a meeting with Mr. O'Callaghan, isn't that right?
- 6 A. Yes.
- 7 Q. 3 And I think following on that meeting on the 30th of June, the following day at
- 8 11202, you wrote, this is your signature, is that right, Mr. Dunlop?
- 9 A. Yes.
- 10:23:13 10 Q. 4 You wrote the following letter to Mr. John Walsh at Cox's, re all purpose
- 11 National Stadium "I met with Owen O'Callaghan at my office yesterday" that's
- 12 the 29th of June.
- 13 A. Yeah.
- 14 Q. 5 "He reaffirmed our earlier agreement that the ownership of the lands at
- 10:23:27 15 Neilstown, North Clondalkin, Dublin 22 (specifically the lands on which the
- 16 proposed all purpose National Stadium is to be built) comprising some 55 acres
- 17 is to be vested in Owen O'Callaghan 33.3 per cent. Ambrose Kelly 33.3 per
- 18 cent, Frank Dunlop 33.3 per cent. These three being the shareholders in
- 19 Leisure West Ireland limited."
- 10:23:49 20
- 21 Now, in view of the submission made by Mr. Redmond and just so that there is
- 22 absolutely no ambiguity about it, do you agree, Mr. Dunlop, that what I have
- 23 just read to you records an apparent agreement between yourself and Mr.
- 24 O'Callaghan made on the 29th of June 1994, that the lands on which the National
- 10:24:10 25 Stadium was to be built were to be transferred to Leisure West limited to be
- 26 owned one-third by you, one-third by Mr. O'Callaghan and one-third by
- 27 Mr. Ambrose Kelly?
- 28 A. It records an apparent agreement, yes.
- 29 Q. 6 All right. And that agreement is stated by you in this correspondence to have
- 10:24:25 30 been reaffirmed.

- 10:24:27 1 A. Yes.
- 2 Q. 7 At your meeting on the 29th of June '94, isn't that right?
- 3 A. Correct.
- 4 Q. 8 Does that mean that of -- I assume that that means, Mr. Dunlop, that the
- 10:24:35 5 agreement was in existence prior to the 29th of June '94, if it's reaffirmed by
- 6 Mr. O'Callaghan at the meeting?
- 7 A. Any agreement that was in existence was to accommodate the interest and the
- 8 pressure arising -- coming from Mr. Lawlor. The agreement that I had verbally
- 9 with Mr. O'Callaghan from day one related to the shareholding in the Stadium
- 10:25:05 10 that I outlined to you yesterday. 25 per cent for each person, one of them
- 11 holding 25 per cent for the other.
- 12 Q. 9 Yes. There is nothing in your diary at 11176 to suggest that Mr. Lawlor was at
- 13 the meeting on the 29th of June 1994, between yourself and Mr. O'Callaghan,
- 14 isn't that right?
- 10:25:21 15 A. Correct, yes.
- 16 Q. 10 And it would appear that immediately following on that meeting you wrote on the
- 17 following day to your solicitor Mr. John Walsh, isn't that right?
- 18 A. Correct.
- 19 Q. 11 And at 11202, Mr. Dunlop, I would suggest to you that on any plain reading of
- 10:25:36 20 the words that you have written, dictated and signed in this document shows
- 21 that on the 30th of June 1994, you told your solicitor that Mr. O'Callaghan had
- 22 reaffirmed his earlier agreement the previous day, isn't that right?
- 23 A. Correct, yes.
- 24 Q. 12 That means that there was an agreement in existence in relation to the
- 10:25:53 25 Neilstown lands prior to the 29th of June '94, isn't that right?
- 26 A. And the agreement was as I have outlined it to you.
- 27 Q. 13 Yes. That is as you have you the lined in your evidence, Mr. Dunlop?
- 28 A. Correct.
- 29 Q. 14 But it is not, i think you must agree in accordance with what is recorded in
- 10:26:05 30 the correspondence?

- 10:26:08 1 A. No it is not in accordance with the correspondence and I said that yesterday.
- 2 Q. 15 Yes. And what is this letter goes on to state on its face is that, the
- 3 agreement related to the ownership of the lands at Neilstown, North Clondalkin,
- 4 Dublin 22, specifically the lands know within which the Stadium is to be built
- 10:26:24 5 55 acres, isn't that right?
- 6 A. Correct.
- 7 Q. 16 And what you are telling your solicitor here in this is that those lands are to
- 8 be transferred to one-third each to Mr. O'Callaghan, Mr. Kelly and Mr. Dunlop
- 9 being the shareholders in Leisure West, isn't that right?
- 10:26:36 10 A. Yes.
- 11 Q. 17 So what you are telling your solicitor here is that the lands are to be
- 12 transferred from whoever owns the lands to Leisure Ireland Limited, isn't that
- 13 right?
- 14 A. The our earlier agreement that the ownership of the lands shall be -- is to be
- 10:26:53 15 vested in.
- 16 Q. 18 Yes.
- 17 A. Owen O'Callaghan, Ambrose Kelly and myself, yes.
- 18 Q. 19 No. Continue to the next line.
- 19 A. And these three being the shareholders in Leisure Ireland Limited, yes.
- 10:27:04 20
- 21 MR. REDMOND: Chairman, again I have to point out that the clear wording of
- 22 that letter suggests that the land to is to be vested in three individuals,
- 23 they being described as shareholders in Leisure Ireland Limited not that the
- 24 land be vest in the Leisure Ireland Limited.
- 10:27:19 25
- 26 MS. DILLON: That is fine.
- 27
- 28 CHAIRMAN: Yes.
- 29
- 10:27:21 30 Q. 20 MS. DILLON: But in any event, Mr. Dunlop, what you say now is that is not

- 10:27:25 1 true and was not true then.
- 2 A. It was not true then. It was never true. The genesis of this arrangement,
3 including letters to solicitors and instructions arose out of two things.
4 One, pressure from Liam Lawlor arising out of the agreement with Mr.
10:27:47 5 O'Callaghan that there would be an agreement vis-a-vis a shareholding in the
6 Stadium.
7
8 And secondly, the fact that Mr. Lawlor felt that Mr. O'Callaghan wasn't doing
9 anything about it.
- 10:28:00 10 Q. 21 Yes. There is nothing to suggest that Mr. Lawlor had any involvement in the
11 meeting on the 29th of June?
- 12 A. Not on the meeting of the 29th, there is no record in my diary.
- 13 Q. 22 It would seem if you look at 11240, which is a letter of the 12th of July '94,
14 written by Mr. Owen O'Callaghan referring to the same meeting where he says re
10:28:19 15 Stadium:
16
17 "Dear Frank, when I met you in Dublin on Wednesday 29th of June, we both
18 discussed and agreed that the Stadium proposal really seemed to be getting off
19 the ground at last."
- 10:28:28 20 A. Yeah.
- 21 Q. 23 "This prompted me to ask you what is the present legal status of the developing
22 company Leisure Ireland and I informed you that it was exactly where it was 12
23 months ago, in limbo. I think it is important for everybody's sake that we get
24 this formalised and maybe you would speak again to John Walsh and ask him to
10:28:42 25 make contact with John Deane."
26
27 You had in fact by the time Mr. O'Callaghan sent this letter on the 12th of
28 June -- July, you had written your letter of the 30th of June '94, to
29 Mr. Walsh.
- 10:28:53 30 A. Correct.

- 10:28:54 1 Q. 24 Asking him to expedite I think the matter of the agreement in relation to the
2 ownership of the Neilstown lands. Isn't that right?
- 3 A. Correct.
- 4 Q. 25 And I think that you wrote on the 12th of July '94, at 11239, to Mr. Walsh
10:29:12 5 again and you say:
6
7 "Dear John, I am currently in the USA but I am concerned that matters relating
8 to the National Stadium should be expedited. I have spoken to Owen O'Callaghan
9 by phone and he informs me that his solicitor, John Deane, awaits contact from
10:29:24 10 you with regard to an agreement concerning the ownership of the site in North
11 Clondalkin."
12 A. Yeah.
- 13 Q. 26 And again do you say to the Tribunal, that what is recorded there is incorrect
14 is that you had not any agreement with Mr. O'Callaghan in relation to the
10:29:36 15 ownership of the site or the lands at North Clondalkin?
16 A. Never and I did say I think in response to Judge Keys yesterday, I think it was
17 Judge Keys, who asked me a specific question. That it is inconceivable, it is
18 quite preposterous for anybody to suggest that Mr. O'Callaghan, who owned a
19 body land in North Clondalkin, albeit with another person, would unilaterally
10:30:09 20 transfer that land or an interest in that land to three individuals, two of
21 whom were already being paid substantial fees in relation to their professional
22 advices vis-a-vis the Stadium.
- 23 Q. 27 And if you look, Mr. Dunlop, at 11262 on the 19th of July '94, your solicitor
24 Mr. John Walsh, wrote to you in relation to the Stadium and he outlined the
10:30:30 25 history of the events.
26 A. Yes.
- 27 Q. 28 Arising from Mr. Deane's letter of the 7th of December last, and said that
28 there hadn't really been any progress and he set out the various information as
29 he understood it in relation to the Merrygrove contract with Dublin Corporation
10:30:45 30 for 32.8 acres in November '88, and then the special conditions in relation to

10:30:51 1 planning permission. And the advices he received from John Deane about the
2 lapse in the planning permission. And then the other special conditions and at
3 paragraph five that "he had been advised by John Deane that a contract had been
4 received for the corporation in relation to an additional tracts of land which
10:31:08 5 I believe runs to approximately 28 acres".

6 A. Yes.

7 Q. 29 So in that first portion of the letter, Mr. Walsh is recounting to you the
8 acquisition history as he understands it, of the two lots of land that were
9 purchased or on which Merrygrove had an option at Neilstown, isn't that right?

10:31:24 10 A. Yes, as I was going to say instructed but as informed by Mr. Deane.

11 Q. 30 Yes. And he then goes on to say "As you will appreciate from the foregoing,
12 the existing contractual situation is unsatisfactory in the context the of the
13 ambiguity of the 1988 contract that related to the first piece of land and the
14 planning permission and the fact that it does not reflect what is now proposed
10:31:44 15 for the Stadium project.

16
17 I hope to have some further feasibility on the second contract when I receive a
18 copy from John Deane. However in order to "copper fasten" matters, I see the
19 following basic requirements.

10:31:57 20
21 1. Merrygrove should procure an option from the corporation in favour of
22 Leisure Ireland for the purchase of the entire land upon a specific set of
23 terms and conditions to be agreed between the parties."

24 A. Uh-huh.

10:32:09 25 Q. 31 So what Mr. Walsh is advising there, Mr. Dunlop --

26 A. Yes.

27 Q. 32 -- do you want to explain to the Tribunal why it was that Mr. Walsh, if you
28 hadn't any agreement to transfer the lands or there was no negotiation or
29 agreement about the transfer of land, why is Mr. Walsh here advising you how to
10:32:25 30 go about implementing or putting in place a situation where the option that

10:32:30 1 Merrygrove owns on the Neilstown land will be transferred to Leisure Ireland?

2 A. Yes. Well two things. I will answer that in two ways.

3

4 One, to repeat again ad nauseam, there was no such agreement in relation to the

10:32:46 5 transfer of the ownership or beneficial interest in the lands owned by

6 Merrygrove to either to me Liam Lawlor or Ambrose Kelly collectively or

7 individually, that's point number 1.

8

9 Point No. 2 obviously what is happening here is that John Walsh is advising me

10:33:02 10 as a result of a conversations with John Deane as to how to progress in

11 relation to the option that John Deane has outlined in his response letter to

12 John Walsh's first letter vis-a-vis the matter.

13 Q. 33 What is the option over, Mr. Dunlop?

14 A. Well the option is over the lands.

10:33:18 15 Q. 34 Yes. And what is the only asset that Merrygrove owns?

16 A. Land.

17 Q. 35 And where is that land?

18 A. North Clondalkin.

19 Q. 36 Did it ever own anything else?

10:33:25 20 A. Well I am not sure what else Merrygrove owned but certainly I know it owned

21 that land, yes.

22 Q. 37 And the only option it had was an option to buy the lands from the corporation?

23 A. Correct.

24 Q. 38 So what Mr. Walsh and Mr. Deane are discussing here or certainly what Mr. Walsh

10:33:39 25 is discussing with you or advising with you is procuring an option?

26 A. Yes.

27 Q. 39 From Merrygrove over the lands, isn't that right?

28 A. Yes.

29 Q. 40 And that would mean that if Merrygrove gave an option to Leisure West then

10:33:53 30 Leisure West would have the option to I would the land, isn't that right?

10:33:56 1 A. Yes.

2 Q. 41 Isn't that right?

3 A. Yes.

4 Q. 42 But you say that there was never any such agreement, isn't that right?

10:34:02 5 A. I am absolutely adamant and certain that there was never any such agreement

6 between Mr. O'Callaghan and myself. I cannot account for anything that Mr.

7 O'Callaghan might have said to other people but this matter was never ever

8 discussed in the details of a proposal other than accommodating or managing an

9 interest in that Mr. Liam Lawlor was claiming or wanted or wanted action from

10 Owen O'Callaghan.

11 Q. 43 When you went to Cox's solicitors, Mr. Dunlop, Mr. Lawlor didn't go with you?

12 A. That's correct, yes.

13 Q. 44 And when you sat across the table from those three solicitors and gave them

14 their instructions following which the correspondence we've looked at arose,

10:34:48 15 Mr. Lawlor wasn't with you?

16 A. No he wasn't.

17 Q. 45 Why would you have directed your solicitors to embark upon a falsehood, Mr.

18 Dunlop?

19 A. We --

10:34:55 20 Q. 46 Why would you have instructed your solicitor to engage in correspondence with

21 Mr. Deane about arranging an option to transfer the lands into the name of

22 Leisure West in circumstances in which you now tell the Tribunal, there never

23 was any such agreement?

24 A. Yes, I don't want to be semantical but the question of an option arose out of a

10:35:16 25 response letter from Mr. Deane to Mr. Walsh, that was not -- the wording

26 "option" was never used by me until Mr. Deane used the word option in his

27 response letter to Mr. Walsh. Mr. Lawlor was anxious to effect an agreement.

28 I certainly went to Arthur Cox. I certainly gave instructions to Arthur Cox,

29 as is evidenced from some of the correspondence that is has been opened in

10:35:45 30 relation to the matter. It was never the intention of Mr. O'Callaghan and I

10:35:51 1 knew this because Mr. O'Callaghan never discussed it with me. All Mr.
2 O'Callaghan ever discussed with me was giving the three of us a 25 per cent
3 shareholding in what I again I think it was Judge Keys said the entity known as
4 the Stadium, whether in an operational manner or what. What was wanted was an
10:36:10 5 agreement between the four people.
6

7 JUDGE KEYS: Mr. Dunlop, could I just ask you on that point and you may not be
8 able to this question and I don't wish to complicate the matter any further.
9 But had the project proceeded and the agreement which you understood you had or
10:36:27 10 the intentions of Mr. O'Callaghan what he intended to give to you. What do you
11 believe you would have actually ended up with? The Stadium is now built for
12 the sake of argument, what exactly would you have ended up with as you
13 understood it?

14 A. I believe what we would have ended up with as a result of the conversation that
10:36:44 15 I had with Mr. O'Callaghan would be a shareholding in some operational entity,
16 Leisure Ireland or Leisure West or whatever it was going to be called, which
17 had some operational role in the running or the operation of the Stadium and it
18 was always in relation to the entity known as the Stadium.
19

10:37:02 20 JUDGE KEYS: And would you have anticipated that as having a lease for example
21 that Leisure Ireland would have a lease on the Stadium and would then rent it
22 to an association or something like that or?

23 A. Yes, it could well have been. These were matters that were never gone into any
24 any great detail, other than as I have attested, other than an agreement with
10:37:26 25 Mr. O'Callaghan that there would be this shareholding.
26

27 JUDGE KEYS: Well do I take it then that Mr. Lawlor was pressing for something
28 greater than that?

29 A. Yes.
30

10:37:34

10:37:34 1 JUDGE KEYS: And that was an actual beneficial interest in the actual lands?
2 A. Yes, I have given evidence already about sometimes very, very specific
3 evidence, sometimes slightly vestigial of the role Mr. Lawlor played in lots of
4 things. He was a very, very clever forceful operator. And he knew and I
10:38:01 5 understand Ms. Dillon to have said yesterday that there is evidence or from
6 Mr. Lawlor that he agrees that there was a shareholding agreement between
7 Mr. Lawlor, Mr. Kelly, and myself and Mr. O'Callaghan in relation to the
8 Stadium in relation to Leisure West. But he obviously was forcing the hand.
9 He wanted. He saw the opportunity here and he saw what was going to be a very
10:38:24 10 valuable site and a very valuable entity.
11

12 JUDGE KEYS: But he was putting pressure on you it to push that idea ahead and
13 you were facilitating him by writing a letter?
14 A. Because he would not and I would not allow him, certainly Ms. Dillon has asked
10:38:40 15 me was he at the meeting with Arthur Cox. I think with all due respect, I
16 think poor James O'Dwyer would have a multiple coronary if Liam Lawlor walked
17 into his office, knowing James as I do. But there was no question that Liam
18 Lawlor was ever going to be identified up front in relation to this. He was
19 pushing the material. He was actually pushing Owen O'Callaghan as far as he
10:39:04 20 possibly could through me. Mr. O'Callaghan never accommodated this or never
21 accented to this.
22

23 JUDGE KEYS: That means you were playing ball for Mr. Lawlor if that's the
24 case.

10:39:15 25 A. Well, yes, I mean, I have already described Mr. Lawlor as a friend. I knew
26 this was not going to come to anything in relation to land. Absolutely knew.

27

28 JUDGE KEYS: Thank you.

29

10:39:34 30 JUDGE FAHERTY: Mr. Dunlop, can I just ask you. When you attended, you

10:39:34 1 wrote -- you telephoned Arthur Cox's and that was followed up by a letter by
2 them saying that they would be happy to engage with you and you wrote then.
3 Can I just ask you, at your first attendance at Arthur Cox's, in what capacity
4 did you first engage with Arthur Cox & Co.

10:39:48 5 A. I think.

6

7

JUDGE FAHERTY: Do you understand my question?

8 A. Yes, I do. I think when I phoned James O'Dwyer, who I had been working with on
9 other matters, I told him in general terms about the Stadium, what the position
10 of it was and who owned the land.

10:40:01 10

11

12

JUDGE FAHERTY: I know the substance.

13

A. And we were trying to effect an agreement.

14

10:40:09 15 JUDGE FAHERTY: Yes that's my point. I just want to ask you, forget about
16 what the agreement was.

16

17

A. Yes.

18

19

JUDGE FAHERTY: What I wanted to ask you is when you went to Arthur Cox's were
10:40:18 20 you going, I put it this way and you can agree or disagree maybe to short
21 circuit matters.

21

22

A. Uh-huh.

23

24

JUDGE FAHERTY: You have said here that you were getting, whatever the
10:40:27 25 interest was, you were getting an interest you say equivalent to 25 per cent.
26 It was to be reflected in any legal document as 33 and a third per cent as I
27 understand it, but that was for other reasons because the late Mr. Lawlor's
28 interest was not to be recorded as I understand it.

26

27

28

29

A. Identified.

10:40:45 30

10:40:45 1 JUDGE FAHERTY: According to you.

2 A. Yes, correct.

3

4 JUDGE FAHERTY: Did you go on behalf of Mr. Kelly, yourself and Mr. Lawlor to

10:40:58 5 Arthur Cox's?

6 A. I don't think I had very much conversation with Ambrose Kelly about this matter

7 at all. I certainly went.

8

9 JUDGE FAHERTY: Yes. Well were you the agent of Leisure West?

10:41:09 10 A. Yes.

11

12 JUDGE FAHERTY: Because I think whatever was going to be transferred as I

13 understand it, you were there so could I say in two capacities, if I can put it

14 like this. You were there as representative, rather than agent might be too

10:41:22 15 strong a word, of the proposed entity to advise Arthur Cox of what you believed

16 the agreement or intended agreement, whatever it was, was arrived at.

17 A. Correct.

18

19 JUDGE FAHERTY: And presumably you would have been there, you would have had

10:41:38 20 apart from that role you were playing as the face of Leisure West for the

21 purposes of these conducting whatever negotiations were going to be conducted

22 with Merrygrove. You would have had presumably also, a personal interest in

23 that you were going to be recipient of something.

24 A. Yes, I would have had a personal interest.

10:41:55 25

26 JUDGE FAHERTY: Thanks very much

27 A. I cannot say for completeness sake, Judge, I am sure it will come up in the

28 documentation. When the arrangements were made in relation to the establishing

29 of Leisure West or Leisure Ireland but certainly such steps were taken.

10:42:11 30

- 10:42:11 1 JUDGE FAHERTY: Thank you.
- 2
- 3 Q. 47 MS. DILLON: If I could just scroll down on the existing document at 1663 to
- 4 the next paragraph, please. And I just want to draw this to your attention Mr.
- 10:42:22 5 Dunlop in the light of your evidence that you never had any interest or
- 6 agreement with Mr. O'Callaghan in acquiring the property or the land. And the
- 7 next paragraph in Mr. Walsh's letter states:
- 8
- 9 "When I received your letter -- that's your letter Mr. Dunlop -- I initially
- 10:42:34 10 commenced drafting an option agreement in favour of Leisure Ireland against
- 11 Merrygrove Estates Limited and I attach for what it is worth, a draft of what I
- 12 prepared".
- 13
- 14 It would seem from that, that Mr. Walsh understood what he was being asked to
- 10:42:46 15 do or to implement it, he considered drafting an option that would transfer the
- 16 option to purchase presumably whatever Merrygrove had in relation to the lands,
- 17 isn't that right?
- 18 A. Correct, yes.
- 19 Q. 48 Yes. And then he goes on to say "however in, my view any such option document
- 10:43:03 20 will not serve to improve the security of Leisure Ireland in acquiring the
- 21 property".
- 22
- 23 It follows from that, that Mr. Walsh's understanding that what he was
- 24 attempting to achieve for you on foot of your instructions was that Leisure
- 10:43:15 25 West would acquire the property, isn't that right?
- 26 A. Yes.
- 27 Q. 49 But you say that even though you gave those instructions to Mr. Walsh that you
- 28 did so, not out of any genuine belief that you had any such agreement with Mr.
- 29 O'Callaghan but in order to further the interests of Mr. Liam Lawlor, as I
- 10:43:30 30 understand what you are telling the Tribunal, is that right?

- 10:43:32 1 A. Correct. I mean, the genesis of all of this correspondence arose out of what I
2 have loosely described as the pressure coming from Mr. Lawlor to effect an
3 agreement. Arising out of what Mr. O'Callaghan had said that there would be a
4 25 per cent shareholding.
- 10:43:55 5 Q. 50 Yes. And on the 25th of July '94, you replied to Mr. O'Callaghan's letter at
6 11274. You thank him for his letter of the 12th, and say "the content is not
7 exactly as I foresaw having reviewed the correspondence between John Deane and
8 John Walsh together with the copies of the contracts between Merrygrove Limited
9 and Merrygrove Estates Limited and Dublin Corporation. I would like to outline
10:44:10 10 what I now believe is necessary on foot of the original agreement between us
11 reiterated during my office on Wednesday 29th June '94, and confirmed in your
12 follow-up letter of the 12th of July '94". Isn't that right?
- 13 A. Uh-huh, yes.
- 14 Q. 51 And according to the letter that you sent to your solicitors on the 30th, the
10:44:27 15 day following that, that was an agreement to transfer the lands, isn't that
16 right?
- 17 A. Yes, you have opened that letter.
- 18 Q. 52 Yes I did, yes. Isn't that right?
- 19 A. Yes.
- 10:44:36 20 Q. 53 So what's being discussed here by you in your letter to Mr. O'Callaghan is an
21 agreement to transfer the Neilstown lands, isn't that right?
- 22 A. Yes, we were creating a file, Ms. Dillon, that is being viewed by another
23 person. We are creating a file. There is a file being created here in
24 relation to this matter that is being viewed by a third party.
- 10:44:51 25 Q. 54 And who is the third party?
- 26 A. Liam Lawlor.
- 27 Q. 55 And the purpose of creating this file is to create the illusion if your
28 evidence is correct, that there was a binding agreement or an agreement in
29 place between Mr. O'Callaghan and Leisure Ireland?
- 10:45:04 30 A. Yes.

- 10:45:06 1 Q. 56 For the transfer of lands and that that was a false file, Mr. Dunlop, if what
2 you are now telling the Tribunal is correct?
- 3 A. Well certainly, certainly the preparation of the documentation and the creation
4 of the file was for the purpose that I have outlined. It was never ever, ever
10:45:26 5 agreed and again I put it in the context that anybody would want to be living
6 on another planet to expect Mr. O'Callaghan to agree to the transfer or
7 beneficial interest in lands that he owned with another person to three
8 individuals named.
9
- 10:45:41 10 The agreement was as I have responded to Judge keys again, I am sorry to keep
11 bringing Judge Keys into the picture. But in response to Judge Keys, the
12 interest was within relation to the entity known as the Stadium. It was never
13 defined in particularity what exactly it would be, an operational company or
14 whatever. But you are quite right, the documentation was provided, was
10:46:04 15 created, a file was created where the third party could look and see and
16 believe that something was being effected which in fact was never going to be
17 effected.
- 18 Q. 57 Did you enter into this correspondence with the agreement and knowledge of Mr.
19 O'Callaghan, in other words, did you explain to Mr. O'Callaghan that Mr. Lawlor
10:46:29 20 was setting about or wanted to set about putting in place a paper trail to show
21 that there was an agreement to transfer the lands at Neilstown?
- 22 A. Well Mr. O'Callaghan knew, I can't say at what stage. But certainly Mr.
23 O'Callaghan knew and I think is evidenced from the correspondence that you have
24 opened between Mr. O'Callaghan and myself and on foot of a meeting that which
10:46:50 25 had Mr. O'Callaghan. Mr. O'Callaghan knew what Mr. Lawlor was looking for.
26 But he was not, not in a month of Sundays would he agree to it.
- 27 Q. 58 But you allowed yourself to be used by Mr. Lawlor for the purpose of engaging
28 in correspondence through solicitors to suggest that the existence of an
29 agreement which you knew had never in fact been agreement, if your evidence to
10:47:10 30 the Tribunal is correct, isn't that right?

10:47:11 1 A. Yes, in broad terms, yes, that I was facilitating Liam Lawlor to relieve the
2 pressure that he was bringing to bear in relation to something that he is well
3 knew. He was pushing the outer limits on this, again as I said to Judge Keys,
4 he was pushing the outer limits in trying to get Mr. O'Callaghan to agree to
10:47:30 5 transfer an interest in land. Mr. O'Callaghan -- well Mr. O'Callaghan can
6 speak for himself.

7 Q. 59 Yes.

8 A. He is a shrewd businessman and to suggest that he was going to transfer a 25
9 per cent interest or 33 and a third per cent interest in valuable land to Liam
10:47:46 10 Lawlor for whatever reason was never ever contemplated.

11
12 CHAIRMAN: But Mr. Dunlop, I think the question that Ms. Dillon --

13 A. Sorry Chairman.

14
10:47:55 15 CHAIRMAN: Posed to you a few moments ago was, is it your evidence that Mr.
16 O'Callaghan knew or did not know that the, that what you and Mr. Lawlor were
17 doing in your correspondence with the solicitors was in effect creating the
18 impression that there was an agreement agreed in principle? Is it your
19 evidence that Mr. O'Callaghan knew that this was a tactic being adopted by you
10:48:36 20 and Mr. Lawlor or did he not know?

21 A. No, he did know. I cannot say to you when he knew or when he became aware but
22 certainly, certainly he did know that what -- he knew what Liam Lawlor was
23 looking for.

24
10:48:41 25 CHAIRMAN: No, no, no that's not the -- the question from Ms. Dillon, as far
26 as you're aware was Mr. O'Callaghan aware of the fact that Mr. Lawlor and
27 yourself were in effect, writing to Arthur Cox indicating that there was an
28 agreement in place in principle for the --

29 A. Yes.

10:49:00 30

10:49:00 1 CHAIRMAN: For the transfer --

2 A. Yes.

3

4 CHAIRMAN: Of the Merrygrove interest?

10:49:04 5 A. Yes.

6

7 CHAIRMAN: Now, you keep answering that by saying he knew what Mr. Lawlor was

8 looking for.

9 A. No, no, no. I take your point, Chairman, and you are quite right, I apologise.

10:49:14 10 The answer is yes.

11

12 CHAIRMAN: Yes he did know.

13 A. Yes he did know.

14

10:49:18 15 CHAIRMAN: And he didn't have any difficulty with, as far as you are aware,

16 with these letters being written?

17 A. I cannot absolutely attest that he was ... he was shown all the correspondence

18 or shown some the correspondence. But certainly he was shown some and

19 certainly in reply to Ms. Dillon what I have said to Ms. Dillon, yes, there was

10:49:39 20 a conversation with Mr. O'Callaghan on the 29th of whatever the date was, which

21 resulted the following day in a letter from me to him but yes he did know. I

22 cannot specifically say to you when he became aware, whether it was from the

23 outset or at an early stage but certainly he knew that any correspondence that

24 was being conducted with Arthur Cox vis-a-vis the transfer of land held by him

10:50:06 25 in the name of Merrygrove to an entity known as Leisure West was -- yes, he

26 knew that that correspondence was taking place. That that allegedly was to

27 give effect to an agreement that he had made with Liam Lawlor and Ambrose Kelly

28 and myself, which he never had. The only agreement he ever made was in

29 relation to the 25 per cent.

10:50:33 30

- 10:50:33 1 Q. 60 MS. DILLON: But it wasn't just a case, Mr. Dunlop, that Mr. Lawlor was making
2 a case that he was entitled to 25 per cent of the land, is that right?
3 A. Yes, correct.
- 4 Q. 61 You were making the case also and Mr. Kelly?
10:50:47 5 A. Yes.
6 Q. 62 That you were all --
7 A. Mr. Kelly played a very minor role in this I hasten to add. But certainly in
8 relation to the matter the triangular arrangement was Mr. O'Callaghan,
9 Mr. Lawlor and myself.
- 10:51:01 10 Q. 63 Yes. And what you were saying in the correspondence through the solicitors was
11 that you had an agreement with Mr. O'Callaghan to arrange for the transfer of
12 the lands to a company called Leisure Ireland?
13 A. Yes.
14 Q. 64 In its simple terms, isn't that right?
10:51:17 15 A. That's correct.
- 16 Q. 65 That is the effect of the correspondence that we've looked at, isn't that
17 right --
18
19 MR. REDMOND: Insofar as Ms. Dillon says that is the effect of the
10:51:25 20 correspondence that we've looked at. That is a matter for conveyancing counsel
21 to give an opinion on. Mr. Dunlop is not qualified or fit to give an opinion
22 as to whether or not that correspondence exhibits a concluded agreement.
23
24 Now in, so far as Ms. Dillon wants to proceed on the basis of a purported
10:51:41 25 agreement I don't have a difficulty. But I object to the suggestion that that
26 documentation exhibits a concluded agreement of any kind.
27
28 CHAIRMAN: I don't think Ms. Dillon's said that it was a concluded agreement.
29
10:51:55 30 MS. DILLON: No I didn't.

10:51:57 1 CHAIRMAN: It evidenced an agreement having been reached.

2

3 MR. REDMOND: Well, Mr. Chairman, are we going to have angels dancing on a pin
4 head. Is there seriously --

10:52:09 5

6 CHAIRMAN: If somebody goes into their solicitor a lay person and says I have
7 agreed with Mr. X to buy land from him. That is not -- there is no suggestion
8 there that there is a concluded agreement. That's what the solicitor then
9 does. But what the client is saying to the solicitor, and this is what we

10:52:29 10 understand Mr. Dunlop was saying to Arthur Cox, was there is a deal. We've
11 done a deal. Now you put the, you do the necessary legal aspects to that to
12 make it enforceable. But a deal is a deal. If my understanding of the
13 correspondence from Mr. Dunlop and Mr. Lawlor, or which was prepared with
14 Mr. Lawlor's assistance, was that Arthur Cox were being told that a deal has

10:52:58 15 been done. And then the instruction to Arthur Cox, which would be normal,
16 would be prepared, would prepare whatever necessary legal aspects are needed to
17 bring it to fruition. But it's still an instruction that a deal is being done.

18

19 I know it hasn't. I am not suggesting that there was a legally enforceable
10:53:24 20 agreement in place when Mr. Dunlop goes to his solicitor initially and writes
21 these letters.

22

23 MR. REDMOND: I am going one stage further, Chairman. What I am saying that
24 even the most recent correspondence that Ms. Dillon is referring to does not
10:53:36 25 legally concluded and enforceable agreement between the parties. That's ...

26

27 CHAIRMAN: Well there wasn't a legally enforceable agreement.

28

29 MR. REDMOND: Well I'm happy with that.

10:53:44 30

10:53:44 1 CHAIRMAN: Well there wasn't as far as we were aware.

2

3 MR. REDMOND: I am happy with that.

4

10:53:48 5 CHAIRMAN: As far as we were aware there were no proceedings instituted we are
6 never to know the extent to which it was enforceable. But I mean our interest
7 really focuses on the instructions that were given to Arthur Cox and the
8 reasoning behind it, the knowledge of, the knowledge that Mr. O'Callaghan had
9 or may have had of the fact that Mr. Dunlop and Mr. Lawlor were telling their
10 solicitor that there was a deal there.

11

12 MR. REDMOND: I am grateful for that clarification, Chairman.

13

14 CHAIRMAN: All right.

10:54:22 15

16 Q. 66 MS. DILLON: What did you instruct Cox's to do for you, Mr. Dunlop?

17 A. I went to Cox's after discussion with Liam Lawlor and told Cox's in broad
18 outline what the arrangement was in relation to the Stadium and that we wanted
19 to arrive at an agreement between O'Callaghan, Owen O'Callaghan Liam Lawlor --
10:54:47 20 Ambrose Kelly and myself. Liam Lawlor's name wasn't mentioned as I have said
21 already. To give an effect to an interest in the Stadium project.

22

23 Now, it is evidenced, as you have opened the correspondence, from the letter
24 that Mr. John Walsh wrote to John Deane shortly thereafter and including to me,
10:55:13 25 what he intended and understood that to be and Mr. Deane replied saying yes,
26 Owen is agreeable and he mentioned the word "option". But the, to give, to put
27 it bluntly, to box off Liam Lawlor's pressure in relation to this matter, a
28 file was being created to ensure that Liam Lawlor at some stage and that for
29 however long, felt comfortable that something was going to be effected in
10:55:46 30 relation to the interest that he claimed in the Merrygrove site in the

- 10:55:51 1 Neilstown site in the Stadium site.
2
- 3 Q. 67 MS. DILLON: Did you instruct your solicitors, Mr. Dunlop, that you had
4 entered into or you had made an agreement between Mr. O'Callaghan and the other
10:56:03 5 promoters of Leisure West for the transfer of the lands at Neilstown?
6 A. Yes, I told Arthur Cox as a result of the discussion with Liam Lawlor prior to
7 going that we wanted to enter an agreement which would give effect to --
- 8 Q. 68 I will just repeat the question.
9 A. To --
- 10:56:19 10 Q. 69 I'll just repeat the question to you. Did you tell Arthur Cox that you had
11 made an agreement with --
12 A. Yes.
- 13 Q. 70 -- Mr. O'Callaghan and the other promoters of Leisure West land for the
14 transfer of the lands?
10:56:29 15 A. Yes, I think I probably did and I think that's reflected in the correspondence.
- 16 Q. 71 That is the case, isn't it?
17 A. Yes.
- 18 Q. 72 But what you told your solicitors was a lie, Mr. Dunlop, if your evidence to
19 this Tribunal is correct?
10:56:41 20 A. Yes, it certainly was never the intention for the transfer of an interest in
21 the land.
- 22 Q. 73 And do you say then that Mr. O'Callaghan was complicit and had a full knowledge
23 and understanding of the course that you were embarked upon with Mr. Lawlor, in
24 other words that he knew from the beginning that that this correspondence was a
10:57:02 25 sham?
26 A. Well I cannot say whether he knew from the beginning, but he certainly knew
27 from the correspondence that you have opened and from the meetings that I had
28 with him what in effect was taking place. John Walsh of Arthur Cox was writing
29 to John Deane, who was Mr. O'Callaghan's solicitor, outlining what had
10:57:20 30 happened.

- 10:57:20 1 Q. 74 Of your knowledge, Mr. Dunlop, and not speculating from what is it in the
2 correspondence that I have opened to you. From your discussions with Mr.
3 O'Callaghan at the time that you had these meetings with him, did Mr.
4 O'Callaghan have a full knowledge and understanding of the paper trail that was
10:57:37 5 being put in place by you on behalf of Mr. Lawlor to claim an interest in the
6 Neilstown lands, that in fact had not been agreed?
7 A. Oh, yes I think there is no other logic to in answering that question other
8 than to say, yes.
- 9 Q. 75 Yes. And at which of your meetings with Mr. O'Callaghan did you have this
10:57:54 10 discussion with him where all of this was discussed between you?
11 A. That I can't say which particular meeting. But certainly Mr. O'Callaghan knew,
12 one, either that I was going to Arthur Cox, I cannot say whether he actually
13 did know that I was going. But certainly he knew that I had been to Arthur Cox
14 and solicitors and what had been said and stated.
- 10:58:19 15 Q. 76 And this correspondence then was something that is didn't come as a surprise to
16 Mr. O'Callaghan because you had told him all about this, what was really
17 happening, is that right?
18 A. Yes, I cannot say to you absolutely categorically and definitively that I sat
19 down with Mr. O'Callaghan and explained this from A to Z on any particular
10:58:38 20 occasion, there was a process of osmosis about this. But Mr. O'Callaghan knew
21 what Liam Lawlor was looking for.
- 22 Q. 77 Uh-huh.
23
24 CHAIRMAN: But --
- 10:58:47 25 A. And he had never --
26
27 CHAIRMAN: But were -- I mean -- he obviously knew what Mr. Lawlor was looking
28 for.
- 29 A. Sorry I beg your pardon.
10:58:56 30

10:58:56 1 CHAIRMAN: But the question is did he know that these letters were being
2 written, whether he saw them or not is another day's work. As far as you were
3 concerned was he aware that you were making this case to Arthur Cox on your own
4 behalf and on behalf of Mr. Lawlor and on behalf of Mr. Kelly, namely, that you
10:59:15 5 had -- that there was a deal in place in respect of the Merrygrove lands?

6 A. Well that ...

7

8 CHAIRMAN: But you say -- our understanding. I mean, we can finalise it in
9 this way.

10:59:28 10 A. Yes, okay.

11

12 CHAIRMAN: Our understanding is, from the evidence is that Mr. O'Callaghan was
13 aware that this tactic of informing Arthur Cox that a deal was in place, he was
14 aware that this tactic was being followed by you at the time you were following
10:59:48 15 that tactic.

16 A. Yes, either verbally or via the correspondence.

17

18 JUDGE FAHERTY: To put it just another way. As I understand your evidence,
19 Mr. Dunlop, you have said to Ms. Dillon that this file, as you call it was
11:00:00 20 being created, this body of correspondence.

21 A. Yes.

22

23 JUDGE FAHERTY: Some how to appease the late Mr. Lawlor, given what you say
24 the late Mr. Lawlor's demands were.

11:00:11 25 A. Yeah.

26

27 JUDGE FAHERTY: And as I understand your answers to both Ms. Dillon and the
28 Chairman, are you saying -- or I don't understand it but I am asking you. Are
29 you saying that Mr. O'Callaghan had knowledge of this appeasement, if I can
11:00:29 30 call it, that you were doing -- this file was being created

11:00:33 1 A. Yes, he certainly. In answer to --
2
3 JUDGE FAHERTY: For the answers that you have said.
4 A. Yes in answer to Ms. Dillon and the Chairman I have said at some stage, I
11:00:42 5 cannot say exactly when, that Mr. O'Callaghan, yes, was aware that this
6 correspondence had been entered into -- that I had been to Arthur Cox and this
7 correspondence was entered into and the basis on which it was done.
8
9 CHAIRMAN: All right. Well I think the position seems to be, Mr. Dunlop's
11:00:58 10 position seems to be clear. Obviously it's a matter that will have to be
11 raised with Mr. O'Callaghan.
12
13 JUDGE FAHERTY: And Mr. Deane in due course.
14
11:01:05 15 Q. 78 MS. DILLON: I'll move on from that, Mr. Dunlop, to deal with the balance of
16 the documentation that I had hoped to deal with yesterday evening.
17
18 In relation to the National Stadium. And at 10610, I just want to draw to your
19 attention on the 4th of January '94, in the last paragraph. This is an
11:01:22 20 attendance by Mr. Michael O'Farrell of Allied Irish Bank on a telephone call
21 with Mr. Owen O'Callaghan and he is updating him in relation to Barkhill and he
22 says as the bottom "as regards the Stadium, he had a meeting with Albert
23 Reynolds recently who was very keen" and we had seen that meeting yesterday on
24 the 13th of December, isn't that right?
11:01:37 25 A. Yes.
26 Q. 79 1993. "They had been seeking 5 million per annum subvention and he is meeting
27 Bertie Ahern on this issue in the next two weeks." In fact no such meeting
28 appears to have taken place within the following two weeks although there were
29 meetings later on.
11:01:50 30 A. Yes, correct.

- 11:01:51 1 Q. 80 Now, you -- I just want to draw to your attention there the correspondence that
2 we had looked at yesterday when you attended at the solicitors first, do you
3 remember that? And the three solicitors took notes of what you said.
4 A. Yes.
- 11:02:03 5 Q. 81 And the figure that they had all noted you as having told them about was a
6 subvention of 5 million per annum.
7 A. Yes.
- 8 Q. 82 Isn't that right?
9 A. Correct.
- 11:02:12 10 Q. 83 And they had recorded you as saying, whether that be right or wrong, that that
11 had been granted, isn't that right?
12 A. I can't remember the exact terminology in the attendance notes.
- 13 Q. 84 Yes.
14 A. But certainly similitude was presented that it was true that I had said that
11:02:37 15 there was some funding coming from the government on an annual basis for ten
16 years.
17 Q. 85 Yes. I think at 10107, Mr. Dunlop, and I think this is the meeting that takes
18 place in Cox's on the 10th of September 1993, some nine months after this
19 attendance is taken in the bank, isn't that right, that we just looked at?
- 11:02:56 20
21 And in the third line of that attendance is what is noted there "approached
22 Minister for Sport. Commitment of 5 million for ten years". Do you see that?
23 A. Yes.
- 24 Q. 86 And I had put to you that that information had to be supplied to the solicitors
11:03:09 25 by you, isn't that right?
26 A. Yes.
- 27 Q. 87 And what I want to draw to your attention now at 10610, is what Mr. O'Callaghan
28 is recorded as telling the bank that they had been seeking 5 million per annum
29 subvention.
11:03:23 30 A. Yes.

- 11:03:23 1 Q. 88 And then he is meeting Bertie Ahern. And I am simply drawing to your attention
2 that your tell your solicitors in September of a commitment to get 5 million,
3 isn't that correct?
- 4 A. Yes.
- 11:03:33 5 Q. 89 And in January of that year, Mr. O'Callaghan tells the bank that what they are
6 seeking is 5 million pounds per annum, isn't that right?
- 7 A. Yes.
- 8 Q. 90 I am just drawing both of those matters to you, Mr. Dunlop, so that you can
9 comment on them. In other words, is it the position that by the time that you
10 went to the solicitors in September, that you had an understanding that a
11 commitment for 5 million pounds had been given in relation to the Stadium?
- 12 A. No, I don't believe as I've said yesterday, that any such commitment was ever
13 given, notwithstanding any request for funding from the government by Mr.
14 O'Callaghan.
- 11:04:06 15 Q. 91 Yes. And yesterday at 10825. I had asked you, Mr. Dunlop, in relation to the
16 second paragraph of this letter which relates to Mr. Ahern's visit with Chilton
17 & O'Connor on the 11th of March 1994. I have drawn to your attention the
18 second paragraph wherein reference was made to finance ministry documentation
19 and Mr. Burke had noted "currently being forwarded to me are the recently
11:04:29 20 published National Lottery annual report and finance ministry documentation"
21 And you had suggested I think that that might have been forwarded by
22 Mr. Lawlor, isn't that right?
- 23 A. Yes, I cannot say for definite but I mean I did say that there was a
24 possibility that it was forwarded by Mr. Lawlor.
- 11:04:45 25 Q. 92 Yes and I think if I show you 14571, Mr. Dunlop. And this is a fax to Niall
26 Lawlor from the late Mr. Liam Lawlor on the 10th of March '94. And he attaches
27 an article from today's Irish Times and he sends a brief note re the meeting
28 for Bertie Ahern regarding the National Stadium, isn't that right?
- 29 A. Yes.
- 11:05:05 30 Q. 93 There is no suggestion there that Mr. Lawlor was sending on finance ministry

- 11:05:08 1 documentation, isn't that right?
- 2 A. Correct.
- 3 Q. 94 The fact that the information and documents that Mr. Lawlor is furnishing is a
- 4 copy of the from the Irish Times or an extract on bond issues, isn't that
- 11:05:17 5 right?
- 6 A. For clarity, I don't know what finance ministry documentation means.
- 7 Q. 95 You didn't supply it in any event, isn't that right?
- 8 A. No, no.
- 9 Q. 96 All right. And I think on the 6th of May at 10927, I think yesterday you
- 11:05:35 10 agreed that on that date there was a meeting between Mr. Owen O'Callaghan,
- 11 Mr. O'Connor and Mr. Albert Reynolds as he then was, isn't that right?
- 12 A. What date again Mr. Dillon?
- 13 Q. 97 On the 6th of May '94, Mr. Dunlop. You weren't at the meeting.
- 14 A. That's correct.
- 11:05:48 15 Q. 98 But you had set up the meeting I think and had known about it and the a meeting
- 16 was recorded at 10934.
- 17 A. Yes.
- 18 Q. 99 And I think subsequently at 23760, Mr. Kevin Burke writes to Mr. Ciaran Mulcahy
- 19 and he says:
- 11:06:10 20
- 21 "As you are aware, An Taoiseach Albert Reynolds has asked us to prepare a
- 22 financing plan for the Irish National Stadium" and they sent certain queries
- 23 arising out of that documentation. I am sorry, Mr. Dunlop, is there something
- 24 you wish to say?
- 11:06:25 25 A. No, I am just reading this paragraph here. Mr. Reynolds has asked us to
- 26 prepare a financing plan for the Irish National Stadium. I am just wondering
- 27 was I ever aware that such a request had been made.
- 28 Q. 100 Well the letter is cc'd to you at the bottom.
- 29 A. Yes.
- 11:06:45 30 Q. 101 You did not discover any of this.

- 11:06:48 1 A. No, exactly. Mr. Reynolds has asked us and this letter is from.
2 Q. 102 Mr. Kevin Burke to De Loitte & Touche.
3 A. Yes, okay, fine.
4 Q. 103 And in the course of that, it records that Mr. Reynolds had requested them to
11:07:05 5 prepare a financing plan.
6 A. Yes.
7 Q. 104 And Mr. Niall Lawlor worked with Mr. Kevin Burke in Chilton & O'Connor, isn't
8 that right?
9 A. Yes, again I am not absolutely certain at what period he was working but he
11:07:19 10 certainly worked for Chilton & O'Connor at some stage.
11 Q. 105 Well he was certainly there in '94, isn't that right?
12 A. Yes, correct.
13 Q. 106 And now I think that arising from that correspondence on the 8th of June '94,
14 Chilton & O'Connor sent certain queries to Ambrose Kelly at 11070. And there
11:07:45 15 is only one of these I want to draw to your attention at 11071. One of the
16 questions posed by Mr. Burke was "Will the authority pay property or other
17 taxes, if so how much? As a per cent of value of facility concessions
18 merchandising, payroll etc."
19
11:07:55 20 And I want to draw to your attention 11090 and in this letter Mr. Owen
21 O'Callaghan sends replies to Chilton & O'Connor's queries to Mr. Ambrose Kelly.
22 He says "In reply to the copy of Chilton & O'Connor fax sent to, you I list out
23 hereunder the replies to the queries applicable to me". And therefore what Mr.
24 O'Callaghan is doing here is, he is sending to Mr. Kelly who had been the
11:08:21 25 recipient of the Chilton & O'Connor queries, the answers, isn't that right?
26 A. Yes, correct.
27 Q. 107 And I want to draw to your attention Mr. O'Callaghan's answer at 11091, which
28 was the answer in relation to with the authority pay property or other taxes?
29 A. Uh-huh.
11:08:35 30 Q. 108 And the answer that Mr. O'Callaghan provided was "the authority Leisure

- 11:08:39 1 Ireland, will not pay property taxes as we expect to have the site tax
2 designated." That was a view apparently held by Mr. O'Callaghan on June of
3 1994, isn't that right?
- 4 A. Well --
- 11:08:52 5 Q. 109 When he sends the correspondence.
- 6 A. From that correspondence, yes.
- 7 Q. 110 Now, what was your state of knowledge at that time, Mr. Dunlop, about a belief
8 or an understanding that the Leisure Ireland site or that the Stadium site
9 would get tax designation?
- 11:09:06 10 A. Yes well first of all, I can't account for what Mr. O'Callaghan says there. I
11 have absolutely no recollection of Mr. O'Callaghan, myself or Ambrose Kelly or
12 anybody on behalf of the Stadium seeking tax designation for the proposed
13 Stadium or the site.
14
- 11:09:26 15 In fact, the policy in the totality of which may not be relevant here, but the
16 policy in relation to the totality of the North Clondalkin site including
17 Quarryvale was not to seek tax designation but I take the point that you are
18 making in relation to what Mr. O'Callaghan has said. I have no knowledge or
19 recollection of any effort ever being made to seek tax designation for the
20 site.
- 11:09:48 21 Q. 111 I think certain amendments were proposed to the Chilton & O'Connor document.
22 And in June and July of 1994, there was correspondence about setting up a
23 meeting with Mr. Reynolds, then Taoiseach. And at 11255, correspondence is now
24 being sent by Chilton & O'Connor to Mr. O'Callaghan, Chairman of O'Callaghan
11:10:12 25 Properties which is cc'd to Bill O'Connor and Frank Dunlop Leisure Ireland and
26 Ambrose Kelly Leisure Ireland, isn't that right?
- 27 A. Yes.
- 28 Q. 112 There is no reference to that correspondence being cc'd to Mr. Lawlor, isn't
29 that correct?
- 11:10:23 30 A. You are correct, no.

- 11:10:25 1 Q. 113 In the second paragraph Mr. Burke asked Mr. O'Callaghan "to begin the process
2 of obtaining a letter of certification from the applicable parties on the roof
3 and floor technology and also if it is agreeable with you we will make contact
4 with Frank Dunlop to discuss the scheduling of a meeting with An Taoiseach the
11:10:43 5 week commencing July 18th".
- 6 A. Yeah.
- 7 Q. 114 So it seems your function within the group, Mr. Dunlop, was certainly to
8 encompass the arrangement of meetings with senior politician, isn't that right?
- 9 A. Yes.
- 11:10:55 10 Q. 115 I think you did indeed write following that correspondence on 7th July, you
11 wrote on the 11th of July '94 at 11322, to Mr. Albert Reynolds referring to the
12 previous meeting between Mr. O'Connor, Mr. O'Callaghan and Mr. Reynolds and
13 saying the plans were nearly complete and asking for a meeting at some time in
14 July, isn't that right?
- 11:11:20 15 A. Yeah.
- 16 Q. 116 And I think that at 11257, on the 18th of July, Paddy Teehan from the
17 Taoiseach's office rang about a meeting arranged for Tuesday 10.30 in his
18 office. You see at the bottom of the page.
- 19 A. Yes.
- 11:11:38 20 Q. 117 Isn't that right?
- 21 A. That's correct, yes.
- 22 Q. 118 And I think then that on the 28th of July at 11293, Mr. Reynolds' diary
23 confirms a meeting between Mr. O'Callaghan and Mr. O'Connor at the Connemara
24 Cost Hotel but in fact I think Mr. William O'Connor didn't travel because he
11:12:07 25 was hospitalised and I think Mr. Burke took his place instead, isn't that
26 right?
- 27 A. As I recall matters I think there were two rent representatives of what I might
28 call the American funders or the ... and I think Mr. Burke was one of them,
29 yes.
- 11:12:23 30 Q. 119 And this was a meeting I think that took place at the time of the Galway Races,

- 11:12:27 1 isn't that right, in the Connemara Coast Hotel?
- 2 A. Yes, I drove Mr. O'Callaghan to Galway. We drove to the Connemara Coast Hotel.
- 3 We had a meeting with the Taoiseach. I can't say how long the meeting lasted
- 4 but certainly it was of the order of half an hour to 45 minutes. Mr. Reynolds
- 11:12:48 5 was anxious to move on to the Galway Races and as I recollect matters we, we
- 6 tailgated him back to the races because he had security out riders.
- 7 Q. 120 Yes. And what was discussed in terms of financing of the National Stadium at
- 8 that meeting?
- 9 A. I think Mr. Burke, I think Mr. Burke outlined to the Taoiseach. I think there
- 11:13:14 10 was fairly hefty document in evidence on that day prepared by Mr. Burke or an
- 11 update of some documentation that had already been prepared by Chilton &
- 12 O'Connor and that was outlined by Mr. Burke to the Taoiseach.
- 13 Q. 121 And I think a draft letter was prepared on the 8th of August '94, to An
- 14 Taoiseach Albert Reynolds from Chilton & O'Connor at 16542. And in this draft
- 11:13:49 15 letter he states:
- 16
- 17 "An Taoiseach, it was a pleasure meeting you in Galway with Frank Dunlop and
- 18 Owen O'Callaghan. We have submitted at your request a copy of our financing
- 19 study to Minister Bertie Ahern in addition I would like to recap the questions
- 11:14:01 20 that you raised in the July 28th discussion and then there is a discussion
- 21 about interest rates, the creation of a government department which they did
- 22 not propose, and then the fact that the NTMA would not be suitable as a
- 23 financing agent."
- 24 A. Yes.
- 11:14:17 25 Q. 122 Now it would appear, it's not clear whether that letter was ever sent but it
- 26 would appear that at that stage they had submitted a copy of the financing
- 27 study to the Minister for Finance, isn't that right?
- 28 A. Yes, as I said, this document was produced fairly completed document with the
- 29 cover on it, which slightly offended people I think because it contained the
- 11:14:42 30 Irish harp.

- 11:14:43 1 Q. 123 Yes. But I think it is clear from the correspondence that an agreement had
2 been made or a direction had been given by Mr. O'Callaghan --
3 A. Correct.
- 4 Q. 124 -- prior to the final draft that the harp be removed and that in fact had all
11:14:54 5 been done, isn't that right?
6 A. Yes.
- 7 Q. 125 There were a number of amendments proposed and questions raised by Chilton &
8 O'Connor, isn't that right?
9 A. Yes.
- 11:15:01 10 Q. 126 And those had all been taken care of prior to the meeting with Mr. Reynolds?
11 A. Mr. Reynolds, corrects.
- 12 Q. 127 But it was clear from all of the financing documentation that the Stadium was
13 dependent on government support?
14 A. That was always the case.
- 11:15:12 15 Q. 128 And would it be fair to say that in your recollection, was Mr. Reynolds
16 supportive of the Stadium project?
17 A. I think I have already said this from day one, yes.
- 18 Q. 129 Now, did Chilton & O'Connor and know of Mr. Lawlor's involvement in the
19 Stadium?
11:15:30 20 A. I cannot say whether they did or not or how much they knew of his involvement.
21 But certainly as I had said yesterday, Mr. O'Connor and Mr. Lawlor were
22 friends. There is a distinct possibility and I cannot put it any more than
23 that, that they did know, how much they knew I cannot say.
- 24 Q. 130 Now Mr. Niall Lawlor worked for Chilton & O'Connor, isn't that right?
11:15:58 25 A. Correct.
- 26 Q. 131 Did Albert Reynolds know of Mr. Lawlor's involvement or Mr. Lawlor's stated
27 involvement --
28 A. No.
- 29 Q. 132 In the Stadium?
11:16:04 30 A. No.

- 11:16:05 1 Q. 133 Did Mr. Bertie Ahern know of Mr. Lawlor's involvement?
2 A. If he did he certainly didn't hear it from me.
3 Q. 134 Yes. And insofar as you would have been discussing with Mr. Reynolds and
4 Mr. Ahern the development of the Stadium as a project, why would you not have
11:16:26 5 wanted to explain or tell Mr. Reynolds or Mr. Ahern, that a sitting TD of the
6 Fianna Fail party had an interest in the Stadium?
7 A. Well I think Mr. Reynolds, I think I said to the Chairman that Arthur, James
8 O'Dwyer of Arthur Cox would have a multiple coronary. I think the Taoiseach
9 and the then Minister for Finance would be in the same coronary unit if Liam
11:16:49 10 Lawlor's name was mentioned in this context.
11 Q. 135 And I think in September, Mr. Dunlop, at 11365, at 9:15 Mr.-- 11364. Sorry.
12 Mr. O'Callaghan rings your office and asks you had you arranged any meeting
13 with Bertie Ahern for next week.
14 A. Yes.
11:17:13 15 Q. 136 And again this appears to be part of your function, isn't that right, Mr.
16 Dunlop, arranging of such mootings?
17 A. Correct.
18 Q. 137 And I think that on the 21st of September '94 at 11371, Hanah Riordan of
19 Mr. Ahern's office rings your office at 11:50, isn't that right?
11:17:29 20 A. Correct, yes.
21 Q. 138 And then 13th of September at 11351, there is a very tiny entry in your diary,
22 Mr. Dunlop, for the 13th. If we could just have that blown up again, please.
23 You will see there is an entry Niall Duggan/A Kelly at AK Group office?
24 A. Yes.
11:18:00 25 Q. 139 And is Mr. Duggan one of the solicitors in Cox's?
26 A. Um.
27 Q. 140 Or was that Colm Duggan?
28 A. I am not absolutely certain who Niall Duggan is now. I think there was an
29 architect in Ambrose Kelly's office named Duggan. I am not absolutely certain
11:18:11 30 about that, sorry.

- 11:18:12 1 Q. 141 And you see immediately ahead of that there is an entry that appears to read
2 Cathleen, T's office rang re Town C?
3 A. Yes.
4 Q. 142 Now is town C town centre?
11:18:25 5 A. Yes it would be. Unless it's Tom C I'm not absolutely certain about that.
6 Could you bring it up another little bit, Ms. Dillon? I think it's Tom but I'm
7 not -- even if it is Tom I'm not.
8 Q. 143 No, I suggest.
9 A. Is it town?
11:18:50 10 Q. 144 Who is Tom C anyway?
11 A. I have no idea.
12 Q. 145 Isn't it much more likely to be town C?
13 A. Yes, it certainly could be. It's either town C or Tom C there is absolutely no
14 doubt about that.
11:19:03 15 Q. 146 Well what town centre would the Taoiseach's office have been ringing you about,
16 Mr. Dunlop, on the 13th of September 1994?
17 A. Well there is only one town centre that I would be involved in and that was in
18 relation to Quarryvale.
19 Q. 147 And why would you have been contacting Mr. Reynolds office about the town
11:19:24 20 centre?
21 A. That I ... I just can't say.
22 Q. 148 Is it possible that the town centre you would have been contacting
23 Mr. Reynolds' office about is in fact the Neilstown/Clondalkin town centre?
24 A. It's unlikely because if I was going to be ringing the Taoiseach's office in
11:19:43 25 relation to the Neilstown town centre I would at this stage I would -- this is
26 1990?
27 Q. 149 1994.
28 A. '94. The likelihood is that I might have been ringing about the Stadium,
29 unfortunately, I can't say. I don't know.
11:19:56 30 Q. 150 And I think at 11388, on the 29th of September 1994, you attended at a meeting

11:20:05 1 with Arthur Cox about Leisure Ireland and in that at that the item No. 2 on
2 that the following appears to be recorded.
3
4 "Asked to carry out financial feasibility study. Presented to Taoiseach in
11:20:19 5 August. Given to Minister for Finance. Ogden international provided a project
6 for Phoenix Park. Apparently they are looking for a casino. They have applied
7 for planning permission. This has frightened Owen O'Callaghan."
8 A. Uh-huh.
9 Q. 151 In relation to that entry, Mr. Dunlop, in relation to the Ogden International
11:20:41 10 and the casino in the Phoenix Park, why was that of any relevance or interest
11 in relation to the National Stadium?
12 A. Offhand, I can't say other than that it was another project that we were aware
13 of. Everybody was aware of it at the time. I can't say why it would have any
14 impact or why it had frightened Owen O'Callaghan in relation to what he was
11:21:07 15 proposing. I'm afraid I don't have any explanation for that.
16 Q. 152 Did you have any involvement with Ogden International or Ogden Development or
17 the Phoenix Park development?
18 A. None what so ever.
19 Q. 153 All right. Yesterday I showed you a letter dated March 9th '94, Mr. Dunlop, at
11:21:27 20 10825. And this is a letter that was sent to you?
21 A. Uh-huh.
22 Q. 154 From Mr. Kevin T Burke and it was cc'd to Mr. Kelly and Mr. O'Callaghan about
23 the meeting with Mr. Bertie Ahern on the 11th of March '94, in Los Angeles. If
24 we just have the full letter please for the moment. You will see there it's
11:21:45 25 headed "March 11th meeting with Minister Bertie Ahern in Los Angeles".
26 A. Yes.
27 Q. 155 And in that. In the seconds paragraph if we could increase this now. It says
28 "I will need an update with reference to any recent discussions with the FAI
29 and De Loitte & Touche. Currently being forwarded to me are the recently
11:22:07 30 published National Lottery annual report and finances ministry documentation"

- 11:22:11 1 and we had discussed that yesterday, isn't that right?
- 2 A. Yes.
- 3 Q. 156 And it was drawn to my attention overnight that there is a second copy of that
- 4 letter in the brief, Mr. Dunlop, at page 14818.
- 11:22:23 5 A. Uh-huh.
- 6 Q. 157 Which is a letter that has been discovered to the Tribunal by Mr. Lawlor and
- 7 the first letter was discovered to the Tribunal by Mr. O'Callaghan. And this
- 8 is the same letter, to a great degree. It has the same date, it's also
- 9 addressed to you. It's headed March 11th meeting with Minister Bertie Ahern in
- 11:22:44 10 Los Angeles.
- 11
- 12 It says: "Dear Frank -- and in the second paragraph could it be increased
- 13 please it states -- I will need to update with reference to any recent
- 14 discussions with the FAI De Loitte & Touche and the proposed Phoenix Park
- 11:22:58 15 development".
- 16
- 17 Now, in the first letter we had looked at that Mr. O'Callaghan provided to the
- 18 Tribunal there had been no reference to the Phoenix Park development, isn't
- 19 that right?
- 11:23:05 20 A. Yes absolutely, yeah.
- 21 Q. 158 In this letter which is provided to the Tribunal by Mr. Lawlor, which is an
- 22 identical letter but it includes the words "the proposed Phoenix Park
- 23 development".
- 24 A. Yes, which letter was sent.
- 11:23:18 25 Q. 159 I can't assist you there, Mr. Dunlop. If we had your copy of the letter it
- 26 might be of assistance. You haven't provided a copy, isn't that right?
- 27 A. Don't have one.
- 28 Q. 160 Did you get one at the time?
- 29 A. I can't say that I did. It is cc'd to me.
- 11:23:32 30 Q. 161 No it is addressed to you.

- 11:23:33 1 A. I beg your pardon it's addressed to me. I can't say that I have any
2 recollection of any reference to the proposed Phoenix Park development by Kevin
3 Burke.
- 4 Q. 162 Certainly what it appears that there are two copies that are almost identical
11:23:49 5 in existence of the same letter, isn't that right?
- 6 A. Uh-huh.
- 7 Q. 163 The significant difference between the two is that Mr. Lawlor's copy refers to
8 the proposed Phoenix Park development, isn't that right?
- 9 A. Uh-huh.
- 11:23:59 10 Q. 164 That would I would suggest to you, Mr. Dunlop, is the same matter that you
11 referred to on the 29th of September '94, when you met with your solicitors,
12 isn't that right?
- 13 A. I have absolutely no recollection of anything in relation to the Phoenix Park
14 development vis-a-vis Owen O'Callaghan or any impact he said it might have or
11:24:18 15 had not on the Stadium project. I can't account at all for any reference to an
16 attendance note in relation to Arthur Cox and my -- or a note being made in
17 relation to this matter during the course of that attendance note. It didn't,
18 it certainly wasn't on the radar as far as I was concerned.
- 19 Q. 165 Insofar as the two letters dated the 9th of March 1994, are concerned --
- 11:24:42 20 A. Uh-huh.
- 21 Q. 166 -- you can't explain the difference between the two copies of the letters that
22 have been provided from the two different sources, isn't that right?
- 23 A. I'm afraid I can't.
- 24 Q. 167 All right. But it is clear from 11388, Mr. Dunlop, that on the 29th of
11:24:59 25 September 1994, some five or four months after the letter of the 9th of March
26 1994, you did instruct your solicitors of a concern being expressed or
27 attributed by you to Mr. O'Callaghan about a proposed Phoenix Park development,
28 isn't that right?
- 29 A. Yes it would appear so from the attendance note, yes.
- 11:25:20 30 Q. 168 And you don't dispute that the only person who could have given those

11:25:22 1 instructions to Cox's at that stage was yourself, isn't that right?

2 A. Correct, yes.

3 Q. 169 But you say that you had no involvement in the Phoenix Park race course or any

4 involvement in general, is that right?

11:25:31 5 A. Correct.

6 Q. 170 In relation to the matter. There is one final matter I want to draw to your

7 attention in relation to the Stadium, Mr. Dunlop, at 11844 in 1994. 114484.

8 Sorry. 485 I beg your pardon. This is an extract from your diary for November

9 1994, Mr. Dunlop.

11:25:54 10 A. Yes.

11 Q. 171 And you will see there that on the 3rd of November you have "depart USA".

12 A. Correct, yeah.

13 Q. 172 On the 4th of November, you have a meeting recorded for 9:00 in the plaza

14 something or other?

11:26:06 15 A. Athena.

16 Q. 173 To meet Bill O'Connor?

17 A. Plaza Athena, street.

18 Q. 174 It doesn't matter where the location is other than it's in America?

19 A. In New York.

11:26:17 20 Q. 175 And you have arranged to meet Bill O'Connor?

21 A. Yeah.

22 Q. 176 And on the 6th of you return to Dublin.

23 A. Yes.

24 Q. 177 The only recorded entry in your diary for that three day visit to New York is a

11:26:28 25 meeting with Mr. O'Connor?

26 A. Yes.

27 Q. 178 Was that meeting with Mr. O'Connor about the Stadium?

28 A. The likelihood is yes, the Stadium was discussed. I am just trying to get my

29 mind around why I was in the United States at that particular time. It may

11:26:42 30 well have been for Fianna Fail fundraising dinner. I am not absolutely 100 per

11:26:48 1 cent certain about that but to be in the United States for that short period of
2 time I ... I took in a meeting with Bill O'Connor whether Bill O'Connor was at
3 any fundraising dinner or not I just say.

4 Q. 179 Well it's unlikely that at 9 o'clock in the morning on Friday 4th of November,
11:27:05 5 there was any funds raising function, Mr. Dunlop, being carried out any where,
6 isn't that right?
7
8 And so that the only matter that's recorded in your diary in relation to your
9 attendance in New York is the meeting with Mr. O'Connor?

11:27:19 10 A. Yes, yeah.

11 Q. 180 Now what was discussed at that meeting?
12 A. Nothing that really impacts on me now other than that if it's in my diary for
13 that time on that day in New York, I met him.

14 Q. 181 Yes.
11:27:31 15 A. And the likelihood is, yes the Stadium was discussed in some form or other.

16 Q. 182 Yes that's what I'm asking you, Mr. Dunlop, what was discussed. It was
17 obviously important enough to bring you to America, isn't that right?
18 A. Well I'm not ... I think I suggested to you that I don't think that was the
19 purpose of my being in America but I think I have availed of being in America
11:27:54 20 to meet Bill O'Connor.

21 Q. 183 Yes. Well are you absolutely sure about that, Mr. Dunlop, because the
22 following week at 11491, you see that you have you having met Mr. O'Connor in
23 New York on the 4th of November '94, that Mr. O'Connor is in Ireland on the 8th
24 of November, isn't that right?

11:28:13 25 A. Yes.

26 Q. 184 So it would appear that what happened is that for what you have a three day
27 trip to America, isn't that right?
28 A. Uh-huh.

29 Q. 185 You record one entry in your diary which is a meeting with Mr. O'Connor though
11:28:25 30 you may have had other business there, isn't that right?

11:28:27 1 A. Yes.

2 Q. 186 Mr. O'Connor returns with you. Not with you. I beg your pardon. He returns
3 to Ireland on the 8th the following week, isn't that right?

4 A. Yes.

11:28:35 5 Q. 187 And you meet him in Dublin on the 8th, isn't that right?

6 A. At the Berkley Court, yes.

7 Q. 188 Yes. And on the 10th of November 1994, you have a meeting I think in your
8 diary to see Bertie Ahern with Bill O'Connor.

9 A. Yes.

11:28:54 10 Q. 189 Isn't that right?

11 A. Yes.

12 Q. 190 So the sequence of events then in October/November of 1994, is that on the 3rd
13 of November '94, you go to America. On the 4th of November 1994, you meet
14 Mr. Bill O'Connor. On the 6th of November 1994, you return to Dublin. On the
11:29:12 15 8th of November 1994, Mr. Bill O'Connor is in Dublin and he meets with you at
16 the Berkley Court, isn't that right?

17 A. Correct. Yes.

18 Q. 191 On the 10th of November 1994, Mr. Bill O'Connor goes to see Mr. Bertie Ahern
19 with Mr. Owen O'Callaghan, isn't that right?

11:29:27 20 A. Yes.

21 Q. 192 And I think if one looks at 14578, for the 10th of November. One sees recorded
22 there in Mr. Ahern's diary an entry for Owen O'Callaghan and Bill O'Connor.

23 A. Correct, yes.

24 Q. 193 And I think that Mr. Ahern in his statement to the Tribunal at 14244, confirms
11:29:53 25 that there was a meeting on the 10th of November with Mr. O'Callaghan. He
26 recalls that "Mr. O'Callaghan was accompanied by a gentleman from an American
27 financial company whom he believes was called Mr. William O'Connor. In the
28 light of the request to refer to discussions in respect of certain lands in
29 west Dublin, I wish to state that at this meeting Mr. O'Callaghan apprised me
11:30:13 30 of his plans to build a Stadium in Clondalkin for which he was hoping to obtain

11:30:17 1 government approval." Isn't that right?

2 A. Support.

3 Q. 194 Government support, isn't that right?

4 A. Correct.

11:30:22 5 Q. 195 Subject to anything that Mr. Ahern may wish to tell the Tribunal, it is the
6 position, is it not Mr. Dunlop, that prior to and for a good period of time
7 prior to the 10th of November '94, Mr. Ahern had been aware of Mr.
8 O'Callaghan's plans to build a National Stadium?

9 A. I would say so, yes.

11:30:39 10 Q. 196 Because you had arranged other meetings, isn't that right?

11 A. Absolutely, yes.

12 Q. 197 And documentation had been provided to Mr. Ahern, isn't that the position?

13 A. Correct, yes.

14 Q. 198 So now what can you tell the Tribunal happened at that meeting?

11:30:49 15 A. With Mr. Ahern.

16 Q. 199 Yes.

17 A. Yes. The only thing I can tell you about it is what I was told by Mr.
18 O'Callaghan.

19 Q. 200 Yes.

11:30:59 20 A. That the meeting according to Mr. O'Callaghan lasted for a very short time and
21 that Mr. O'Connor in particular and Mr. O'Callaghan also but to a lesser
22 extent, were both extremely annoyed with the response to that they had got from
23 Mr. Ahern.

24 Q. 201 In Mr. O'Callaghan's statement at 20262 he says in the fourth paragraph
11:31:31 25 "Mr. Bill O'Connor of Chilton & O'Connor of Los Angeles whose company was
26 prepared to prepare the funding for the Stadium and myself met with Bertie
27 Ahern in November 1994. The meeting lasted approximately 10 minutes and
28 Mr. Ahern abruptly told us that the government would not support this Stadium
29 financially and he did not envisage a Stadium being built in Neilstown."

11:32:01 30

- 11:32:01 1 Does that accord with your recollection?
- 2 A. Yes, it does.
- 3 Q. 202 Right. Now, I think that Mr. Ahern for completeness, at 1267. In relation to
4 telling Mr. O'Callaghan that he was not in favour of the Stadium at paragraph
11:32:12 5 10 at page 1267 states:
6
7 "I also recollect that Mr. O'Callaghan called to my constituency office in May
8 of '98. My recollection is that on this occasion Mr. O'Callaghan was
9 accompanied by Frank Dunlop. Mr. O'Callaghan wished me to brief me on his
11:32:27 10 latest plans regarding the Stadium. I told Mr. O'Callaghan that it was my plan
11 to build a National Stadium elsewhere that would remain totally under the
12 control of the State and be available to all sectors of the community. Hence I
13 was not in support of his proposal".
14
- 11:32:39 15 Now, subject to anything that Mr. O'Callaghan and Mr. Ahern wish to tell the
16 Tribunal, it it would appear to be the case that Mr. Ahern is saying that the
17 conversation at which he informed Mr. O'Callaghan that he would not support
18 Stadium occurred in May of 1998, isn't that right?
- 19 A. Yes. I believe there may be a conflation of matters there in Mr. Ahern's mind.
11:33:01 20 I can absolutely state that I did accompany Mr. O'Callaghan to Mr. Ahern's
21 constituency office in St. Luke's in Drumcondra on an afternoon, I do believe
22 Mr. Ahern had either immediately from the meeting flown in from a Finance
23 Ministers meeting or a meeting of the European Council and was going elsewhere.
24 He, I recollect that the matter in relation to the discussion was about Mr.
11:33:32 25 O'Callaghan trying to impress on Mr. Ahern, the fact that there was going to be
26 an international team located in the Stadium. At this stage I believe Mr.
27 O'Callaghan was in discussions with Wimbledon.
- 28 Q. 203 Yes. But what I was putting to you --
- 29 A. Sorry.
- 11:33:53 30 Q. 204 -- Mr. Dunlop, was in relation to the timing of the information.

- 11:33:57 1 A. Yes.
- 2 Q. 205 That Mr. Ahern was not going to support Mr. O'Callaghan's --
- 3 A. Yes.
- 4 Q. 206 -- provision for the National Stadium. That according to Mr. Ahern's statement
- 11:34:06 5 at page 1267, this appears according to what Mr. Ahern says, to have occurred
- 6 in 1998. And according to what Mr. O'Callaghan says at 20262, it occurred at
- 7 the meeting with Mr. O'Connor on the 10th of November 1994.
- 8 A. Yes. And I have given my answer to you in relation to that. What I understood
- 9 from Mr. O'Callaghan on foot of the conclusion of that meeting in Mr. Ahern's
- 11:34:32 10 office.
- 11 Q. 207 Yes. Were you present at the meeting?
- 12 A. No I wasn't.
- 13 Q. 208 Were you told afterwards by Mr. O'Callaghan that Mr. Ahern had been dismissive?
- 14 A. Yes, I was told two things. One, that he had been dismissive and that
- 11:34:48 15 Mr. O'Connor was highly offended at the treatment that he had received.
- 16 Q. 209 And just on that point. It would appear to be the case that on the 28th of
- 17 November '94, following that meeting, at 16473. That notwithstanding his
- 18 dissatisfaction with Mr. Ahern that Mr. O'Connor wrote to Mr. Ahern on the 28th
- 19 of November '94:
- 11:35:11 20
- 21 "Dear Tanaiste, I would like to congratulate you on your recent unanimous
- 22 election as leader of Fianna Fail. Also thank you for allocating the time to
- 23 meet with Mr. Owen O'Callaghan, Frank Dunlop and myself on the financing plan
- 24 for the national all purpose Stadium".
- 11:35:24 25 Which would suggest that you were there, Mr. Dunlop.
- 26 A. I wasn't there. What I think Mr. O'Connor is talking about there is that I do
- 27 believe that I drove Mr. O'Callaghan and Mr. O'Connor to the meeting.
- 28 Q. 210 And then it goes on to state "We wish you every success on the crucial talks
- 29 that you are embarking upon and we hope to be in contact in the near future to
- 11:35:46 30 progress the project." Isn't that right?

- 11:35:47 1 A. Yes.
- 2 Q. 211 Now, that wouldn't suggest the response of a person who had been unilaterally
3 shown the door by Mr. Ahern, isn't that right, on the 10th of November '94?
- 4 A. I think somebody I can't attest to who, advised Bill that it would be
11:35:57 5 appropriate to write a letter in those terms to Mr. Ahern.
- 6 Q. 212 Right. And Mr. Ahern replied, didn't he, to --
- 7 A. Yes, he did.
- 8 Q. 213 -- to Mr. O'Connor at 16474. Thanking Mr. O'Connor for his expressions of good
9 wishes on his election of leader of Fianna Fail and that he very much
11:36:15 10 appreciated his doing so. Then goes on to state it was a great honour and
11 privilege to be chosen as the 6th leader of the party and that he was mindful
12 of the responsibility and challenges that lie ahead and heartening to know that
13 he had the good wishes of people like yourself in the future, isn't that right?
- 14 A. Yes.
- 11:36:29 15 Q. 214 Now, that is the correspondence that happens after the meeting takes place at
16 which you say you were told by Mr. O'Callaghan that Mr. Ahern said he would not
17 support the project, isn't that right?
- 18 A. Correct, yes.
- 19 Q. 215 Now, I think just for completeness, that the Tribunal has in fact written to
11:36:44 20 Mr. O'Connor on a number of occasions seeking his assistance but there has been
21 no response to the Tribunal's requests for assistance from Mr. O'Connor. And I
22 think then that in November 1994, Mr. Dunlop, the Labour coalition withdrew
23 from government and a new government was formed in December '94, isn't that
24 right?
- 11:37:04 25 A. That's correct yes.
- 26 Q. 216 And I think it became known as the rainbow coalition, isn't that right?
- 27 A. That's correct.
- 28 Q. 217 And in 1998, I think at the meeting to which you had referred at 13173, I think
29 you had referred to a meeting between Mr. O'Callaghan and yourself at St.
11:37:24 30 Luke's and Mr. Ahern, isn't that right?

- 11:37:27 1 A. Correct.
- 2 Q. 218 And this is the meeting to which you refer, isn't that right?
- 3 A. Correct.
- 4 Q. 219 And that is a the meeting at which Mr. Ahern in his statement states that he
- 11:37:37 5 informed Mr. O'Callaghan that he wouldn't support the Stadium, isn't that
- 6 right?
- 7 A. Correct, yes.
- 8 Q. 220 And following that meeting in May of '98, Mr. O'Callaghan wrote to Mr. Ahern at
- 9 13193. Sorry I beg your pardon, wrote to Mr. Ahern at 14779, in relation to
- 11:37:58 10 the proposed move by Wimbledon to Dublin.
- 11 A. Yes.
- 12 Q. 221 And the difficulties that Mr. Ahern was facing in relation to the move to
- 13 Wimbledon, isn't that right?
- 14 A. Correct, yes.
- 11:38:07 15 Q. 222 And what he was asking in the third last paragraph is for the FAI and the
- 16 national league to sit down with them and have a constructive meeting and both
- 17 of us discuss our problems and fears and hopefully resolve them to each others
- 18 mutual benefit.
- 19 A. Yes.
- 11:38:20 20 Q. 223 The FAI need a stadium in the interests of Ireland's international football we
- 21 will provide it for them, if anyone can get us together you can, isn't that
- 22 right?
- 23 A. Correct.
- 24 Q. 224 So that is the correspondence that followed on the meeting that took place on
- 11:38:34 25 the 25th of May '98, isn't that right?
- 26 A. Relating to Wimbledon.
- 27 Q. 225 Relating to Wimbledon.
- 28 A. Yes.
- 29 Q. 226 And that was the move of Wimbledon was something that was being promoted by a
- 11:38:43 30 number of people including Mr. Eamonn Dunphy, isn't that right?

- 11:38:46 1 A. Yes. I can't attest to who generated but certainly Mr. O'Callaghan became
2 totally involved in trying to attract Wimbledon and introduced me on one
3 occasion to ... somebody called ... Sam Hamman.
- 4 Q. 227 Yes. And I think Mr. Hamman ultimately sold out to some Norwegian developers,
11:39:09 5 isn't that right?
6 A. That's correct.
- 7 Q. 228 Between '94, Mr. Dunlop, and when the Wimbledon project came on stream or
8 started being discussed in later years, the Stadium project seems to disappear,
9 isn't that right, from the end of November of 1994?
- 11:39:24 10 A. Yes it just withered away, there was no interest in it.
- 11 Q. 229 I just want to move on now to deal with the diaries, Mr. Dunlop.
12
13 CHAIRMAN: All right. We'll just take a ten minute break.
14
- 11:39:36 15 MS. DILLON: May it please you, Sir.
16
- 17 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK**
18 **AND RESUMED AS FOLLOWS:**
19
- 11:56:45 20 Q. 230 MS. DILLON: You will recollect, Mr. Dunlop, that we had previously discussed
21 the question of the obliterations in your diary and the material that was
22 redacted by you, isn't that right?
23 A. Yes.
- 24 Q. 231 And subsequent to the first forensic examination the Tribunal arranged for the
11:57:00 25 material of your diaries to be sent to the Federal Bureau of Investigation in
26 America, who provided certain further information to the Tribunal in relation
27 to the material that is underneath the redacted material in your diary?
28 A. Yeah.
- 29 Q. 232 And in the first instance I want to talk to you about two entries in your diary
11:57:22 30 which were not redacted by you, Mr. Dunlop, at 14474. You have an entry on the

- 11:57:29 1 28th of August 1998 for 5K LAL?
- 2 A. Yes.
- 3 Q. 233 And on the 3rd of September at 14475, you have an entry in your diary for AK
- 4 LAL?
- 11:57:43 5 A. Yes.
- 6 Q. 234 And it was your evidence to the Tribunal, which was disputed by the late
- 7 Mr. Liam Lawlor that that represented a record of payments that had been made
- 8 by you to Mr. Lawlor on though dates, isn't that right?
- 9 A. Correct.
- 11:57:55 10 Q. 235 And you had provided information to the Tribunal by reference to cheques drawn
- 11 on your bank account as the source of the monies that were used to finance
- 12 these payments in cash to Mr. Lawlor, isn't that right?
- 13 A. Yes.
- 14 Q. 236 And Mr. Lawlor had doubted the veracity of the diary entries. And at 14477.
- 11:58:17 15 He had said that having looked closely at the diary pages he had the greatest
- 16 doubt or the gravest doubts regarding the veracity of the two entries as
- 17 contemporary annotations. And what Mr. Lawlor appeared to be disputing there
- 18 and I think was disputing there was that you had made the entries at the time
- 19 that the payments were stated to have been made, isn't that right?
- 11:58:38 20 A. Yes.
- 21 Q. 237 Now, I think that was one of the matters on which the FBI was sought as to
- 22 whether or not it was possible to date the entry that you had made, isn't that
- 23 right?
- 24 A. The FBI.
- 11:58:51 25 Q. 238 Yes. And the Tribunal can tell you, Mr. Dunlop, at 25799. That --
- 26 A. Knew I had some ...
- 27 Q. 239 -- that the biro that was used to make the entries was in existence in 1998
- 28 from a comparative analysis that they conducted but in addition to that, they
- 29 forensically examined the over written diary entries, Mr. Dunlop?
- 11:59:21 30 A. Uh-huh.

- 11:59:22 1 Q. 240 And you know that in your 1998, in your 1999 and in your 2000 diaries there are
2 a large number of heavily over written entries. If I can show you one at
3 13401. And you see the entries there on the 26th of January 1999?
4 A. Yes.
- 11:59:45 5 Q. 241 There is a very heavily over written entry?
6 A. Yes.
- 7 Q. 242 And at brief page 25731. This is what is recorded beneath that heavily over
8 written entry?
9 A. Yes.
- 11:59:59 10 Q. 243 Demetrius?
11 A. Yes.
- 12 Q. 244 Now, there are I think well over 15 of those entries in your diary, isn't that
13 right, Mr. Dunlop? Now Demetrius I assume is a code name for somebody, is that
14 right?
15 A. Self, yes it is yeah.
- 16 Q. 245 And when you say self, do you mean that the other person who is Demetrius gave
17 themselves that code name?
18 A. Correct.
- 19 Q. 246 All right. Now, I think you had, I had asked you about Demetrius previously,
12:00:27 20 isn't that right, Mr. Dunlop and you had indicated that without naming the
21 person that this was a person who was a Fine Gael activist, is that the
22 position?
23 A. Yes, just at the conclusion just before lunch one day last week you raised the
24 matter with me and that's what I said yes.
- 12:00:43 25 Q. 247 Yes. And that continues I think to be the position, isn't that right?
26 A. Yes it is.
- 27 Q. 248 And is it the position that this person is not a person who is connected or
28 involved in any of the investigations of the Tribunal to your knowledge?
29 A. To my knowledge, no.
- 12:00:57 30 Q. 249 Yes but I think what you will have to do, Mr. Dunlop, is you will have to

12:01:02 1 identify that person in writing for the benefit of the Tribunal.

2 A. I can, I will take the paper. I don't need the pen. I will take the paper and

3 just hold it for a moment because I can absolutely say to you that momentarily

4 his surname escapes me I know first his first name. I will do it before I

12:01:22 5 conclude.

6 Q. 250 I propose to move on, it will be a matter for the Tribunal to examine the

7 document and if necessary you can be recalled to deal with the matter I don't

8 propose to deal any further with the matter today. But I do propose to deal

9 with some further material that has come to light as it were in relation to the

12:01:39 10 diary entries. And if we could have first 4971. Sorry. I beg your pardon.

11 Not 4971. At 4280. This is the very first Owen O'Callaghan entry in your

12 diary, Mr. Dunlop, for the 8th of June 1990. And you remember you told the

13 Tribunal that you couldn't really understand what that entry was doing there

14 because you hadn't met Mr. O'Callaghan by that time, isn't that right?

12:02:07 15 A. Yes, yeah.

16 Q. 251 But beneath that there was a matter that was redacted, isn't that right, and

17 over written. And if you look at page 25588. This is what's beneath it.

18 "Guinness & Mahon".

19 A. Yeah.

12:02:24 20 Q. 252 Now does that assist you, Mr. Dunlop, in dealing with the entry in relation to

21 Mr. O'Callaghan on the 8th of June 1990, with a matter that was redacted

22 beneath it being a reference to Guinness & Mahon?

23 A. Well no it doesn't. I had never met Mr. O'Callaghan at Guinness & Mahon, if

24 that is what.

12:02:45 25

26 CHAIRMAN: It's "G & M".

27 A. Yes.

28

29 JUDGE FAHERTY: I think you told us before, Mr. Dunlop just for the transcript

12:02:54 30 "G & M" appears on the document.

12:02:56 1 MS. DILLON: Yes.
2
3 JUDGE FAHERTY: And Mr. Dunlop as I understand it has given evidence
4 previously.
12:03:01 5
6 MS. DILLON: Yes that refers to Guinness & Mahon.
7
8 JUDGE FAHERTY: I just wanted to.
9
12:03:06 10 MS. DILLON: Sorry I was trying to fast forward sorry
11 A. Never met Owen O'Callaghan at Guinness & Mahon unless there is another Owen
12 O'Callaghan in Guinness & Mahon. Certainly there was no connection between
13 Owen O'Callaghan and Guinness & Mahon.
14 Q. 253 So it's the position then in relation to the entry 8th of June 1990, you can't
12:03:28 15 explain why Mr. O'Callaghan's name is there in the first instance?
16 A. Correct.
17 Q. 254 And you can't explain why there is an entry in relation to Guinness & Mahon "G
18 &M" there, is that the position?
19 A. Yes.
12:03:33 20 Q. 255 I think if you look at October 9th 1990 at 4391, and this was a redacted entry
21 for the 9th October 1990, isn't that right?
22 A. Yes.
23 Q. 256 And if you look at brief page 25566. What was redacted was "agreed schedule of
24 payment with DS, five down 20 following and 10 before Christmas". Isn't that
12:04:07 25 right?
26 A. Yes.
27 Q. 257 Right. That's a financial transaction?
28 A. Correct.
29 Q. 258 Relating to a person who is involved in another module but not this particular
12:04:16 30 module, isn't that right?

- 12:04:16 1 A. Correct, yes.
- 2 Q. 259 So what you have taken out there, Mr. Dunlop, is a financial transaction, isn't
- 3 that right?
- 4 A. Yes.
- 12:04:22 5 Q. 260 If we look then at 4971. And you will remember this entry, Mr. Dunlop. There
- 6 are two redactions on that page and the first of those which is further up the
- 7 page as it were at the top of the page if I can show you brief page 25599.
- 8
- 9 CHAIRMAN: What year is this?
- 12:04:45 10
- 11 MS. DILLON: This is 1991. This is the date of the meeting. You will note
- 12 from the diary, Mr. Dunlop, that on the previous day April 25th, you have what
- 13 is recorded there as a meeting with Tom Gilmartin and Owen O'Callaghan.
- 14 A. Yes.
- 12:04:57 15 Q. 261 On the first day?
- 16 A. Yes.
- 17 Q. 262 Then the following day in the diary there are two redactions. This is the
- 18 first and then we'll look at the second in a moment?
- 19 A. Uh-huh.
- 12:05:06 20 Q. 263 And while it's quite difficult to make out, Mr. Dunlop, if you look at it for a
- 21 little while. I think that what was originally there was Tom Gilmartin's name,
- 22 isn't that right?
- 23 A. Originally Tom Gilmartin's name and the piece in front is the time or some time
- 24 yes.
- 12:05:20 25 Q. 264 Isn't that right?
- 26 A. Yes.
- 27 Q. 265 So that when you came to do the redaction if we could just have 4971. On the
- 28 two redactions what you have redacted out of both entries on the 26th of April
- 29 was Mr. Tom Gilmartin's name, isn't that right?
- 12:05:36 30 A. Yes, correct.

- 12:05:37 1 Q. 266 And I think that just for completeness if we look at what was produced in
2 relation to the bottom redaction and that can be found at brief page 25603.
3 And I think it's beyond doubt there, Mr. Dunlop, that it was Mr. Gilmartin's
4 name that had been in, isn't that right?
- 12:05:57 5 A. Correct, yes.
- 6 Q. 267 So that you had entered Mr. Gilmartin's name as being in your diary for once on
7 his own and once in somebody else's company on both occasions you had redacted
8 it out, isn't that right?
- 9 A. Correct.
- 12:06:09 10 Q. 268 Now, if I show you 14203, Mr. Dunlop, and this is an entry for the 6th of June
11 1991. And at the bottom at 4:30 there is an entry Owen OC here and beneath
12 that 9:00 and it's heavily redacted Buswells, isn't that right?
- 13 A. Uh-huh.
- 14 Q. 269 And beneath that, Mr. Dunlop, at 25607. This is what's redacted "TG" which I
15 suggest is Tom Gilmartin, "OOC" which is Mr. Owen O'Callaghan, C McG which is
16 Mr. Colm McGrath and SG, Sean Gilbride
- 17 A. Yes.
- 18 Q. 270 Isn't that right?
- 19 A. Correct.
- 12:06:49 20 Q. 271 Now going back to the original diary, Mr. Dunlop, at 14203. Why did you redact
21 that out?
- 22 A. Because I don't believe I ever met those people in Buswells with Mr. Gilmartin.
- 23 Q. 272 But you left in GB Buswells?
- 24 A. Yes.
- 12:07:04 25 Q. 273 And who was GB?
- 26 A. That I ... GB ... I'm afraid I can't assist you there immediately. GB ... not
27 GV ... no, I don't know offhand I don't know.
- 28 Q. 274 But what you are concealing, Mr. Dunlop, and what you have redacted?
- 29 A. Yes.
- 12:07:26 30 Q. 275 Out is a meeting that was arranged at a minimum with Mr. Gilmartin, Mr.

- 12:07:32 1 O'Callaghan, Mr. Gilbride and Mr. Colm McGrath in Buswells on the 6th of June,
2 isn't that right?
- 3 A. Yes, never met them.
- 4 Q. 276 All right. Now in such --
- 12:07:40 5 A. I never met Mr. Gilmartin in Buswells Hotel.
- 6 Q. 277 If such a meeting in fact had taken place or in fact been a arranged it would
7 cast doubt upon this entire arrangement that you say that you entered into with
8 Mr. O'Callaghan because Mr. Gilmartin didn't want you involved in Quarryvale,
9 isn't that right?
- 12:07:57 10 A. Correct, yes.
- 11 Q. 278 So that if one was consulting these diaries in their unredacted format prior to
12 giving them the Tribunal you would have seen, I suggest, Mr. Dunlop, that that
13 particular entry could create a particular problem in light of the position you
14 had adopted isn't that right?
- 12:08:19 15 A. As you put it and on the premise that you put it, the answer is yes. But I
16 never met Tom Gilmartin in Buswells Hotel.
- 17 Q. 279 And if I can show you 6339, Mr. Dunlop. And there is an entry in your diary
18 for December the 1st 10:00 something re Quarryvale, do you see that?
- 19 A. Yes, yes.
- 12:08:36 20 Q. 280 And I want to show you the underwritten portion of that is at 25611. And what
21 was redacted there was LL?
- 22 A. Liam Lawlor, yes.
- 23 Q. 281 Isn't that right?
- 24 A. Yes.
- 12:08:46 25 Q. 282 So what you are leaving there is re Quarryvale but what you were taken out as
26 you have previously taken out were references to Mr. Lawlor isn't that right?
- 27 A. Yes.
- 28 Q. 283 So that you weren't disclosing references to Mr. Lawlor in your diary when you
29 were providing them to the Tribunal, isn't that right?
- 12:09:02 30 A. Correct.

- 12:09:03 1 Q. 284 And that would appear to be a deliberate redaction isn't that right Mr. Dunlop?
- 2 A. Yes.
- 3 Q. 285 April -- 9414. This is an entry on Saturday April the 13th Mr. Dunlop.
- 4 Lepardstown and there is something overwritten beside it, do you see that on
- 12:09:42 5 April the 13th.
- 6 A. April 17th.
- 7 Q. 286 Sorry the 17th, I beg your pardon?
- 8 A. Yeah.
- 9 Q. 287 And if you look at page 25644. This is what was beneath it. Do you see that?
- 12:09:56 10 A. Bertie, yes.
- 11 Q. 288 Yes. Is there any reason why you would have overwritten that in your diary Mr.
- 12 Dunlop?
- 13 A. Other than that it's Leopardstown and it's races and it has nothing to do with
- 14 the Tribunal.
- 12:10:06 15 Q. 289 I see. And if I can show you 10344. And this is an alteration Mr. Dunlop in
- 16 your diary that we'd looked at before on November the 10th. And what appears
- 17 on first reading to be GH with a telephone number beneath that at page 25645.
- 18 There is written LL one and a half?
- 19 A. Yes.
- 12:10:32 20 Q. 290 One ready half cheque?
- 21 A. Yes.
- 22 Q. 291 And I think you had given evidence previously that having looked at what was
- 23 written beneath that, that referred to a payment to Mr. Lawlor?
- 24 A. Correct.
- 12:10:42 25 Q. 292 And you couldn't explain I think why you would have overwritten that, isn't
- 26 that right?
- 27 A. That is correct, yes.
- 28 Q. 293 And this is an instance at 10344, Mr. Dunlop, of misdirection isn't that right,
- 29 in other words, you have altered the entry?
- 12:10:57 30 A. Yes, I have altered the entry, yes.

12:11:00 1 Q. 294 Do you think now having considered the matter why was it that you wished to
2 alter the entry?
3 A. I presume at the time, I altered the entry at the time because I didn't want
4 that particular matter to be seen.

12:11:15 5 Q. 295 Now, if I can show you September 1995 at 11925. And this is an entry that you
6 have overwritten isn't that right on the 1st of September 1995.
7 A. Yes.

8 Q. 296 Right. And this is what is beneath that entry Mr. Dunlop at 25648.
9 A. Yes.

12:11:42 10 Q. 297 Now what was that about? What's written there is "OOC to deliver". What was
11 Mr. O'Callaghan to deliver, Mr. Dunlop, on the 1st of September 1995?
12 A. I'm afraid I can't tell you. I'm afraid I don't know.

13 Q. 298 It might assist if we look at the next overwriting which is the 15th of
14 September 95 at 11949. And you remember this overwriting Mr. Dunlop?
12:12:19 15 A. Yes.

16 Q. 299 And I had put I think various possible alternatives to you that you weren't
17 that happy to accept isn't that right? But what was in fact beneath it Mr.
18 Dunlop is at 25652. And this reads "spoke by phone to OOC" do you see that?
19 A. Yes.

12:12:42 20 Q. 300 And then he reiterated his commitments to fulfilling his obligations
21 absolutely?
22 A. Yeah.

23 Q. 301 Isn't that right, Mr. Dunlop?
24 A. Yep, there is something else beneath that again but yes.

12:12:57 25 Q. 302 No problem.
26 A. Yes.

27 Q. 303 Isn't that right?
28 A. Uh-huh.

29 Q. 304 So the entry that was overwritten and which you redacted out for the 15th of
12:13:05 30 September of 1995 read "spoke by phone to OOC he reiterated his commitments to

12:13:13 1 fulfilling his obligations absolutely no problem"?

2 A. Uh-huh.

3 Q. 305 Isn't that right? What was that all about Mr. Dunlop?

4 A. Again, all I can say know -- other than to say that it relates to my talking to

12:13:25 5 him about a success fee, I cannot say.

6 Q. 306 Why did you redact it, Mr. Dunlop?

7 A. Obviously I didn't want anybody to see it.

8 Q. 307 Well in particular who did you not want to see it?

9 A. Obviously the Tribunal.

12:13:46 10 Q. 308 Because you see, Mr. Dunlop, in relation to that particular diary entry and the

11 subsequent diary entries in terms of date. That diary entry is dated 1995.

12 A. Uh-huh.

13 Q. 309 And was not the subject matter of any order by the Tribunal?

14 A. I see, yeah.

12:14:05 15 Q. 310 The orders of the Tribunal for discovery went as far as 1993, isn't that right?

16 A. If you say so yes. I can't recollect. But I take your word for it, yes.

17 Q. 311 I have for you, Mr. Dunlop, a piece of paper which I will come to.

18 A. Yeah.

19 Q. 312 The dates of the orders of the Tribunal. But I don't believe that they covered

12:14:25 20 the later diaries, the later periods.

21 A. Uh-huh.

22 Q. 313 Which would mean, Mr. Dunlop, that it was only when the Tribunal requested you

23 to produce your diaries that you would have had reason to consider the contents

24 of the later entries, isn't that right?

12:14:38 25

26 MR. REDMOND: Mr. Chairman, again, Ms. Dillon is suggesting that because he

27 hadn't been asked for any discovery at that stage he was supposed to presume

28 that he was only going to be asked for the documentation in which an order was

29 actually made.

12:14:53 30

- 12:14:53 1 CHAIRMAN: Well is that an reasonable presumption?
2
- 3 MR. REDMOND: Well it's an equally reason to say the contrary. And therefore
4 the converse must be put at the same time otherwise it's not an inquiry, it's a
12:15:03 5 leading question.
6
- 7 MS. DILLON: All right.
8
- 9 CHAIRMAN: Well you can deal with that, Mr. Dunlop. Which was it? Did you
12:15:11 10 conduct this, these obliterations at the time when you were being asked for the
11 relevant entries relating to a shorter period of time or at least a period
12 which stopped short of this entry in 1995, did you obliterate this at that time
13 or at a later stage
14 A. I'm afraid I can't tell you, Chairman.
12:15:40 15
- 16 Q. 314 MS. DILLON: The first order for discovery that was made, Mr. Dunlop, by the
17 Tribunal against you was the 12th of February 1999. And it covered from the
18 1st of September '91 to the 1st of September '93.
19 A. Uh-huh.
- 12:15:51 20 Q. 315 The second order was the 12th of February '99. And it covered from the 1st of
21 September '91 to 1st of September '93.
22 A. Uh-huh.
- 23 Q. 316 And the third order was March 2000 and it covered a short period from the 1st
24 of January 1990 to September '91, and September, 93 to December, 93. So the
12:16:10 25 furthest period that any of the orders went was December 1993. And then in
26 2001, Mr. Dunlop, I think it was the 30th of October 2001, following a letter
27 from the Tribunal, you produced your original diaries covering all of the
28 periods, isn't that right?
29 A. Yes, as I recollect, yes.
- 12:16:28 30 Q. 317 And what I was suggesting to you was that in view of the fact that the earlier

12:16:33 1 orders of the Tribunal went no further than the 31st of December 1993, that
2 it's likely that you didn't have to consider the contents of these diaries
3 until the Tribunal asked you for those diaries in October of 2001 and would you
4 agree with that?

12:16:49 5 A. I can't say yes or no. I just cannot say as I said to the Chairman I just
6 cannot say yes or no.

7 Q. 318 All right. Do you accept in relation to the entry that's on screen for the
8 15th of September 1995, that what is there is your original note?

9 A. Yes.

12:17:10 10 Q. 319 And that what it relates to is an agreement with Mr. O'Callaghan which you then
11 redacted?

12 A. Yes.

13 Q. 320 All right. And on the 14th of June '96 at 12568. We have dealt with this
14 before, Mr. Dunlop, and this was an entry in relation to an agreement with Mr.

12:17:31 15 O'Callaghan having met him at Frank Dunlop, A to arrange a new retainer and
16 then B, to agree and pay success to FD, isn't that right?

17 A. Yes, correct.

18 Q. 321 And I just want to come back to that for a moment or the third or beneath that
19 had been obliterated. And unfortunately, Mr. Dunlop, at 25660 there has been
12:17:52 20 no further success in trying to work out as to what was beneath the

21 obliteration. But I just wanted to ask you, Mr. Dunlop, at 12568 may the
22 Tribunal take it that by the 13th of June 1996, you had not been agreed a
23 success fee with Mr. O'Callaghan by view of item B that's recorded there?

24 A. Yes.

12:18:53 25
26 (Witness handing in piece of paper)

27 Q. 322 If I could have 13043, please. Now, this is the 13th of November 1997, and to
28 put this entry into context, Mr. Dunlop, the Tribunal was established I think
29 in 1997, isn't that right? In late '97?

12:19:17 30 A. October November 1997.

- 12:19:18 1 Q. 323 I think early November 1997, isn't that right?
- 2 A. Yes.
- 3 Q. 324 And on the 13th of November, you have a heavily overwritten entry, isn't that
- 4 right?
- 12:19:24 5 A. Yes.
- 6 Q. 325 And if I can show you that at 25687. Now, can you just read that for me, Mr.
- 7 Dunlop?
- 8 A. It looks like "OOC D day".
- 9 Q. 326 Yes.
- 12:19:47 10 A. "D day", yes.
- 11 Q. 327 What was the D day with Mr. O'Callaghan about, Mr. Dunlop, what did it mean?
- 12 A. Other than relating to a success fee, I have no idea.
- 13 Q. 328 What arrangement or agreement had you made with Mr. O'Callaghan that would have
- 14 led you to put an entry called "OOC D day" in your diary?
- 12:20:13 15 A. Other than as I've said to you I may have had a discussion with Owen
- 16 O'Callaghan and there may well have been an agreement to pay.
- 17 Q. 329 But other than that, you can't assist?
- 18 A. I'm afraid not.
- 19 Q. 330 That would suggest that you were expecting something, isn't that right, Mr.
- 12:20:29 20 Dunlop?
- 21 A. In that terminology, yes.
- 22 Q. 331 Yes. In other words you would have -- and I would suggest?
- 23 A. Or, or --
- 24 Q. 332 Or?
- 12:20:37 25 A. Or expecting something or that there was something to be done in relation to
- 26 Owen O'Callaghan vis-a-vis my acting for him.
- 27 Q. 333 Yes. And looking at what you know of the events of '97, Mr. Dunlop.
- 28 A. '96.
- 29 Q. 334 Was there anything in -- in '97.
- 12:21:00 30 A. Sorry I beg your pardon, yes.

- 12:21:01 1 Q. 335 This is an entry of the 13th of November '97, Mr. Dunlop?
- 2 A. Sorry I beg your pardon.
- 3 Q. 336 Not at all.
- 4 A. The starting of the Tribunal that was your question.
- 12:21:10 5 Q. 337 Yes.
- 6 A. Yes.
- 7 Q. 338 What were you doing for Mr. O'Callaghan in November of 1997?
- 8 A. I don't believe I was doing very much for him. I think matters, I think we
- 9 were on retainer at that stage.
- 12:21:25 10 Q. 339 Yes.
- 11 A. No, I don't think we were -- I don't think, unless there was something that Mr.
- 12 O'Callaghan can attest to, I don't believe we were all of the issues in
- 13 relation to Quarryvale and other matters I think had been concluded.
- 14 Q. 340 On its face, Mr. Dunlop, it could be an innocuous entry, isn't that right?
- 12:21:45 15 A. Absolutely.
- 16 Q. 341 But you redacted it forcefully, isn't that right?
- 17 A. Yes.
- 18 Q. 342 And you can't now think of what it was that was so significant you described it
- 19 as "OOC D day" on the 13th of November 1997?
- 12:21:58 20 A. Other than what I said to you initially a moment ago, it's one of two things.
- 21 One, it's either an agreement with Mr. O'Callaghan in relation to a payment or
- 22 it is something that I was doing for Mr. O'Callaghan because he was a client
- 23 other than that, I cannot help you.
- 24 Q. 343 Or it might have been a discussion about the establishment of the Tribunal, Mr.
- 12:22:17 25 Dunlop?
- 26 A. I don't think I would put it in those terms.
- 27 Q. 344 All right. Or it might have been an agreement about an amount of money or a
- 28 payment of an amount of money?
- 29 A. Yes, it could be.
- 12:22:27 30 Q. 345 And if I could show you 15130, which is an entry for the 7th of May '98. And

- 12:22:34 1 this entry has in fact been Tip-exed out of your diary on the 7th of May.
- 2 A. Yes.
- 3 Q. 346 And it's been tip-exed out be but beneath it apparently is what is written at
- 4 25702, you see there appears to be a time first of all which might be 11:00 a
- 12:22:52 5 name.
- 6 A. I will have to take --
- 7 Q. 347 And then there appeared to be -- sorry.
- 8 A. No, I'm afraid I ...
- 9 Q. 348 Is it possible, Mr. Dunlop, that's what's written there is Liam?
- 12:23:23 10 A. It is possible it's either "Liam" or "Larry" yes.
- 11 Q. 349 And that the next word ends in SH. something SH. cash possibly?
- 12 A. Yes it is possible yes I would agree that the last two letters look like S.H.
- 13 yes.
- 14 Q. 350 Yes.
- 12:23:41 15 A. But there appears to be a D as well I'm not absolutely certain about that.
- 16 Q. 351 And if I can show you 13152, you will be familiar with this entry, Mr. Dunlop
- 17 because this is the one that you had suggested initially related to
- 18 Mr. Duignan, isn't that right?
- 19 A. Yes.
- 12:23:56 20 Q. 352 And then I think after the first analysis of the documentation at 25062. You
- 21 had made some less than helpful suggestions in reply to the Chairman about
- 22 plumbing I think that evidence, Mr. Dunlop in relation to the last line?
- 23 A. Yes it's "planning".
- 24 Q. 353 Yes. Yes, and I had suggested to you that it was --
- 12:24:21 25 A. Well sorry, Ms. Dillon, if I had made unhelpful suggestions. If I recollect
- 26 this matter was handed to me in the witness box without prior notification and
- 27 we were trying to decipher the matter.
- 28 Q. 354 Yes. You having been the original author.
- 29 A. Yes but we were trying to decipher the matter on no notice.
- 12:24:40 30 Q. 355 Yes. Now at 25584, Mr. Dunlop. And it's not really at all much ... I am going

- 12:24:54 1 to give you the copy, Mr. Dunlop, it's not as clear as the first copy that we
2 looked at but it might be slightly clearer than what's on screen. I want to
3 you to assist the Tribunal from looking at that is the first word that's
4 written on 25062 please "cheque"?
- 12:25:16 5 A. Something "to issue" certainly.
- 6 Q. 356 Yes.
- 7 A. And if you use the phrase to "issue" the likelihood is that it is cheque, yes.
- 8 Q. 357 So that what is written there is "cheque to issue" something blank then "for
9 100,000".
- 12:25:25 10 A. Yes.
- 11 Q. 358 And then beneath that the next line all that can be deciphered are the words
12 "to be" something and a date.
- 13 A. Yes.
- 14 Q. 359 And after that "300K planning".
- 12:25:36 15 A. Correct, yes.
- 16 Q. 360 All right. Now I think subsequently, subsequent to that particular entry, Mr.
17 Dunlop, in May of '98 it is the case that you did receive a cheque for 100,000
18 pounds in June of 1998?
- 19 A. Correct.
- 12:25:49 20 Q. 361 Which you have described to the Tribunal as the first payment of the success
21 fee, isn't that right?
- 22 A. Yes.
- 23 Q. 362 And you were, you did subsequently receive 300,000 pounds in October of '98,
24 isn't that right?
- 12:26:01 25 A. Yes I did, yes.
- 26 Q. 363 Now I think at 133, at 1337, in November of 1998 and sorry 1337. 733 sorry.
27 This entry on the 4th of November 1998, Mr. Dunlop, which is heavily
28 overwritten by you can be seen at 25711, and this is the first Demetrius entry
29 in your diary?
- 12:26:37 30 A. Yes.

- 12:26:37 1 Q. 364 That has been heavily overwritten. And it is the case, is it not, Mr. Dunlop,
2 that all of the Demetrius entries were overwritten completely, isn't that
3 right?
- 4 A. Correct.
- 12:26:47 5 Q. 365 And is it the position that you did that when you were asked to produce the
6 diaries for the Tribunal?
- 7 A. Well I can't tell you when I did it but yes I did overwrite them but I can't
8 tell you when I did it.
- 9 Q. 366 Sorry. The rest of these entries are Demetrius -- various Demetrius entries,
10 Mr. Dunlop. I am trying to find the ones that aren't. Oh, yes, at 13369, on
11 the 10th of December '98.
- 12 A. Yep.
- 13 Q. 367 There is an entry that's overwritten on the third line. And --
- 14 A. On the 10th.
- 12:27:37 15 Q. 368 The 10th of December.
- 16 A. Yes, yeah.
- 17 Q. 369 '98. And this can be seen at 25728.
- 18 A. Yep.
- 19 Q. 370 Now, what does that mean "T to QV"?
- 12:27:56 20 A. Well I have already given evidence to the fact that any time T appears it
21 refers to the Taoiseach and to and Q V is Quarryvale.
- 22 Q. 371 And on the 10th of December 1998, had you made an arrangement for Mr. Ahern to
23 attend at Quarryvale or meet at Quarryvale?
- 24 A. No, I don't believe I did. This doesn't relate to the official opening of
12:28:25 25 Quarryvale. I'm afraid I don't ever recollect making an arrangement for the
26 Taoiseach to go to Quarryvale. 1998 if it is Mr. Ahern.
- 27 Q. 372 Yes it is December 1998.
- 28 A. No, no, I'm afraid I can't help you if we're going to go with the with T being
29 Taoiseach, no.
- 12:28:51 30 Q. 373 On the 5th of March '99 at 13499, the first entry, Mr. Dunlop, on the 5th of

12:29:01 1 March 1999, which is overwritten.

2 A. 5th of March, yes.

3 Q. 374 Can be seen at 25746. Sorry. The 2nd. It is the second one. Well the first

4 and the second. The first the is the Demetrius which I am not concerned about

12:29:17 5 but the second overwritten entry is "GV Merrion Hotel".

6 A. Yes.

7 Q. 375 And is there any reason why you would have overwritten that entry, Mr. Dunlop?

8 A. I can't say that there is because I gave evidence in relation to that.

9 Q. 376 Yes. The next entry, Mr. Dunlop, relates to a person who is not the subject

12:29:37 10 matter of inquiry in this particular module. But it is --

11 A. Yes.

12 Q. 377 -- an entry in your diary for the 22nd of June 1999. And I don't want any

13 documents to be put on screen but I want to show you what has been deciphered

14 from beneath it "Mr. Dunlop" for the purpose of asking you to confirm that it

12:29:56 15 apparently records some type of financial transaction.

16 A. "Agreed." Sorry. Yeah. Yes, it does. It does appear to be some form of

17 financial transaction, yes.

18 Q. 378 And it has been redacted.

19 A. It has been redacted, yes.

12:30:33 20 Q. 379 And in fact just to show you the page which is at 13601, it has been heavily

21 redacted, Mr. Dunlop, isn't that right?

22 A. Yes. Yeah.

23 Q. 380 And this was a person, Mr. Dunlop, who, with whom you had a very significant

24 financial relationship, isn't that right?

12:30:57 25 A. I'm afraid ...

26 Q. 381 I don't want you to concern yourself about it, Mr. Dunlop, because I am going

27 to come to a much more legible financial relationship with that person that you

28 had also overwritten but which clearly can be read. The point I was trying to

29 put to you, Mr. Dunlop, is that this is a person who conferred significant

12:31:19 30 financial benefit on you, isn't that right?

12:31:19 1 A. Yes.

2 Q. 382 And again, it is something that has been overwritten in your diary, isn't that

3 right?

4 A. Yeah.

12:31:21 5 Q. 383 And earlier we had seen that in relation to Citywest.

6 A. Yes.

7 Q. 384 You had also overwritten that entry.

8 A. Correct.

9 Q. 385 So that these matters, these three people if I can put it like that, would have

12:31:33 10 been your most significant financial contributions, the person about whom the

11 entry is made in the document in your hand, Citywest and Mr. O'Callaghan, isn't

12 that right?

13 A. Yes.

14

12:31:42 15 CHAIRMAN: Sorry.

16

17 Q. 386 MS. DILLON: Now if I can show you --

18

19 CHAIRMAN: Ms. Dillon, Mr. Redmond may want to see.

12:31:50 20

21 MS. DILLON: Oh, yes of course.

22

23 CHAIRMAN: May want to see that document, if he wants to see it.

24

12:31:56 25 Q. 387 MS. DILLON: Oh, yes of course.

26 Now, on the 30th of July 1999, Mr. Dunlop, at 13630, there is again a very

27 heavy redaction in your diary, isn't that right?

28 A. Yeah.

29 Q. 388 And if we look at 25784. The following appears to be recorded. "Spoke at

12:32:21 30 length with OOC", do you agree with that?

12:32:23 1 A. Yes.

2 Q. 389 "Re fees 300".

3 A. Yeah.

4 Q. 390 "Contribution".

12:32:32 5 A. Yes, yeah.

6 Q. 391 Yes. And "asked to talk after 16th of the 9th -- in fact '99".

7 A. Uh-huh.

8 Q. 392 "Re: Payment".

9 A. Uh-huh.

12:32:50 10 Q. 393 So the whole thing would read "spoke at length with OOC re fees 300
11 contribution and asked to talk after the 10th of the 9th '99 re payment". Do
12 you agree with that?

13 A. Yes.

14 Q. 394 All right?

12:33:06 15 A. Yes.

16 Q. 395 Now, in July of 1999, Mr. Dunlop, you had been paid your success fee in October
17 of 1998, and you have told the Tribunal that you had no further arrangement or
18 agreement with Mr. O'Callaghan about the payment of further funds, isn't that
19 right?

12:33:24 20 A. Correct.

21 Q. 396 You have a redacted entry in your diary for the 30th of July 1999, that appears
22 to suggest a record of an agreement or a conversation with Mr. O'Callaghan in
23 which there was a discussion about a 300 contribution.

24 A. Yes.

12:33:41 25 Q. 397 And that I suggest to you is not 300 pounds it's 300,000, isn't that right?

26 A. I would say so, yes. It doesn't seem to be a K behind it which I would say so
27 absolutely, yes.

28 Q. 398 Did you make an arrangement or an agreement with Mr. O'Callaghan in July of
29 1999, for a payment of a further sum of 300,000 pounds?

12:34:00 30 A. No I did not.

- 12:34:01 1 Q. 399 Well why would you have recorded that agreement in your diary, Mr. Dunlop?
- 2 A. I cannot say to you why that is there because I certainly didn't make an
- 3 agreement with Mr. O'Callaghan after the payment of the 300,000 or the 300,000
- 4 plus VAT in 1998.
- 12:34:23 5 Q. 400 But you were obviously discussing money with Mr. O'Callaghan in July of 1999?
- 6 A. Yes, as that note attests, yes.
- 7 Q. 401 And you had obviously made your agreement about the legal fees with Mr.
- 8 O'Callaghan in November of '98, because the first invoice is dated the 13th of
- 9 November '98?
- 12:34:41 10 A. Correct, yeah.
- 11 Q. 402 So that this doesn't relate to the agreement in relation to the payment of
- 12 legal fees, it's something else entirely isn't it, Mr. Dunlop?
- 13 A. Yes, it may well be but I can absolutely say to you that I did not enter into
- 14 an agreement with Mr. O'Callaghan in 1999, in relation to the payment of, if
- 12:34:59 15 you will allow me to use the, further 300,000. I was paid 300,000 plus VAT by
- 16 Mr. O'Callaghan in October of 1998, in the circumstances that I have outlined.
- 17
- 18 CHAIRMAN: This is 300 outstanding, isn't it?
- 19
- 12:35:14 20 MS. DILLON: Maybe, Sir. I have put my best interpretation on it, Sir. But
- 21 looking at it --
- 22
- 23 CHAIRMAN: Would you agree with that, Mr. Dunlop, is that 300,000?
- 24 A. Yes, I would say yes, Mr. Chairman, it does look like outstanding, yes.
- 12:35:34 25
- 26 CHAIRMAN: Does that suggest that as of that date in 1999, there was 300,000
- 27 outstanding in your mind in any event?
- 28 A. Well the note would suggest such, yes. But I have never, after the payment of
- 29 the 300,000 in -- on foot of the invoice that we looked at some weeks ago for
- 12:35:52 30 300,000 plus VAT, I -- there was no other outstanding monies from Mr.

12:35:57 1 O'Callaghan.
2
3 MR. REDMOND: Mr. Chairman, I should also point out that insofar as even on the
4 basis of hypothesis we agree that it says 300 outstanding. That then militates
12:36:10 5 against the proposal put forward by Ms. Dillon that it's recording an
6 agreement. If the money is agreed that it's outstanding that's not the
7 recording of an agreement it's possibly the recording of a conversation but not
8 a new agreement.
9
12:36:29 10 CHAIRMAN: Yes. It suggests that Mr. Dunlop believed that there was 300,000
11 outstanding as of that date.
12
13 MS. DILLON: Yes. I mean it wouldn't be outstanding, Sir, without an earlier
14 agreement.
12:36:33 15
16 MR. REDMOND: I am not suggesting it there never was an agreement. I am
17 suggesting that that does not record an agreement.
18
19 CHAIRMAN: It could, there could have been a dispute about it too, we don't
12:36:45 20 know.
21
22 Q. 403 MS. DILLON: What I am interested in, Mr. Dunlop.
23 A. Yes.
24 Q. 404 This is an entry that relates to some financial transaction with Mr.
12:36:53 25 O'Callaghan.
26 A. Uh-huh.
27 Q. 405 That appears to be clear, isn't that right?
28 A. It relates to a conversation yes with Mr. O'Callaghan, yes.
29 Q. 406 Yes. In 1999.
12:37:00 30 A. Yes.

- 12:37:01 1 Q. 407 And it, the figure appears to be 300.
- 2 A. Yes, it does.
- 3 Q. 408 And that is likely to be 300,000, isn't that right?
- 4 A. Yes.
- 12:37:11 5 Q. 409 You are hardly discussing a figure of 300 pounds with Mr. O'Callaghan?
- 6 A. I don't ever recollect discussing anything of the order of 300 pounds with Mr.
- 7 O'Callaghan, no.
- 8 Q. 410 But the last word is payment, isn't that right?
- 9 A. Yes.
- 12:37:27 10 Q. 411 So the discussion appears to be about an amount of money.
- 11 A. Uh-huh.
- 12 Q. 412 And payment.
- 13 A. Uh-huh.
- 14 Q. 413 Now there was never any question of you paying Mr. O'Callaghan was there, Mr.
- 12:37:37 15 Dunlop?
- 16 A. No definitely not.
- 17 Q. 414 The only way the money travelled was between Mr. O'Callaghan and yourself was
- 18 to you, isn't that right?
- 19 A. Yes.
- 12:37:44 20 Q. 415 And I am suggesting to you that what this record is, Mr. Dunlop, is a record of
- 21 some discussion or conversation you had with Mr. O'Callaghan in July of 1999
- 22 concerning a sum of 300,000 pounds and the payment or possible payment of that
- 23 sum to you?
- 24 A. Certainly the, as we can read it as best we can read it that records a
- 12:38:06 25 conversation because the first word says "spoke at length with OOC." I can
- 26 only say to you what I've said to you earlier, that I have never entered into
- 27 an agreement or arrived at an agreement or spoke to Mr. O'Callaghan about any
- 28 payment other than the payments that we have already dealt with.
- 29 Q. 416 Can I show you, Mr. Dunlop, another redacted matter at 13656. And this again
- 12:38:35 30 is heavily redacted the entry on the bottom on the 10th of September 1999, and

12:38:41 1 then there is an entry at 25792. "Sent invoice to SN (295K)".

2 A. Yes.

3 Q. 417 And what you had redacted out was a record of an invoice that you had sent to

4 somebody for 295,000 pounds, a financial transaction, isn't that right?

12:39:03 5 A. Yes.

6 Q. 418 At 13615. I am going to give you the hard copy of this, Mr. Dunlop. And you

7 have given evidence about this in which you agreed that it was likely you

8 thought it would relate to some financial transactions and without mentioning

9 the person's name that is written there.

12:39:29 10 A. Yeah.

11 Q. 419 Clearly isn't it. I am going to put to you what the body of the document

12 states and see as you look at it do you agree with that. "Re acquisition

13 arrangements 3 million pounds by the 31st of the 8th '99".

14 A. Uh-huh.

12:39:43 15 Q. 420 "Quarter million".

16 A. Uh-huh.

17 Q. 421 "When" blank and we'll leave out the initials "gets the first planning

18 permission". That's "plan per" in the document.

19 A. Yes.

12:39:52 20 Q. 422 That person and you "to discuss one further payment after a meeting in January

21 2005".

22 A. Uh-huh.

23 Q. 423 Do you agree with that?

24 A. Yes, I do.

12:40:01 25 Q. 424 Right. Now what that is is a record of an apparent financial transaction

26 involving millions of pounds, Mr. Dunlop, with a named individual that you have

27 redacted out of your diary, isn't that right?

28 A. Correct, yes.

29 Q. 425 And it goes back to the diary entry we had looked at earlier which I had asked

12:40:19 30 you not to concern yourself too much about this because I was coming to this

- 12:40:23 1 and this would make it clearer, isn't that right?
- 2 A. Yes.
- 3 Q. 426 So what you appear to have done consistently, Mr. Dunlop, is for whatever
- 4 reason you have gone through your diaries and you have redacted out anything
- 12:40:35 5 that records financial arrangements in particular with three parties. One of
- 6 which is Mr. O'Callaghan, one of which relates to Citywest and one of which
- 7 relates to the individual that we have just been discussing but which we won't
- 8 name because he is not involved in this module, isn't that correct?
- 9 A. Correct.
- 12:40:52 10 Q. 427 And from whom were you keeping that information, Mr. Dunlop?
- 11 A. Obviously from, I didn't want anybody to see it, including the Tribunal.
- 12 Q. 428 Did you do it for the Tribunal, Mr. Dunlop?
- 13 A. That I cannot say.
- 14 Q. 429 In November '99 at 13676, there is a redaction in your diary on the 8th of
- 12:41:15 15 November 1999, and beneath that at 25831. I suggest to you that what you had
- 16 redacted out was the following "cheque to" something "from sale".
- 17 A. Yes.
- 18 Q. 430 To arrive from sale.
- 19 A. I was going to say to arrive, from sale yes.
- 12:41:46 20 Q. 431 And again that's a financial transaction, isn't that right?
- 21 A. Correct.
- 22 Q. 432 Now, at 13874, Mr. Dunlop, on the 22nd of June 2000, at the bottom of the page
- 23 there is a redacted entry, isn't that right, and there is also one on the 25th.
- 24 You see that?
- 12:42:04 25 A. The 22nd of June, yes.
- 26 Q. 433 The first one on the 22nd is at 25837. "Gave John 8." Now I just want you to
- 27 bear that in mind, Mr. Dunlop, and we look at the 23rd of June at 13874. And I
- 28 don't -- that entry I am going to have to show you and then Mr. Redmond what's
- 29 this because it doesn't relate to anybody who is before the Tribunal but it
- 12:42:37 30 relates to a financial transaction, isn't that right?

12:42:51 1 A. Yes, it does relate to a financial transaction, yes.

2 Q. 434 And then on the Sunday the 25th at 13874 there is a redacted entry which can be
3 seen at 25839. "Gave John 5".

4 A. Yes.

12:43:13 5 Q. 435 And that I suggest is the John that's referred to in the other note that
6 identifies the people, isn't that right? So that is another financial
7 transaction that you are redacting out the of the diaries. Now, there was one
8 extremely heavily overwritten diary entry, Mr. Dunlop, at 8031. And you
9 remember this?

12:43:33 10 A. Uh-huh.

11 Q. 436 Right. And the previous examination had been of no assistance, isn't that
12 right, in relation to it?

13 A. Yes.

14 Q. 437 And I can't say that the present examination is hugely of assistance but some
12:43:48 15 words can be deciphered, Mr. Dunlop. And I am going to leave this particular
16 document to re examination. But I am going to suggest to you that some of the
17 documents that can be gleaned from page -- Mr. Dunlop, there is a page number
18 on the document.

19 A. 25669.

12:44:16 20 Q. 438 Yes.

21

22 MR. REDMOND: Just to add to the confusion. I appear to have 25570.

23

24 MS. DILLON: They are all the one. They are all various shadings taken by the
12:44:30 25 examiner of the same page.

26

27 MR. REDMOND: I thought for a moment I might have had a Jackson Pollock
28 painting.

29

12:44:38 30 MS. DILLON: No. I agree it is difficult but however it is important and it

- 12:44:39 1 is the one that Mr. Dunlop couldn't assist on the last occasion.
- 2 A. At least.
- 3 Q. 439 There are a number of words, Mr. Dunlop, and I am only going to put these to
4 you because they are opt record because I can't expect you to deal with that as
12:44:52 5 it is today. But if you examine that document at length and take your time
6 looking at eventually a number of words become clear. In the second line the
7 word "by local" in the third line "OOC agree" in the fourth line "planning
8 decisions". Do you see that?
- 9 A. Well you are telling me.
- 12:45:14 10 Q. 440 I am just telling you.
- 11 A. Yes I am writing them down as you say them, Ms. Dillon, because I am a little
12 bit ... as confused as my counsel in relation to it. If I look at it in time I
13 may well agree. But as of now -- I can see I think the word "by" all right but
14 after that I cannot see anything and "FD".
- 12:45:36 15 Q. 441 Yes. What you should do with that document because you have a agreed that it
16 is an entry that relates to Mr. O'Callaghan. You will be provided with all of
17 the variations on that because this appears to be the only one that we have had
18 very limited success in finding out what was written beneath them because there
19 has been a fairly successful effort made to find out what was written beneath
12:45:57 20 the other entries, isn't that right, Mr. Dunlop? I don't want you to do it
21 now, Mr. Dunlop?
- 22 A. Sorry.
- 23 Q. 442 I think that it will be re-examined and when we come to re-examination I can
24 deal with that. I want to put this proposition to you, Mr. Dunlop, that at
12:46:14 25 some stage you sat down with your diaries and you deliberately removed
26 references to financial transactions involving your three biggest clients, is
27 that right?
- 28 A. I did redact entries in my diaries in relation to a number of clients, yes.
- 29 Q. 443 And all of these entries that we've looked at in the latter half of this
12:46:37 30 examination today relate to entries in your diary that took place after April

- 12:46:42 1 of 2000?
- 2 A. Yes, the dates you've given me are correct, yes.
- 3 Q. 444 And also some of them relate to entries after 1993, isn't that right?
- 4 A. Correct.
- 12:46:55 5 Q. 445 1994, '95, '96 and '97?
- 6 A. Correct.
- 7 Q. 446 And you are first asked to produce those diaries by the Tribunal in October
- 8 2001, isn't that right?
- 9 A. Correct.
- 12:47:09 10 Q. 447 Now, Mr. Dunlop, the Tribunal had asked me in dealing with Mr. Lawlor and again
- 11 I am just going to give you ... I am going to give you a number of documents,
- 12 Mr. Dunlop, for the purpose of establishing that these are documents that can
- 13 be found at pages 25801, Mr. Dunlop, through to 8520?
- 14 A. They are in the brief.
- 12:47:34 15 Q. 448 They are in the brief?
- 16 A. Yeah.
- 17 Q. 449 And they relate to unexplained lodgements to the account of Mr. Lawlor. The
- 18 late Mr. Lawlor. And if you look at 25801.
- 19 A. Sorry, Ms. Dillon. Are these in the brief?
- 12:47:50 20 Q. 450 Yes they are.
- 21 A. When were they put in the brief?
- 22 Q. 451 They were only given out this morning.
- 23 A. Oh sorry.
- 24 Q. 452 I'm not asking you to deal with them I just want to draw them to your attention
- 12:47:58 25 because what the Tribunal wishes you to be informed about, Mr. Dunlop, is that
- 26 between the periods that are set out in the document there are unexplained
- 27 lodgements at 25802. To the accounts of Mr. Lawlor, late Mr. Lawlor for the
- 28 period and during the period when you say that you made particular payments to
- 29 Mr. Lawlor?
- 12:48:22 30 A. I see.

- 12:48:22 1 Q. 453 Now, obviously you can't explain where the late Mr. Lawlor got the individuals
2 funds that he lodged to his individual bank accounts, isn't that the position?
3 A. Correct.
- 4 Q. 454 However, it is the case and is apparent from the documents that lodgements not
12:48:35 5 equal to the money that you say that you gave him but lodgements that are
6 unexplained were made to the accounts of Mr. Lawlor. And in the period that
7 were unidentified they amount to 775,000 pounds approximately, Mr. Dunlop.
8 A. Yes.
- 9 Q. 455 And you will, if you have any queries in relation to those documents we can
12:48:55 10 revert in relation to them. And can I show you then at, a document at 25822
11 Mr. Dunlop. Now, this document, Mr. Dunlop, relates to your financial
12 transactions.
13 A. Yes.
- 14 Q. 456 And again, we have dealt with in the course of your direct evidence to the
12:49:17 15 Tribunal with each of these transactions. And what is recorded here is a
16 summary of what I will call your unexplained financial transactions. And what
17 is summarised here, Mr. Dunlop, is between the 8th of February. Sorry the 8th
18 of September '89 and there is only one transaction in 1989 and it relates to
19 National Toll Roads.
12:49:40 20
21 So between the 9th of February 1990 and the 17th of September 1993, these
22 transactions take place.
23 A. Fine.
- 24 Q. 457 And what they are recording is are either cheque that is are payable to Shefran
12:49:51 25 that are never lodged to a bank account or cash withdrawals from your accounts
26 that you haven't explained other than saying that you paid, you may have made
27 payments from them. Or they relate to loans you take out, you took out that
28 where you can't explain what you did the with the money. You remember February
29 1992 you borrowed 20,000?
12:50:10 30 A. Correct.

- 12:50:10 1 Q. 458 What this is, Mr. Dunlop, is the summary of what you have described as your
2 confluence of funds?
3 A. Uh-huh.
- 4 Q. 459 All right. And looking at the documentation and starting and I am not going to
12:50:23 5 go through it. What is recorded here are all the National Toll Roads payments,
6 all of the Shefran payments that are not lodged to a bank account. In other
7 words, credit is given for where they are, lodgements are made. And all of the
8 withdrawals that you have made in cash from the various bank accounts together
9 with loans that are made. So payments you received to Shefran from Baldoyle
12:50:45 10 that you cash are in this list, isn't that right?
11 A. Yes, I see Baldoyle here, yes.
- 12 Q. 460 If you look for example at item 20.
13 A. Yes.
- 14 Q. 461 That was a cheque that you received that you cashed. You remember you
12:50:55 15 described funds that you would have had available to you, I think in November,
16 in January of 1992, isn't that right?
17 A. That is correct, yes.
- 18 Q. 462 Now, that figure, Mr. Dunlop, totals 535,000 pounds and that is your "war
19 chest" according to your evidence. Now, just taking a global approach to that
12:51:18 20 figure for the moment, Mr. Dunlop, and accepting that the figures are correct,
21 do you say that in relation to those monies that the vast amount of that money
22 was spent on paying councillors?
23 A. No, I don't.
- 24 Q. 463 No.
12:51:36 25 A. What I say is that, and what I said before in evidence and in relation to
26 receipts of monies not recorded or cashed --
27 Q. 464 Yes.
28 A. -- that that was used one, as a "war chest" and could also have been used for
29 other purposes including my own.
- 12:51:54 30 Q. 465 But are you in a position to breakdown, Mr. Dunlop, that figure of 535,000

- 12:52:06 1 pounds that comprises the unexplained financial transactions whether by way of
2 cash withdrawn, cheques cashed or loans taken out as to approximately how much
3 of that you spent on corrupt payments to councillors?
- 4 A. Well not now. Certainly not now, not here.
- 12:52:18 5 Q. 466 Yes.
- 6 A. You have just put this computation in front of me now. But not now I cannot
7 say definitely not.
- 8 Q. 467 All right.
- 9
- 12:52:29 10 CHAIRMAN: Well can he can do it over the next few days.
11
- 12 Q. 468 MS. DILLON: But it is from that fund that you say?
- 13 A. Yes.
- 14 Q. 469 And that fund alone in its various manifestations that you say that you made
15 the payments to councillors?
- 12:52:44 16 A. Yes, these were the sources of funds to various, what I have loosely called the
17 confluence of funds or the "war chest"s.
- 18 Q. 470 Other than the late Liam Lawlor is it your position -- other than the late Liam
19 Lawlor and Mr. GV Wright is it your position that you never paid a senior
12:53:00 20 politician?
- 21 A. I have never given money to a senior politician other than in attending Fianna
22 Fail fundraising functions, which cost a minimal amount of money.
- 23 Q. 471 All right. So that what you say is out of this fund you made the payments that
24 you have identified to the Tribunal over this module and over previous modules,
12:53:26 25 isn't that right?
- 26 A. Correct.
- 27 Q. 472 But other than that, that the line stopped, as it were, with local politicians
28 other than Mr. GV Wright but it was in his capacity as a local politician that
29 you paid him, is that right?
- 12:53:37 30 A. Yes.

12:53:37 1 Q. 473 Insofar as Mr. Lawlor was concerned, the money that you paid to Mr. Lawlor was
2 on a different type of money that you than you paid to other councillors, isn't
3 that right?

4 A. That's correct.

12:53:48 5 Q. 474 But that other than that, you never went further up the line, as it were, you
6 never paid any senior politicians?

7 A. Other than the circumstances that I have just outlined to you.

8 Q. 475 And can I ask you finally, it was a matter that you mentioned in the course of
9 your private interviews to the Tribunal and you were discussing Cooldrinagh
10 with Mr. O'Callaghan. I am jumping a little bit, Mr. Dunlop, because I am
11 arrange anxious to finish at all today if I may?

12 A. So am I.

13 Q. 476 THis is a matter that you were discussing in private interview with the
14 Tribunal in connection Mr. O'Callaghan. And you recounted something that you
15 had been told by Mr. O'Callaghan in connection with Mr. Michael Mulcahy?

16 A. Yes.

17 Q. 477 All right. And what did Mr. O'Callaghan tell you about Mr. Mulcahy?

18 A. As I recall matters, Mr. O'Callaghan and/or Mr. Ambrose Kelly, both of them
19 together on one occasion or both of them separately told me that there had been
12:54:22 20 a request from a Mr. Michael Mulcahy for 50,000 pounds in relation to a matter
21 that Mr. O'Callaghan and Mr. Kelly were interested in previously before, long
22 before 1990 before I became involved with Mr. O'Callaghan.

23 Q. 478 All right. Now Mr.-- this information has been provided to Mr. Mulcahy and
24 Mr. Mulcahy vehemently denies that he ever made such a request of Mr.
12:55:24 25 O'Callaghan. And Mr. O'Callaghan has been asked about this matter also. And
26 Mr. O'Callaghan's position is set out at 20264.

27
28 Is accepts that he was introduced to Michael Mulcahy, he didn't know who he was
29 and presumed him to be a solicitor working with Paul Smithwick. He had never
12:55:45 30 met Michael Mulcahy prior to this meeting with Paul Smithwick. There was at

12:55:49 1 that meeting or subsequently demand for 50,000 and I have no recollection of
2 ever anyone reporting to me that Michael Mulcahy had sought or was seeking 50
3 grand.
4

12:55:57 5 Now what Mr. O'Callaghan had been asked about in fact was A whether it had in
6 fact ever been asked of him. But what he had been provided with was your
7 interview, Mr. Dunlop --

8 A. Yes.

9 Q. 479 -- where what you had recorded was not whether or not such a demand was
12:56:11 10 actually made but whether Mr. O'Callaghan had asked you, isn't that the issue.
11 Sorry. I beg your pardon had told you?

12 A. Had told me. Yes that's correct. And that is the position as I outlined it to
13 the Tribunal way back when. It seems to be ante diluvian but anyway, what an
14 appropriate phrase given the name of the former Chairman.

12:56:41 15
16 Mr. O'Callaghan and/or Mr. Ambrose Kelly either together or on an individual
17 basis told me in some discussion that was taking place between us that this had
18 occurred and that is why I mentioned it in the private sessions on the basis of
19 the co-operation that was being given in the operation of private session on
12:57:09 20 the basis that my lawyers and myself were absolutely assured and guaranteed by
21 Senior Counsel to the Tribunal that the matters that were being discussed in
22 the private session would never see the light of day.

23 Q. 480 Yes but be that as it may, Mr. Dunlop, what I am asking you about the --

24 A. That is the case though that is what was said to you.

12:57:31 25 Q. 481 Insofar as we are discussing this matter in relation to Mr. Mulcahy, you have
26 not suggested and did not in those meetings suggest that you had any knowledge
27 of any such request from Mr. Mulcahy, isn't that right?

28 A. Absolutely I never suggested that.

29 Q. 482 What in fact you told the Tribunal was that Mr. O'Callaghan had said this to
12:57:45 30 you, isn't that right?

12:57:46 1 A. Correct yes.

2 Q. 483 Now Mr. Mulcahy has very vehemently denied that he ever made such a request in
3 any circumstances to Mr. O'Callaghan and Mr. O'Callaghan denies that any such
4 request was never ever made by Mr. Mulcahy him?

12:57:59 5 A. Yes, I have seen that in the brief.

6 Q. 484 But your position, Mr. Dunlop, in relation to what Mr. O'Callaghan told you or
7 Mr. Ambrose Kelly told you was that you had been told this at some meeting with
8 Mr. --

9 A. With Mr. O'Callaghan and/or Mr. Kelly.

12:58:13 10 Q. 485 Now you didn't previously I think indicate that Mr. Kelly might have been
11 present?

12 A. No.

13 Q. 486 Isn't that right, until this moment in time, isn't that the position?

14 A. Correct but the position is that Mr. Kelly was acting or associated with Mr.
12:58:27 15 O'Callaghan at that particular time in relation to a particular body of land.

16 Q. 487 To go back, Mr. Dunlop, to the overwritten diary entry that I have given you.
17 I do intend to revisit that and there may be one or two small matters that I
18 will have to revisit with you.
19

12:58:46 20 Better copies of that documentation will be provided to you, Mr. Dunlop, in
21 relation to the one, what I will call it outstanding diary entry, the rest
22 having been identified to a greater or lesser degree. And I think that
23 concludes, Sir, my direct, the direct evidence of, Mr. Dunlop. And I think Mr.
24 Dunlop is available for cross-examination next Tuesday afternoon at 2 o'clock.

12:59:11 25

26 CHAIRMAN: All right. Could we just. Is Mr. Dunlop being given this book of
27 the photo results of the ...
28

29 MS. DILLON: Well what I was proposing to do.

12:59:25 30

12:59:25 1 CHAIRMAN: Redacted material.
2
3 MS. DILLON: Because I can't see that anybody else would have an interest in
4 dealing with those documents with Mr. Dunlop other than the Tribunal. What I
12:59:32 5 was proposing do is to give copies to, to give a set of the originals to Mr.
6 Dunlop.
7
8 CHAIRMAN: So that he can look at them and maybe over the days, over the
9 coming days maybe something might come to light.
12:59:44 10
11 MS. DILLON: Yes.
12
13 CHAIRMAN: You can stand down.
14
12:59:49 15 MR. KEATING: I would have thought that given one or two of the entries may
16 relate to my client.
17
18 MS. DILLON: Everybody will be given copies but the best copies are the
19 originals that have been provided to the Tribunal of which we don't have
13:00:02 20 unlimited. There is only one set of originals. Everybody will be given a copy
21 as clear a copy as can be provided but --
22
23 CHAIRMAN: All right. And if --
24
13:00:09 25 MS. DILLON: If anything arises those originals will certainly be made
26 available for inspection.
27
28 MR. KEATING: We can correspond with the Tribunal in relation to that.
29
13:00:18 30 CHAIRMAN: So that means next Tuesday at what time?

13:00:21 1

2 MS. DILLON: Two o'clock. That is the only cross-examination that at present
3 is available next week and there is none at all the following week.

4

13:00:27 5 CHAIRMAN: All right. So do we know yet who is cross-examining Mr. Dunlop?

6

7 MS. DILLON: Having looked at the people who have applied to cross examine, I
8 think that it would be possible that three parties could be accommodated next
9 Tuesday. And I think they are on the web page. And I think that in fact they
10 are counsel for Mr. Don Lydon, Mr. GV Wright and Mr. Tony Fox.

13:00:43 10

11

12 CHAIRMAN: All right. Two o'clock next Tuesday. And we are sitting at 2
13 o'clock today for further witnesses.

14

13:00:58 15 MS. DILLON: Yes, Sir.

16

17 CHAIRMAN: All right. Thank you.

18

19 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00 P.M.:

MR. QUINN: Mr. Andrew Rogals, please.

MR. ROGALS, HAVING BEEN SWORN, WAS QUESTIONED BY

MR. QUINN AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Rogals.

A. Thank you, good afternoon.

Q. 488 MR. QUINN: Good afternoon, Mr. Rogals.

A. Good afternoon, sorry.

Q. 489 Mr. Rogals, you were written to by the Tribunal and invited to make a statement in relation to your involvement with the approval of finance for a company Barkhill Limited in 1990, isn't that correct?

A. That's correct.

Q. 490 And I think you provided a statement to the Tribunal on the 31st of January 2005, and that's in the brief at pages 14292 and 14293. And in a moment I will read from that statement or a portion of a 245 statement but before I do, I think it would be fair to say that the introduction to that statement sets out the position within AIB and in particular the position in 1990. And I think at that time if I'm not mistaken by January 1990, you had taken up a position as chief manager of the business support unit?

A. That's correct.

Q. 491 I think you also had some responsibility for the researching use of the technology within the corporate banking Ireland, is that correct?

A. Yes.

Q. 492 You had joined the bank I think in 1981?

A. Yes.

Q. 493 And I think in your statement you set out, by way of background, the structure

14:10:50 1 so to speak within the corporate banking sector of AIB. And without going into
2 detail, would it be fair to say that in 1990, there was a series of corporate
3 banking teams always reporting to a general manager corporate banking who in
4 turn was reporting to the head of corporate and commercial banking?

14:11:11 5 A. Yes.

6 Q. 494 And I think at that time the head of corporate commercial banking was a
7 Mr. McElroy who will be giving evidence later this afternoon, is that correct?

8 A. Yes.

9 Q. 495 And I think so the general manager of corporate banking was Mr. Willie O'Reilly
10 at that time, is that correct?

11 A. That's correct.

12 Q. 496 And these various teams I think, within corporate banking were teams which had
13 a speciality or dealt with specialised industry type operations for example,
14 one team dealt with blood stock, another with inward investment, another with
15 property, is that correct?

16 A. Yes, there were a number of teams, I can't think --

17 Q. 497 Sorry. And I think at one stage you yourself headed perhaps the property team,
18 is that correct, before your promotion to business support group?

19 A. Yes, until the end of 1989.

14:12:03 20 Q. 498 Yes. And I think in relation to the business support group, I think that was a
21 branch within the bank which provided what I might term secretarial services to
22 the corporate banking teams. In other words, that when applications for credit
23 etc. went through for the credit committees it went through the corporate
24 business support unit?

14:12:28 25 A. Yes, I wouldn't call it a branch but ...

26 Q. 499 Well --

27 A. Understood definition.

28 Q. 500 Within the branch?

29 A. It was a sector and also the accounting and as well as the secretarial.

14:12:41 30 Q. 501 And I think it was the practice for there to be within the corporate banking

- 14:12:45 1 sector a credit committee meeting, which would meet probably once a week?
- 2 A. Generally once a week.
- 3 Q. 502 Yes.
- 4 A. Sometimes more frequently.
- 14:12:54 5 Q. 503 Yes. And all loan applications and approvals would go to that credit committee
6 meeting for approval?
- 7 A. They would, yes.
- 8 Q. 504 And I think that, that credit committee was made up of the various managers
9 within the corporate banking itself, headed up perhaps by the head of corporate
10 commercial banking and possibly even the general manager of corporate banking
11 who perhaps chaired the meetings from time to time, is that correct?
- 12 A. The members of the committee were the so-called chief managers as opposed to
13 managers because there were also manager's reporting to the chief managers in
14 corporate banking. So it was the chief managers, the chairman was generally
14:13:40 15 the general manager but he if he wasn't available then one of the chief
16 managers or indeed as you indicated, the head of corporate and commercial
17 banking would chair the meeting.
- 18 Q. 505 Yes. Now, Mr. Eddie Kay I think was in the property section.
- 19 A. He was.
- 14:13:58 20 Q. 506 And I think, was he a manager or a chief manager?
- 21 A. He was a manager.
- 22 Q. 507 A manager. And he of course had a team of people working with him, isn't that
23 right?
- 24 A. He did.
- 14:14:10 25 Q. 508 And in 1990, I think himself and some of his team, perhaps Mr. Donnagh put
26 forward a proposal to the credit committee on behalf of a company called
27 Barkhill Limited, isn't that correct?
- 28 A. Having looked at the records, yes.
- 29 Q. 509 And I think you sat on that credit committee?
- 14:14:26 30 A. I did.

- 14:14:27 1 Q. 510 Yes. And just before I leave this, once the credit committee dealt with the
2 application they either accepted the recommendation coming forward from the
3 team leader or they accepted it subject to conditions and in fact sometimes it
4 came forward with conditions attached or other times they just refused the
14:14:51 5 requests for funding etc.
- 6 A. Very rarely were cases refused.
- 7 Q. 511 Presumably, it would be embarrassing for a team leader to put forward a
8 proposal which was rejected at the credit committee?
- 9 A. It would be embarrassing because he would have discussed it with the customer
14:15:11 10 and also with his chief manager.
- 11 Q. 512 Yes. And he would obviously only have put forward a proposal which he felt
12 would be accepted at the credit committee meeting?
- 13 A. Indeed.
- 14 Q. 513 And of course all the various managers were more or less up-to-date with all of
14:15:37 15 the funding within the corporate banking sector by attending those meetings.
16 In other words it gave you a good insight into where the bank stood and the
17 lending criteria being applied at that level, isn't that right?
- 18 A. I wouldn't use the word "funding" because that might have different
19 connotation. But it would be an exchange of information.
- 14:15:50 20 Q. 514 Yes. Anyone attending those meetings on a regular basis would come away with
21 quite a store of knowledge in relation to what was happening in the various
22 sectors, what was being approved, the level of funding, what securities were
23 being sought, even in a broader contact what was happening in industry
24 generally would be known within the corridors of corporate banking AIB, isn't
14:16:17 25 that right?
- 26 A. They would have a knowledge and how long it would stay with them I don't know
27 because there were 15 to 20 cases each a meeting so ...
- 28 Q. 515 Now, I think once the approval came through from that meeting it required loan
29 documentation to be drawn up and I think at that stage the team leader and the
14:16:41 30 chief manager would prepare that loan documentation in conjunction perhaps the

14:16:46 1 legal and securities teams, is that correct?

2 A. They would, yes.

3 Q. 516 Yes. And presumably the solicitors to the bank?

4 A. Yes, if they were required, yeah.

14:16:54 5 Q. 517 And then the drawdown procedures I think one -- we refer here to a mark up, I
6 think the mark up is the actual documents circulated to the members of the
7 credit committee in advance of the meeting, is that correct?

8 A. Yes.

9 Q. 518 For example if we look at 4056. This is a mark up which appears to have been
10 in circulation in relation to the Barkhill loan application and it seems to
11 suggest that it's headed corporate banking Ireland credit committee. The
12 division is corporate banking Ireland the branch is Dublin the date 19th of
13 January 1990, is that the date of the committee meeting or the date of the
14 approval?

14:17:37 15 A. I don't have that document in front of me so I can't ...

16 Q. 519 Okay. It's on the screen.

17 A. Oh, I beg your pardon right, yes, sorry. Yeah. Okay. That would be the date
18 of the committee meeting.

19 Q. 520 Yes. And then the borrower's name and the brief description of who the
14:17:53 20 borrower is. The credit ratings what was sought, why it was sought, the
21 account history, the facilities, the fees payable to the bank, the rate of
22 interest that would apply, the method for repayment securities offered and any
23 conditions attached. That's all standard isn't it?

24 A. That would be standard, yes.

14:18:13 25 Q. 521 And then the approval would come through, the paperwork would be completed with
26 the legal and securities division and monies would require to be drawn down
27 isn't that right? And I think in your statement you say that "If all security
28 was in order the form -- this is the form to drawdown -- would then be
29 delivered to the business support unit." This is back into your unit so to
14:18:35 30 speak. "They would check the terms of the conditions of the loan and

14:18:38 1 documentation -- as documented on the certified and signed proposal would be
2 set up the accounting records for the loan would fund the loan from treasury
3 and would then disburse the funds. If the security was not in order and
4 certified by the legal and securities then an additional signature of the chief
14:18:56 5 manager was required before drawdown could be effected."
6
7 And you say "That the role of business support was therefore to check that the
8 loan drawdown form had been completed correctly and that there was an approved
9 loan proposal for the facility. The customer was not contacted directly by
14:19:11 10 business support, any queries were directed back to the lending team who would
11 contact the customer."
12
13 For example if we look at document No. 4178. Perhaps 4177 might be a better
14 example. The loan in question I think was finally approved and documentation
14:19:36 15 and agreements reached with Barkhill Limited on the 19th of February 1990. And
16 on screen I think is a drawdown/advice of facility approved. Are you familiar
17 with that type of document?
18 A. I am.
19 Q. 522 And is that the document and does it contain the lending department's
14:19:52 20 signatures in relation to the loan authorising a sum of 7.63941 -- 410 Irish
21 pounds?
22 A. 7639.410, yes it does.
23 Q. 523 And it gives a description of the security and presumably the security in this
24 case is regarded as having been adequate because we have the signatures of
14:20:20 25 Mr. Kay and Mr. Donnagh and there is a third signature, do you recognise the
26 third signature?
27 A. That's my signature.
28 Q. 524 Yes. So you authorised the drawdown of this facility?
29 A. I would have been involved but I'm not quite certain why my signature was
14:20:37 30 required because --

14:20:39 1 Q. 525 I was going to ask you that why the third signature and why your signature was
2 required?

3 A. Well unless and I can't actually make it out the writing here, but unless the
4 security was not in order. But there is no indication whether it is or is not.

14:20:53 5 Q. 526 Now, if I go back for a moment then to the actual, your statement, at 14293
6 under the heading Quarryvale you say the following.

7
8 "I have only one recollection of the above case at credit committee. I believe
9 that sometime in the first half of 1990, the above case was brought to credit
10 committee. Whether this was for the initial approval or a change in terms I
11 cannot remember. To the best of my recollection, Edmond Kay, Eddie Kay
12 presented to the committee which was chaired by Eamonn McElroy. After the
13 presentation the people present were asked for their views. The person to my
14 left, Billy McSweeney now deceased, was in favour."

14:21:33 15
16 CHAIRMAN: Was not.

17
18 MR. QUINN: "Was not in favour. I can recall that I was also against
19 proceedings. I do not remember what the particular issues were that concerned
14:21:42 20 me. However I do recall that one of my colleagues passed that comment to the
21 effect that I would have had a different opinion a few months earlier at which
22 time I was heading the property and services teams. I have no recollection of
23 the decision of the credit committee in relation to the case.

24
14:21:57 25 I do not recollect meeting any of the clients or their advisors linked to
26 Quarryvale other than a passing greeting with Owen O'Callaghan who I knew from
27 my previous role as head of the property team in the main entrance hall of AIB
28 Bank Centre in early 1990, as I was heading into lunch in Bank Centre".

29
14:22:17 30 The position held by Mr. Kay coming to this meeting was a position that you had

- 14:22:23 1 formerly held, is that correct?
- 2 A. No, Mr. Kay had been reporting to me.
- 3 Q. 527 So you would have been senior to Mr. Kay?
- 4 A. I would I suppose, yeah.
- 14:22:32 5 Q. 528 And you would have sat in on numerous credit committee applications and
- 6 meetings for where applications are considered?
- 7 A. I would.
- 8 Q. 529 By any standards you would be regarded as fairly senior person within corporate
- 9 banking?
- 14:22:48 10 A. I suppose I would have been.
- 11 Q. 530 And Mr, is it Mr. Sweeney who is now deceased?
- 12 A. McSweeney.
- 13 Q. 531 McSweeney. He like you would also have been regarded as a very experienced
- 14 banker within AIB?
- 14:23:03 15 A. He would, I mean there was several. Everybody at the committee was an
- 16 experienced banker.
- 17 Q. 532 How many people would have been at that committee?
- 18 A. I can't recall the numbers.
- 19 Q. 533 Well are we talking about five people six people?
- 14:23:14 20 A. It could have been seven or eight but I really don't know.
- 21 Q. 534 But certainly at least two of the seven or eight were against the proposal to
- 22 sanction this facility, isn't that right, including yourself?
- 23 A. That's my recollection, yes.
- 24 Q. 535 Were there others other than yourself and Mr. McSweeney can you recall?
- 14:23:31 25 A. I can't recall.
- 26 Q. 536 If we can revert for a moment to 4056 please. Now, this is the, a mark up
- 27 which would have been circulated to the various members of the committee in
- 28 advance of the meeting, isn't that correct?
- 29 A. It would appear to be, yes.
- 14:23:50 30 Q. 537 Nothing much may turn on this but if we could have 17129. This also appears to

14:23:55 1 be a copy of a mark up, dated the 19th of January 1990. Which differs from one
2 I had on screen a moment ago. Do you know why several different mark ups would
3 come into existence in relation to the same loan application?

4 A. Well, there could be drafting and redrafting of mark ups.

14:24:15 5 Q. 538 Okay. And if we could have 17132. This is yet another mark up but this time
6 it is dated on the bottom left hand corner 19th of January 1990, AIB corporate
7 banking Ireland credit committee?

8 A. Uh-huh.

9 Q. 539 You see that?

14:24:30 10 A. I do.

11 Q. 540 And it's recorded the decision recorded is sanctioned subject to conditions 1,
12 2 and 4 above.

13 A. Correct, I see that.

14 Q. 541 Were you at -- when you referred to the committee meeting where you express
14:24:47 15 reservations in relation to sanctioning this facility, can you recall if that
16 was the first time the application had been considered by AIB's credit
17 committee meeting or was it at a later meeting?

18 A. I don't recall. Well I don't recall it being considered for the initial
19 proposal at a later meeting. I think it was the one and only meeting that it
14:25:11 20 was presented as a new application.

21 Q. 542 So you think that there was just one meeting at which the application was
22 considered and I think Mr. McElroy and his statement will tell the Tribunal
23 that the committee didn't make a decision -- did. And he made the decision
24 some days later after reflecting on the document, after reflecting on the
14:25:41 25 application, do you recall that?

26 A. Well I don't recall him making a decision later because I wasn't present but I
27 can't recall the outcome of the credit committee.

28 Q. 543 Yes. Now, if we accept that and if I could have back on screen, please, 17132.
29 That this is the document that had been circulated. It's unlikely that that
14:26:08 30 document, I suggest to you, had been circulated to circulated to the members of

- 14:26:13 1 the committee know since it appears that the decision is already typed in and
2 recorded on it, isn't that correct?
- 3 A. That's correct.
- 4 Q. 544 So it's more probable that a variation of that document had been in the
14:26:23 5 possession of the members of the committee when they first came to sit on this
6 application isn't that right?
- 7 A. I would imagine so but I can recall an earlier document we had which looked
8 very similar. That without the sanction that would have been probably the one
9 that was ...
- 14:26:37 10 Q. 545 So we if we could have 4056. And if it could be put side by side by with
11 17129, please. If I could just direct your attention, if I may, to the
12 conditions section of both of those documents which is at the bottom of the
13 document. One of the documents has two conditions whereas the other has in
14 fact four conditions, do you see that?
- 14:27:08 15 A. I do.
- 16 Q. 546 Can you recall how many conditions attached to the mark up circulated to you in
17 advance of the meeting?
- 18 A. No, I can't recall.
- 19 Q. 547 Can you recall how many conditions were discussed at the meeting?
- 14:27:21 20 A. I can't recall that either.
- 21 Q. 548 The conditions here are the conditions that the team leader is recommending
22 should attach to any facility, isn't that right?
- 23 A. That's correct, if it was circulated to the meeting that would be what he was
24 recommending.
- 14:27:36 25 Q. 549 Yes. Now, if we look at document 17132, please. We see that it was being
26 recommended by Mr. Kay's team that there would be four conditions attaching,
27 isn't that right? One in relation to confirmation of an offer of sale of the
28 company for 20 million. And confirmation of an offer for 50 per cent of the
29 equity of 40 million subject to designated status being obtained, isn't that
14:28:07 30 correct?

- 14:28:07 1 A. That's what the document says.
- 2 Q. 550 And the second one was written confirmation from Mr. Gilmartin that he will
3 accept the 20 million for the sale of the 50 per cent of the company, isn't
4 that correct?
- 14:28:15 5 A. That's what this document says.
- 6 Q. 551 Now, the third condition being suggested was that there would be verbal
7 confirmation that designated status would be forthcoming, you see that?
- 8 A. I do see that.
- 9 Q. 552 And the final one was that there would be a deferment of 1.325 million payment
10 to Mr. O'Callaghan or O'Callaghan Properties until designation was obtained.
- 11 A. Uh-huh.
- 12 Q. 553 Had you ever or had you ever dealt with Mr. O'Callaghan or Riga Limited's
13 facilities prior to January 1990, in your capacity as general manager?
- 14 A. I can't remember the specifics but I believe we had facilities to Riga through
14:28:57 15 1989.
- 16 Q. 554 Yes. And in your capacity as head of that department presumably you would have
17 been familiar with Mr. O'Callaghan and Mr. O'Callaghan's companies?
- 18 A. I would have been reasonably familiar.
- 19 Q. 555 Yes. And you would have been no that Mr. O'Callaghan or Riga Limited had an
14:29:16 20 agreement with Mr. Gilmartin, isn't that right?
- 21 A. No, I wouldn't have known that.
- 22 Q. 556 Is that because, that was never brought to your attention or it never arose?
- 23 A. Well as far as I'm aware when I was looking after the property section I, we
24 weren't dealing with Mr. Gilmartin.
- 14:29:33 25 Q. 557 Mr. O'Callaghan. You were dealing with?
- 26 A. You asked about an agreement between Mr. Gilmartin and Mr. O'Callaghan.
- 27 Q. 558 Yes. Well I will suggest to you that Mr. O'Callaghan would have been
28 disclosing to you in his dealings with the bank and it would have arisen in the
29 mark ups presented on behalf of Riga that in fact he had an agreement with Mr.
14:29:54 30 Gilmartin under which he was to receive monies?

14:29:57 1 A. I was never aware of that.

2 Q. 559 Well for example if we could have 17133 please. This is a corporate banking
3 group credit committee.
4

14:30:08 5 CHAIRMAN: It's not.
6

7 MR. QUINN: It's not. Sorry. 17133, dated the 20th of July 1989 for a
8 company called Riga Limited. Again, it follows more or less the format of the
9 mark up which we had a moment ago in relation to Barkhill. You are familiar
10 with this document, you accept that it is mark up?

11 A. I accept that it's a mark up, but I can't say that I recollect it.

12 Q. 560 And this is a mark up which had sought facilities totalling 6.650 million Irish
13 pounds on behalf of that company, isn't that right?

14 A. That's what it appears to be, yes.

14:30:48 15 Q. 561 It sets out the reasons for it, the arrangement fees etc. And if we could go
16 perhaps to 17135, and if I could direct your attention to the paragraph just
17 immediately above the heading proposal. And it reads as follows" Riga acquired
18 an option for 0.8 million on 33 acres of Clondalkin from Dublin Corporation
19 subject to obtainment of planning permission.

14:31:12 20
21 Riga in turn has granted an option to Thomas Gilmartin to take over it's
22 interests in the contract and he has paid a nonrefundable option in the
23 consideration of .8 million. The option must be exercised by the 31st of
24 October 1989, and under the arrangement Riga will receive 3 million. Thomas
14:31:28 25 Gilmartin also recently acquired lands 5.2 million from Dublin Corporation at
26 Palmerstown for 2.5 million square foot development and under the terms of his
27 agreement with Riga, should he fail to exercise the option on the Clondalkin
28 lands he would be prohibited from using Palmerstown land for retail purposes.
29 For this reason Riga are confident the option will be exercised and the balance
14:31:52 30 3 million paid to Riga". Do you see that?

- 14:31:55 1 A. I do.
- 2 Q. 562 Would you agree with me, that you must have known that monies were owed under
3 an option agreement by Mr. Gilmartin to Riga, when you came to consider the
4 Barkhill/Gilmartin application in February '90?
- 14:32:10 5 A. I don't recollect this mark up.
- 6 Q. 563 Well leaving the mark up aside for the moment, are you saying that when you
7 attended the meeting in January 1990, in relation to the Barkhill application,
8 that you were unaware that 2.7 million approximately was owed by Mr. Gilmartin
9 to Mr. O'Callaghan?
- 14:32:31 10 A. I can't. I don't remember remembering it, if in a makes sense.
- 11 Q. 564 Well was it brought to your attention at the credit committee meeting?
- 12 A. I don't believe so but I can't remember the details of the presentation that
13 was made.
- 14 Q. 565 Yes. At 14282, we have a copy of that actual option agreement, Mr. Rogals.
14:32:55 15 And if I could direct your attention to 14284. That's condition No. 5 on that
16 agreement. And I can tell you that the written agreement provided for the
17 payment of an 800,000 pounds initial payment and two subsequent payments of
18 1.35 million the first of which was to be paid on the 31st of January. Sorry
19 on the 31st of October 1989 and the second to be paid by the 31st of January
14:33:29 20 1990. And what's on screen is what was to happen in the event of the option
21 not being exercised, do you understand?
- 22 A. I understand.
- 23 Q. 566 And what's on screen suggests that in the event of a purchaser, which would
24 have been Mr. Gilmartin, not exercising the option granted in the manner herein
14:33:45 25 provided then the purchaser shall procure that the owner of the land for the
26 proposed Westpark centre at Palmerstown, Co Dublin, herein after called the
27 Gilmartin lands, enter into a deed of covenant prohibiting the use of the
28 Gilmartin lands for retail purposes, which covenant shall be for the benefit of
29 the lands referred to in the said agreement for sale, provided always that the
14:34:03 30 said covenant shall cease in the event of the failure of the vendor to erect a

14:34:07 1 retail development on the lands referred to the said agreement for sale within
2 a period of five years from the date hereof.
3
4 Effectively what that option provided was that the Gilmartin lands which were
14:34:17 5 the subject of the application in January 1990 were to be sterilized in favour
6 of Mr. O'Callaghan's Riga Limited's lands at Neilstown. Now, can I ask you
7 what discussion took place at that credit committee meeting concerning the
8 risks arising from the exercise of that option by Mr. O'Callaghan or Riga
9 Limited at that time?

14:34:45 10 A. I can't recollect the presentation of our discussion involving this.

11 Q. 567 Well can you recollect a discussion concerning the possibility of designation
12 status being granted to the lands at 4056, please?
13
14 Do you see that it was being suggested that it would be a condition that verbal
14:35:15 15 confirmation that designated status would be forthcoming on the site. That's
16 on the Gilmartin site. Do you recall any discussion on that?
17 A. I can't recall a discussion.

18 Q. 568 That's the type of matter I suggest to you that you would have a memory of if
19 it took place, isn't that right?

14:35:31 20 A. Well I said I can't remember it.

21 Q. 569 For example if we look at 46. Sorry. 4060. This is a document headed risk
22 profile summary. Is a risk profile summary a document that would accompany the
23 mark up?
24 A. Is this the one on screen now, is it?

14:35:58 25 Q. 570 Yes the second page of a risk profile summary. Can I ask you what a risk
26 profile summary is first, Mr. Rogals?
27 A. I am not quite certain. Is this part of the original mark up or is this a
28 separate document.

29 Q. 571 I am asking you, Mr. Rogals, can you assist the Tribunal by advising the
14:36:10 30 Tribunal what a risk profile summary is?

- 14:36:15 1 A. Without seeing the whole document I can't.
- 2 Q. 572 Okay well perhaps if we have 4059 please. This is the first page of the
- 3 document that I am referring to. Presumably the mark up is a standard document
- 4 containing standard terms which will vary obviously depending on who the
- 14:36:37 5 applicant is.
- 6 A. Well the front page is standard.
- 7 Q. 573 What about the a risk profile summary is that a document that you might attach
- 8 to a mark up?
- 9 A. I don't know.
- 14:36:50 10 Q. 574 Well did you ever create such a document or did you everybody in your dealings
- 11 with applications within the bank have occasion to see such a document?
- 12 A. The pages behind the front page of the mark up would generally in my experience
- 13 be called the background, rather than risk profile summary.
- 14 Q. 575 Well taking the document on screen, the Barkhill Limited risk profile summary,
- 14:37:22 15 did you see that document prior to attending that credit committee meeting?
- 16 A. I can't say.
- 17 Q. 576 If we go to 4060 please. Do you see there under the heading "designation" the
- 18 following "designation of the site would greatly enhance the value of the site
- 19 and would make it very attractive for the development with purchasers/lessors
- 14:37:51 20 of units obtaining the same tax incentives as the Customs House Docks and
- 21 Tallaght designated areas."
- 22
- 23 It goes on to say "this week the government press office issued statements by
- 24 junior ministers stating additional designated areas for the Dublin region
- 14:38:02 25 would be announced as part of the budget in two weeks time. Only credible new
- 26 retail development centres would be in Palmerstown/Clondalkin (O'Callaghan
- 27 Properties) and Blanchardstown (Green Properties). Deal already agreed with
- 28 O'Callaghan on Clondalkin and Palmerstown is a far superior site to
- 29 Blanchardstown site.
- 14:38:22 30

14:38:22 1 Minister of Environment to telephone us to confirm designated status will be
2 obtained for the Palmerstown site in the budget in 1990".
3
4 Is that a document that was circulated to you or to other members of the credit
14:38:36 5 committee dealing with this application, Mr. Rogals?
6 A. I don't know if it was part of the original mark up or not, I can't recollect
7 it.
8 Q. 577 Leaving aside, whether it was part of the original mark-up, is it a document
9 that was in circulation and available to the members of the credit committee
14:38:49 10 which came to deal with this matter on the 19th of January 1990?
11 A. I can't remember.
12 Q. 578 Do you remember any discussion at that credit committee on the possibility of
13 the designation of this site?
14 A. No.
14:38:58 15 Q. 579 And do you have any recollection of any discussion concerning monies owed by
16 Mr. Gilmartin to Mr. O'Callaghan?
17 A. I don't.
18 Q. 580 Can I ask you, Mr. Rogals, what your reservations were in connection with this
19 application?
14:39:13 20 A. As far as I can recollect after 18 years, the concern was to do with the
21 short-term nature of the facility and the lack of cashflow to repay the loan.
22 Q. 581 I think the facility was required to part finance the assembly of the site,
23 isn't that right?
24 A. Well I don't have the mark up in front of me so I can't remember.
14:39:37 25 Q. 582 If we could have 4056, please.
26 A. It says to finance assembly of 176 acres of Palmerstown.
27 Q. 583 Yes but if we go to 4057 which is certainly the second page of the mark up, I
28 think it sets out there the proposal, isn't that correct, and it's clearly
29 obvious from that and in particular at the ends of that document that there are
14:40:15 30 additional monies required to complete this site. If we look at two paragraphs

- 14:40:21 1 up from the heading summary/recommendation:
2
3 "8.5 million is now required to secure elements of the site, making an
4 additional payment to Owen O'Callaghan or to O'Callaghan Properties and to take
14:40:32 5 out Bank of Ireland who have advanced 1 million. A further 4 million would be
6 required to complete the site assembly but this can be deferred until the deal
7 with Arlington or an alternative joint developer has been in place." Isn't
8 that right?
9 A. That's what this document says, yeah.
14:40:46 10 Q. 584 If you read that document in advance of the meeting and I suggest to you that
11 you did you would have known at that credit committee meeting that you are only
12 part financing the site, isn't that right?
13 A. I can't recollect reading it but I imagine that I would have done.
14 Q. 585 Yes. And you were part financing a site and you were also repaying I think
14:41:15 15 Bank of Ireland 1 million, isn't that correct?
16 A. That's what this document says.
17 Q. 586 And I think you were also or it was also intended certainly by the 19th of
18 January that that document came into existence that monies would be paid to Mr.
19 O'Callaghan, isn't that correct?
14:41:21 20 A. Again, I am relying on this as part of the mark up and that is what it says
21 here, yeah.
22 Q. 587 And the team leader was suggesting that you would get confirmation on the issue
23 of designated status for the site, isn't that correct?
24 A. Well that was one of the original conditions.
14:41:38 25 Q. 588 And was that something that was discussed and did you discuss how that
26 confirmation might come through and the extent to which you might rely on such
27 confirmation?
28 A. I'm afraid I don't recollect the discussion.
29 Q. 589 Have you ever been at a credit committee meeting in AIB where there was a
14:41:55 30 discussion about a senior government minister giving a commitment to designate

- 14:41:59 1 a site in advance of monies being advanced?
- 2 A. I don't recollect any such situation.
- 3 Q. 590 Yes.
- 4 A. But I didn't attend every committee meeting.
- 14:42:15 5 Q. 591 Is it likely, Mr. Rogals, that at this meeting that there couldn't have been
- 6 discussion about the possibility of designation for the site and a commitment
- 7 that such designation being given by the minister?
- 8 A. I don't know.
- 9 Q. 592 These were -- you, when I say you I mean that credit committee meeting. You
- 14:42:41 10 were the more senior members within corporate banking of Allied Irish Bank on
- 11 the 19th of January 1990, isn't that right?
- 12 A. Of corporate banking, yes.
- 13 Q. 593 Collectively within the Allied Irish Bank Group and in particular within this
- 14 very prestigious section of the bank, you were the most senior people, isn't
- 14:43:00 15 that correct?
- 16 A. I am not sure I would agree with use of the word prestigious but, yes we were
- 17 the senior people in corporate banking.
- 18 Q. 594 Yeah. And corporate banking would be dealing with presumably all major clients
- 19 and this was a meeting which about to sanction in 1990, a facility of 8.5
- 14:43:19 20 million pounds, isn't that right?
- 21 A. That's correct.
- 22 Q. 595 In 1990, how many credit committee meetings would you have attended where you
- 23 would have considered the sanction of 8.5 million pounds?
- 24 A. I don't know, I can't answer that.
- 14:43:36 25 Q. 596 Well --
- 26 A. I'm not quite sure what the purpose of the questions.
- 27 Q. 597 I am not asking you to be specific but would you have attended 10 meetings
- 28 where that level of funding would have been discussed?
- 29 A. This is, do you want me to speculate?
- 14:43:56 30 Q. 598 Well doing your best.

- 14:43:58 1 A. I would imagine quite a lot of meetings.
- 2 Q. 599 That level of funding would have been discussed?
- 3 A. Or more, yes.
- 4 Q. 600 And discussed in the context of a six month lending?
- 14:44:11 5 A. Well I can't recollect the details of every one but ...
- 6 Q. 601 Yes. You were lending 8.5 million for six months, isn't that right?
- 7 A. That's what the mark up suggests.
- 8 Q. 602 To partially assemble the site, not to fully assemble a site, isn't that right?
- 9 A. As we've said yes, for the mark up.
- 14:44:30 10 Q. 603 No planning, no zoning on the site?
- 11 A. As far as I can tell from the document you show me, that's correct.
- 12 Q. 604 And the option agreement were Riga to enforce it would ensure that there would
- 13 be no planning or no zoning or no development on the site, isn't that correct?
- 14 A. Well I don't recollect the option agreement.
- 14:44:50 15 Q. 605 But you do recollect the question of the deferment I suggest to you of monies
- 16 to Mr. O'Callaghan?
- 17 A. No I don't.
- 18 Q. 606 But it was one of the conditions on the mark up which you would have received?
- 19 A. Yes but this is we're talking 18 years ago, so I don't recollect that.
- 14:45:06 20 Q. 607 Would you agree with me that it's something that if it weren't explained to you
- 21 or dealt with at the meeting it's something that you would have raised at the
- 22 meeting with the team leader?
- 23 A. I may have raised it, I don't recollect raising it.
- 24 Q. 608 This was a very short-term facility being granted, isn't that correct, in
- 14:45:26 25 relation to a site?
- 26 A. It would have been relatively short-term, yes.
- 27 Q. 609 And it was short-term because there were two attractive proposals to the
- 28 sanction namely, that the monies would be repaid within six months because Mr.
- 29 Gilmartin would have designation on the site and/or would have sold on the site
- 14:45:52 30 or half the site to Arlington, isn't that correct?

- 14:45:56 1 A. I don't know, I can't tell you.
- 2 Q. 610 But if designation weren't to come through, you were in difficulty or the bank
3 were in difficulty in relation to their advance, isn't that right?
- 4 A. Unless I could see -- can I see the front page of the mark up again?
- 14:46:16 5 Q. 611 Yes. Certainly. I think the mark up I should put on screen is 17132. I am
6 putting this mark up on screen even though it only differs from the one I'm
7 dealing with other than -- in relation to the decision?
- 8 A. Looking at the security element and there were other sources of income such as
9 the sale of the industrial unit.
- 14:46:50 10 Q. 612 As is the 1 million that was due for Milton Keynes?
- 11 A. Yes.
- 12 Q. 613 If we revert for a moment to the document entitled risk profile summary at 4059
13 and we go to 4060. Do you see the heading "repayment".
- 14 A. I do.
- 14:47:14 15 Q. 614 And it says "Tom Gilmartin's objective is to obtain designated status and
16 planning permission for retail development and then dispose of the minimum 50
17 per cent to institution/major property company at 40 million. Correspondence
18 to Tom Gilmartin suggests this is achievable."
19
- 14:47:33 20 Isn't that the context in which this substantial borrowing was given to
21 Barkhill Limited and Mr. Gilmartin?
- 22 A. I can't tell you because I have no idea, I don't recollect this document at
23 all.
- 24 Q. 615 Who would this document have been prepared for if not the credit committee?
- 14:47:51 25 A. I don't know.
- 26 Q. 616 There is no reason why a member of the credit committee couldn't see a document
27 like this, isn't that right? All documents relevant to the application should
28 or ought to be available to the members of the committee, isn't that correct?
- 29 A. No, not all documents, all relevant information should have been or would have
14:48:12 30 been included in the mark up.

- 14:48:15 1 Q. 617 Yes. But one of the, if I were presenting a mark up, one of the things I would
2 have thought I would have in mind is to deal with questions which might arise
3 in the context of what would happen if the borrower defaulted on his
4 borrowings, isn't that right?
- 14:48:37 5 A. You may either write it or cover it in your written or in your spoken
6 presentation.
- 7 Q. 618 And one of the eventuality of the borrower defaulted I think was dealt in this
8 document. "If designation is not received in the 1990 budget, Tom Gilmartin is
9 undertaken to accept the 20 million Arlington offer and repay our facility in
14:48:57 10 full. If designation is not forthcoming and if Arlington reverts their
11 intention to proceed we would then take immediate steps to dispose of the site
12 in an orderly manner."
13
14 Was that the intention of the members of the committee when they came to
14:49:15 15 consider this?
- 16 A. I don't ever correct elect that being discussed as I said I don't recollect
17 this document.
- 18 Q. 619 How long did the discussion on the market up take, Mr. Rogals?
- 19 A. I have no idea.
- 14:49:29 20 Q. 620 If we could have 4058 please. This is a heading on the mark up an extra page
21 in the mark up headed "schedule of land purchase costs".
- 22 A. Uh-huh.
- 23 Q. 621 Do you recall any discussion on the land purchases?
- 24 A. I don't.
- 14:49:47 25 Q. 622 Can I just. A moment ago you explained your reservations then to do with
26 financing was it or refinancing of the facilities?
- 27 A. As I remember, yes.
- 28 Q. 623 How could the facility have ever been financed having regard to the type of
29 facility which was being sought, namely a facility to assist in the assembly of
14:50:09 30 a site or partially assist in the assembly of a site?

- 14:50:12 1 A. I don't recollect the particular point but no doubt it was covered in the
2 presentation.
- 3 Q. 624 No but your reservation in relation to it, Mr. Rogals, you say was confined to
4 the fact that you weren't satisfied on that front, isn't that right? You
14:50:27 5 weren't satisfied that there was any commitment on the repayment of this
6 facility during the term of the facility, isn't that right?
- 7 A. As far as I remember, that was my concern.
- 8 Q. 625 Could there be any reality to that, Mr. Rogals, with the greatest of respect?
9 This was a facility of 8.5 million being sought for six months in relation to
14:50:51 10 the assembly or partial assembling of a site. What repayments were you
11 referring during that six month term, if that was your reservation?
- 12 A. I'm not quite sure I understand the question.
- 13 Q. 626 Your reservation in relation to the sanction of this facility for the six-month
14 period was that there was no provision for the repayments throughout the six
14:51:14 15 month of the facility, isn't that right?
- 16 A. Not so much through the six months but I am now trying to remember something
17 that was 18 years ago and I am struggling to remember what precisely my
18 concerns were but it was around the repayment of the facility in general.
- 19 Q. 627 Well that's an entirely different reason I suggest to you than the one you
14:51:38 20 advanced earlier, isn't that right?
- 21 A. I don't understand what you mean.
- 22 Q. 628 If your concern was in relation to the repayment of the facility in general,
23 then you had a reservation that this money would ever be recovered, isn't that
24 right?
- 14:51:50 25 A. Well that would have been my concern, yes.
- 26 Q. 629 Because I suggest to you that you didn't have a commitment on the tax
27 designation from the government and you weren't happy with the Arlington offer
28 or indeed the security offered, isn't that right?
- 29 A. I don't recollect the Arlington offer being discussed.
- 14:52:09 30 Q. 630 Okay we'll leave the Arlington offer out of it then. The only matter then that

- 14:52:12 1 dealt with the repayment was the question of designation, tax designation.
- 2 A. I don't think that would have related to the repayment.
- 3 Q. 631 But you were expecting the borrower to give back to the bank within six months
- 4 9 million for the 8.5 million that was being paid out, isn't that right?
- 14:52:35 5 A. You are including the interest?
- 6 Q. 632 The .5 million interest.
- 7 A. I haven't done the calculations but sounds about right.
- 8 Q. 633 I suggest to you that the credit committee dealing with this loan application
- 9 had to be concerned and exercised about the whole issue of tax designation on
- 14:52:54 10 this site and what was being sought was a short-term facility in order to allow
- 11 Mr. Gilmartin to acquire the site before designation on the site was on the
- 12 area was announced so that he could acquire the lands, sell on the lands ever
- 13 designation and make the repayment to Allied Irish Bank within six months?
- 14 A. And what, I don't understand. What is the question?
- 14:53:17 15 Q. 634 The question is that that was of nature of the discussion I suggest to you at
- 16 that credit committee meeting?
- 17 A. Well I can't remember the discussion.
- 18 Q. 635 Well looking at the documents. now. You've had the brief circulated to you,
- 19 you've had the benefit of looking at these documents. Are you saying that you
- 14:53:35 20 still have no recollection of what transpired at this meeting?
- 21 A. I am saying that, yes, I can't recollect 18 years ago what transpired at that
- 22 meeting.
- 23 Q. 636 But you recollect that will the Arlington offer wasn't something that was
- 24 uppermost in anyone's mind at the meeting?
- 14:53:50 25 A. I am saying I can't remember it.
- 26 Q. 637 Well if we take the Arlington offer out, isn't the only other thing standing to
- 27 the credit of this application was the possibility of a designation coming
- 28 through on the site and thereby substantially enhancing the value of the asset
- 29 that Mr. Gilmartin or Barkhill had?
- 14:54:10 30 A. That, if it was designated that would make a difference to the value. But

- 14:54:16 1 presumably one could sell the site as it was assembled without the zoning and
2 if it cost 8.5 million maybe recover 8.5 million, I don't know.
- 3 Q. 638 But what was to happen within six months, Mr. Rogals, if not designation?
- 4 A. Well as I understand the application that I saw and as I say I can't recollect
14:54:36 5 the discussion, was to -- I think we said to assemble the site.
- 6 Q. 639 At 4058 we see the heading schedule of land purchase costs. And we see the --
7 you see the 8.5 million do you see that double asterisk, 8.5 million to be used
8 to one, repay Bank of Ireland. That's 1 million. Pay balance on 20 acres
9 Vanhoole, 1.246 million. Dublin Corporation 4,947,000. And part pay to
14:55:12 10 O'Callaghan Properties 1.36 million. That's a document you would have had
11 available to you, isn't that correct? It's something you would have considered
12 and that was, it was in that context that the application was being considered,
13 isn't that correct?
- 14 A. This is part of the original mark up, is it?
- 14:55:30 15 Q. 640 Yes.
- 16 A. Then I, I'm sure I would have seen it.
- 17 Q. 641 Now, the approval when it came through on the 2nd of February 1990, when Mr.
18 Gilmartin was written to you by the bank at 4069. Came from the senior manager
19 Mr. Kay corporate banking, to Mr. Gilmartin and attached was a heads of terms
14:56:01 20 at 4070.
- 21 A. Okay.
- 22 Q. 642 Now, the mark up appeared to suggest that the arrangement fee would be 375,000,
23 which was the amount approved. If we could have on screen beside the heads of
24 terms document 17132. Can you give any explanation, Mr. Rogals, as to why the
14:56:22 25 arrangement fee had now gone up to 425,000?
- 26 A. I couldn't address that issue, that would have to be addressed to the person
27 with wrote the letter.
- 28 Q. 643 Is it usual for there to be a difference between the actual offer letter and
29 the approved sanction or?
- 14:56:53 30 A. It would not be unusual in the sense that the bank would be trying to maximise

- 14:57:00 1 its position with the customer and negotiate.
- 2 Q. 644 Can I just ask you in relation to the drawdown, the facility. When this
- 3 facility was drawn down at 4177. I think you accept that it included your
- 4 signature with the lending department signatures of Mr. Kay and Mr. Donnagh,
- 14:57:23 5 isn't that correct?
- 6 A. Yes.
- 7 Q. 645 And we know from time to time monies, we know these monies for example were
- 8 advanced for a specific purpose, isn't that correct? And that's set out in the
- 9 offer letter of the 19th of February 1990. And if for example, if we could
- 14:57:50 10 have 4147, please. This is part three or paragraph three of that offer letter.
- 11 Do you see under the heading purpose to enable the borrower to part finance the
- 12 purchase of property to include the Vanhoole contract, Dublin Corporation
- 13 tender, the 1 million to the Bank of Ireland etc, do you see that?
- 14 A. I see that on screen yes.
- 14:58:11 15 Q. 646 To what extent would you have approved or would your department have approved
- 16 in sanctioning a drawdown, the payments for the stated purpose and the offer
- 17 letter, what level of supervision for example would operate within the, either
- 18 the business support unit or lending and securities on the application of the
- 19 drawdown money for the purpose contained in the tender document?
- 14:58:42 20 A. The loan document or the loan letter would not can, a copy would not be with
- 21 business support. We would not see that.
- 22 Q. 647 And who would ensure that the drawdown was for the stated purpose?
- 23 A. That would be a matter for the account manager.
- 24 Q. 648 And who was the account manager in this case?
- 14:59:06 25 A. Senior account manager was Eddie Kay.
- 26 Q. 649 And can we take it that Mr. Kay and his successors in that position would have
- 27 ensured that the drawdown would be for the stated purpose?
- 28 A. That would be part of their job responsibility, yes.
- 29 Q. 650 Both in relation to this facility and top ups or other facilities?
- 14:59:28 30 A. Yes.

14:59:32 1 Q. 651 Thank you very much, Mr. Rogals.

2

3 CHAIRMAN: Do you want to ask any questions?

4

14:59:40 5 MR. NESBITT: No.

6

7 CHAIRMAN: Thank you very much, Mr. Rogals.

8

9 **THE WITNESS THEN WITHDREW.**

14:59:45 10

11 CHAIRMAN: Thank you very much.

12 A. Thank you.

13

14 MS. DILLON: Ms. Ann Ormonde, please.

14:59:52 15

16 **MS. ANN ORMONDE, HAVING BEEN SWORN, WAS QUESTIONED**

17 **BY MS. DILLON AS FOLLOWS:**

18

19 CHAIRMAN: Good afternoon, Ms. Ormonde.

15:00:32 20

21 JUDGE FAHERTY: Good afternoon. Good afternoon.

22

23 Q. 652 MS. DILLON: Good afternoon, Ms. Ormonde. In 1993 you were a member of Dublin
24 County Council, isn't that right?

15:00:42 25 A. Yes.

26 Q. 653 And I think thereafter after January '94, you became a member of South Dublin
27 County Council, isn't that right?

28 A. That's right.

29 Q. 654 You were throughout and from 1985 a member of the Fianna Fail party, isn't that
15:00:53 30 right?

- 15:00:53 1 A. That's right.
- 2 Q. 655 I think that your the documentation records your voting record which I'll talk
3 to you about shortly in connection with Quarryvale, isn't that right?
- 4 A. Yes.
- 15:01:03 5 Q. 656 You knew Mr. Frank Dunlop, isn't that right?
- 6 A. Yes.
- 7 Q. 657 Did Mr. Frank Dunlop approach you about Quarryvale?
- 8 A. Only at the stage when they were lobbying for voting but I knew him because he
9 was forever around the council area so I did know him.
- 15:01:23 10 Q. 658 Well the first significant Quarryvale vote as you know Ms. Ormonde was in May
11 of 1991, isn't that right?
- 12 A. That's right.
- 13 Q. 659 Now, do you recollect Mr. Dunlop being involved in connection with the
14 Quarryvale vote at that time or prior to that vote?
- 15:01:38 15 A. I don't recollect at what time he approached me and Mr. O'Callaghan together.
16 I cannot recall exactly.
- 17 Q. 660 Did you have a meeting at some stage with Mr. Dunlop and Mr. O'Callaghan
18 together?
- 19 A. I can recall at some stage that I met them and I can't recall whether it was in
15:01:56 20 the council or whether it was one of the hotels or whether I was part of a
21 group of people who were going to be met at that time.
- 22 Q. 661 Would you have known Mr. O'Callaghan socially?
- 23 A. No.
- 24 Q. 662 No. And did you have meetings with Mr. O'Callaghan together with other
15:02:14 25 councillors?
- 26 A. I have a feeling that's where, that's where, that it was at a group lobbying
27 thing that I met Mr. O'Callaghan.
- 28 Q. 663 So that you will, and was that the only context in which you met Mr.
29 O'Callaghan?
- 15:02:27 30 A. That's the only time I had met him.

- 15:02:29 1 Q. 664 And this was a group presentation in relation to Quarryvale?
- 2 A. That I can recall, I can recall that as a group.
- 3 Q. 665 And if we just look at the documentation with which you have been circulated,
- 4 Ms. Ormonde, and if we look at 7963. This is an extract from Mr. Dunlop's
- 15:02:47 5 diary. And you will see that on the 7th of September there is a note "arranged
- 6 to meet Ann Ormonde". And then there is an entry for a meeting with Ann
- 7 Ormonde in September 1992?
- 8 A. Yeah. I saw that too in my own documentation but I don't recall it.
- 9 Q. 666 Yes. I think in fact in a previous module you said that you have no
- 15:03:04 10 recollection of this meeting, isn't that right?
- 11 A. I don't recall it at all. I do remember a group meeting with both of them.
- 12 Q. 667 Yes. Mr. Dunlop said in his evidence that he felt that he would have discussed
- 13 the Ballycullen and Beechill matter with you but he would also have discussed a
- 14 larger development at that meeting?
- 15:03:21 15 A. I don't recall that conversation either.
- 16 Q. 668 And in the documentation if I can show you at 7964 when Mr. Dunlop was asked to
- 17 supply the diary entries that related to Quarryvale to the Tribunal. He
- 18 identified this as a Quarryvale related matter.
- 19 A. Yeah, I don't recall that either.
- 15:03:46 20 Q. 669 All right. Well if you look at 8465, Ms. Ormonde, there is a telephone entry
- 21 at 10.30 in Mr. Dunlop's telephone records that records you giving some
- 22 information about your telephone numbers and to disregard, to you returning the
- 23 call from Mr. Dunlop.
- 24 A. I don't recall that at all.
- 15:03:59 25 Q. 670 But would you have contacted Mr. Dunlop at his office, Ms. Ormonde, on
- 26 occasion?
- 27 A. Well, well the only time that I can remember meeting having contacts with Mr.
- 28 Dunlop was after when the Tribunal was established and I don't know, I thought
- 29 he phoned me but it looks from looking at the documentation that he says that I
- 15:04:20 30 contacted him. Now, I don't remember who contacted who but I felt it was he

- 15:04:25 1 contacted me.
- 2 Q. 671 Yes. I think that in your statement to the Tribunal you indicated that Mr.
- 3 Dunlop telephoned you, isn't that right?
- 4 A. Yes, that was my recollection.
- 15:04:33 5 Q. 672 But you have no recollection of any other contact by telephone contact passing
- 6 between you?
- 7 A. No.
- 8 Q. 673 On the 8th of December at 8709, there is an entry in Mr. Dunlop's diary for a
- 9 dinner with Therese, Olivia, Mary, Ann, Owen O'Callaghan and Cox Ardee. Did
- 15:04:53 10 you attend any such dinner?
- 11 A. No.
- 12 Q. 674 And the Ann referred to there is not you, is that correct?
- 13 A. No, no.
- 14 Q. 675 Insofar as your record for voting for Quarryvale is concerned, you have seen
- 15:05:03 15 the documentation, Ms. Ormonde, that has been circulated?
- 16 A. Yes.
- 17 Q. 676 And you agree with the records of the minutes of the meetings.
- 18 A. Yes.
- 19 Q. 677 And at 16718, insofar as the meeting of the 16th of May 1991 is concerned, you
- 15:05:19 20 voted in favour of the amendment to motion 38?
- 21 A. Yes.
- 22 Q. 678 And you voted in favour of the substantive motions, isn't that right?
- 23 A. Yes.
- 24 Q. 679 So effectively what you voted for in May of 1991, was the transfer of the town
- 15:05:30 25 centre zoning from the Lucan/Clondalkin town centre lands to Quarryvale, isn't
- 26 that right?
- 27 A. Yes.
- 28 Q. 680 Why did you do that?
- 29 A. In my regard, there was putting an open door. I had made up my mind and I was
- 15:05:43 30 voting for it. Since 1972 nothing had happened in that area. It was a black

- 15:05:49 1 spot area, total breakdown of law and order, there was students couldn't get
2 jobs, couldn't get work experience and there was, it was an opportunity in my
3 book to get things moving. With social order was, to try and tackle the
4 unemployment of the area and I saw an opportunity to fast track this.
- 15:06:12 5 Q. 681 Would it be fair to say that thereafter that you consistently remained a
6 supporter?
7 A. Yes.
- 8 Q. 682 Of the Quarryvale development at Quarryvale.
9 A. Yes.
- 15:06:19 10 Q. 683 And if one looks at the record of the vote on the 17th of December 1992, you
11 will see that in the second meeting you voted against the first two motions?
12 A. Yes.
- 13 Q. 684 Which effectively was an attempt to reverse what had happened in May of '91,
14 isn't that right?
15 A. Yes, yes.
- 16 Q. 685 And then you voted in favour of an amendment that capped retail shopping at
17 250,000 square feet?
18 A. Yes.
- 19 Q. 686 And in that regard Mr. Dunlop has told the Tribunal that there were effectively
15:06:45 20 negotiations ongoing throughout the meeting in relation to the cap and that
21 there was a view expressed that the only way to get the Quarryvale zoning
22 through was to agree to a cap?
23 A. Well I was delighted that happened because of the message coming through was
24 that it was going to damage the development of the Blanchardstown town centre.
15:07:05 25 So I thought it was a very good compromise and I was very pleased because the
26 whole exercise was to develop the three town centres, that was my philosophy.
- 27 Q. 687 So you were in favour of the cap, is that right?
28 A. Oh, yes, yes.
- 29 Q. 688 And you felt that that was?
15:07:19 30 A. A very good thing.

- 15:07:19 1 Q. 689 And that would allow for appropriate development at Blanchardstown also is that
2 right?
- 3 A. Absolutely.
- 4 Q. 690 And insofar as the next vote is concerned, you also voted in favour of the
15:07:30 5 amendment that rezoned the Neilstown lands back to D, isn't that right?
- 6 A. That's right.
- 7 Q. 691 Town centre lands?
- 8 A. That's right.
- 9 Q. 692 And were you aware of the proposal to development National Stadium on the
15:07:40 10 Lucan/Clondalkin lands?
- 11 A. I didn't take much interest in that at all. I didn't. I really -- that was
12 outside my thinking.
- 13 Q. 693 But would you not have been concerned with what use those particular lands were
14 going to be put?
- 15:07:51 15 A. Well it was going on around me but I didn't really participate in the
16 discussion No. 1. And neither did I ask questions at that time about the
17 National Stadium. I felt that something should go in to the -- if you were
18 transferring the development over to Quarryvale maybe perhaps it would be a
19 good idea to have something in the Neilstown area, I didn't really think about
15:08:16 20 it too much.
- 21 Q. 694 And insofar as the meetings of Dublin County Council were concerned, did you
22 ever receive telephone calls telling you meetings were on and that your vote
23 was needed?
- 24 A. Well that would be the norm because my teaching job was quite close to the
15:08:32 25 Dublin County Council offices. So it would have been very easy for me to nip
26 down should there be a vote on. So --
- 27 Q. 695 Did you everybody get such a phone call in relation to Quarryvale for example?
- 28 A. I got telephone calls all the time, so I'm sure I did.
- 29 Q. 696 And that would mean that there was somebody telephoning you to tell you that
15:08:52 30 there was a vote coming up?

- 15:08:53 1 A. Well I would have alerted them to tell me. I was interested in voting for
2 Quarryvale.
- 3 Q. 697 Yes. And who would you've alerted to tell you about the votes and the when the
4 vote on Quarryvale was coming on?
- 15:09:04 5 A. The whip at the time was Pat Dunne so naturally I would have asked him would he
6 phone me about it.
- 7 Q. 698 You would have known of course from the documentation with which you were
8 circulated by the secretariat of Dublin County Council of the particular
9 meetings when they were coming up and when the special meeting was about
10 Quarryvale, isn't that right?
- 11 A. Oh, I would yes.
- 12 Q. 699 And you would have known not alone from the amount of publicity from the June
13 1991 elections that the Quarryvale issue was a highly contentious issue, isn't
14 that right?
- 15:09:31 15 A. That's right.
- 16 Q. 700 I think it is the case, Ms. Ormonde, from the 17th of December 1992 was a date
17 especially fixed for dealing with only one matter and that was the Quarryvale
18 rezoning, isn't that right?
- 19 A. Yes.
- 15:09:40 20 Q. 701 And in May of 1991, the only substantive issue dealt with on that day was the
21 Quarryvale vote, isn't that right?
- 22 A. That's right.
- 23 Q. 702 So that on the days of the two critical votes I suggest to you, Ms. Ormonde,
24 you would have known in advance --
- 15:09:54 25 A. I would.
- 26 Q. 703 -- that the only matter that was going to be dealt with was the were the
27 Quarryvale matters, isn't that right?
- 28 A. That's right.
- 29 Q. 704 So if you received any phone call in relation to the 17th of December or in May
15:10:06 30 of 1991, it was somebody summoning you for the actual vote, isn't that right?

- 15:10:11 1 A. Well to alert me that a vote might take place at a certain time.
- 2 Q. 705 Yes. Because you would have known --
- 3 A. Yes, I knew I actually.
- 4 Q. 706 -- that Quarryvale was on. So what you were getting the call about was to
- 15:10:21 5 ensure that you were down in Dublin County Council to vote, isn't that right?
- 6 A. That's right.
- 7 Q. 707 And Mr. Dunne was the person who telephoned you in order to tell you that it
- 8 was time for you to come down because you were needed to vote, is that right?
- 9 A. Well I would think so, that's the way it would have worked.
- 15:10:36 10 Q. 708 And I think in January of 1993, Ms. Ormonde, at 9047, at 12:10 you are recorded
- 11 as contacting Mr. Dunlop's office. And you leave a message to say you will
- 12 call back?
- 13 A. I don't recall that.
- 14 Q. 709 Right. And at 9049, on the 8th of January the following day, which is Friday
- 15:11:00 15 the 8th of January you are recorded as at 11:00 43 as ringing Mr. Dunlop's
- 16 office also, isn't that right?
- 17 A. Well I see it there but I don't recall.
- 18 Q. 710 Had you anything that you had to deal with or discuss with Mr. Dunlop in
- 19 January of 1993?
- 15:11:15 20 A. I wouldn't think so. I would have no reason to be phoning him.
- 21 Q. 711 Well could I suggest to you, Ms. Ormonde, that you were a candidate in the
- 22 Senate Election in January 1993 and some five days after your telephone calls
- 23 to Mr. Dunlop's office he paid you 1,000 pounds, isn't that right?
- 24 A. I didn't solicit any money. Did I not solicit Mr. Dunlop.
- 15:11:34 25 Q. 712 I didn't suggest to you that you solicited. I suggested to you that as a
- 26 matter of fact what happened in early January of '93, is that you were a
- 27 candidate in the Senate Election, isn't that right?
- 28 A. That's right.
- 29 Q. 713 On the 12th of January 1993, some four days after your recorded telephone call
- 15:11:50 30 with Mr. Dunlop office at 8153. Mr.-- at 1853, please. Mr. Dunlop's cheque

- 15:12:03 1 stub records a cheque for 1,000 pounds to Ann Ormonde?
- 2 A. Yes, I've seen that in my documentation. I went through my political account
3 which I had opened since 1989 and I have no record of that lodgement.
- 4 Q. 714 Right. Well we'll come do deal with that in a moment, Ms. Ormonde. At the
15:12:21 5 moment what I am trying to establish from you is whether now looking at the
6 coincidence and the dates and assuming for the moment that Mr. Dunlop did in
7 fact write a cheque to you on the 12th of January '93, do you now accept that
8 it's likely that your telephone calls to Mr. Dunlop's office on the 7th and 8th
9 of January '93, were in connection with that cheque?
- 15:12:46 10 A. No, I don't recall any of those phone calls.
- 11 Q. 715 Yes.
- 12 A. And I don't know why I would have made them.
- 13 Q. 716 Would you not accept that it's likely that the only reason you had to contact
14 Mr. Dunlop in early January 1993, was to solicit the donation from Mr. Dunlop
15:12:58 15 which was given to you on the 12th of January '93, by way of cheque?
- 16 A. No, I did not solicit Mr. Dunlop.
- 17 Q. 717 All right. And if I show you at, Ms. Ormonde. A cheque that's made out quite
18 poor copy made out to Ms. Ormonde and I think at 9077, it appears that the
19 cheque has been negotiated and according to your bank records, Ms. Ormond, at
15:13:30 20 9078 you make a lodgement to your bank account on the 18th of January 1993 in
21 the sum of 1,000 pounds, isn't that right?
- 22 A. I couldn't, I didn't recall that. I thought I thoroughly examined my accounts.
23 I thought I had thoroughly examined it but having said that. I have said that
24 if Mr. Dunlop said he gave me 1,000, I will accept it. And I put that into my
15:13:55 25 statement.
- 26 Q. 718 Yes. And if as appears to be the case, Ms. Ormonde, that 1,000 pounds lodged
27 to your account on the 18th of January, represents the encashment of Mr.
28 Dunlop's cheque on the 12th of January '93, you accept that you received this
29 money in January '93?
- 15:14:09 30 A. I accept from seeing what I have seen now.

- 15:14:12 1 Q. 719 Yes. And if you look at 10670, Ms. Ormonde, you will see that at 10.30 on the
2 17th of January, the day before those funds are credited to your bank account
3 you again telephone Mr. Dunlop's office?
4 A. I don't remember that at all.
- 15:14:28 5 Q. 720 And what I am suggesting to you, Ms. Ormonde, is that it's likely that
6 telephone call would have been a telephone call of thanks probably to Mr.
7 Dunlop in respect of the cheque that he had given to you or sent to you?
8 A. Uh-huh.
- 9 Q. 721 On the 12th. Doesn't that seem logical?
15:14:42 10 A. It does seem but I don't recall those phone calls.
- 11 Q. 722 I must then suggest to you also that your contact with Mr. Dunlop in the 7th
12 and 8th of January 1993 probably related to the funds that Mr. Dunlop gave you
13 on the 12th of January 1993.
14 A. All I'm saying is that I did not solicit money from Mr. Dunlop.
- 15:15:03 15 Q. 723 Yes. Who did you believe was the source of the funds that you received from
16 Mr. Dunlop in January of 1993?
17 A. I didn't think at all. I just took it, that it was a political donation, that
18 was it, didn't even give it thought.
- 19 Q. 724 Well did you tell the Fianna Fail Inquiry that you presumed the money that you
15:15:21 20 got from Mr. Dunlop was from Mr. O'Callaghan?
21 A. I'm sure I -- I'm sure I -- I can't remember.
- 22 Q. 725 Yes.
23 A. I can't remember.
- 24 Q. 726 Well if I show you then a record at 3412, Ms. Ormonde, of minutes of the notes
15:15:37 25 that were taken by the people who attended the Fianna Fail inquiry. And what I
26 want to draw to your attention is the final paragraph. And it says "in
27 relation to supporters of the Quarryvale issue she particularly recalls that
28 Colm Tyndall, Colm McGrath and Anne Devitt whom she described as a good clear
29 minded debater. She said she has no knowledge of any other benefits received
15:15:58 30 from Frank Dunlop and that she presumed that the money received was from Owen

- 15:16:01 1 O'Callaghan."
- 2 A. Yeah.
- 3 Q. 727 Did you tell the inquiry that?
- 4 A. Well I did. And now that I see it, it's probably the way it was at the time
- 15:16:10 5 but right now I can't recall that.
- 6 Q. 728 So that in fact what happened in January of 1993, if what you told the Fianna
- 7 Fail inquiry is correct, is that Mr, you contacted Mr. Dunlop. You don't
- 8 believe it was about the money but you received a cheque from Mr. Dunlop but
- 9 that you believed that the ultimate donor of that money to you was Mr.
- 15:16:31 10 O'Callaghan, is that fair?
- 11 A. Possibly, possibly.
- 12 Q. 729 Yes. Now, Mr. Dunlop when he gave evidence to the Tribunal in relation to this
- 13 matter, told the Tribunal in relation to your particular donation that in the
- 14 context of Ann Ormonde that the approach was made to him either by Mr. Liam
- 15:16:52 15 Lawlor or Mr. Gilbride. So what Mr. Dunlop told the Tribunal was that the
- 16 request for the payment of the sum of 1,000 pounds in January 1993, for you was
- 17 made to him by either Mr. Lawlor or Mr. Sean Gilbride?
- 18 A. I have no idea, I wouldn't know that.
- 19 Q. 730 Right. Would you ever have had occasion or reason to discuss with Mr. Sean
- 15:17:14 20 Gilbride fundraising or the receipt of monies from Mr. Dunlop?
- 21 A. No.
- 22 Q. 731 Did you ever have any conversation or discussion with the late Mr. Liam Lawlor
- 23 about fundraising or about receiving money or donations from Mr. Dunlop?
- 24 A. No.
- 15:17:30 25 Q. 732 No. Do you accept that some approach was made by somebody to Mr. Dunlop in
- 26 January of 1993, that resulted in a cheque for 1,000 pounds being paid to you?
- 27 A. I didn't give it any thought at all because I was busy preparing for my
- 28 elections at the time.
- 29 Q. 733 How do you think that Mr. Dunlop came to select you?
- 15:17:48 30 A. I don't know.

- 15:17:49 1 Q. 734 Right. Did you have any discussion with Mr. Dunlop about the cheque in January
2 of 1993?
- 3 A. As I said already, I don't recall having any discussions with him whatsoever in
4 relation to that that cheque.
- 15:18:01 5 Q. 735 And the after the Tribunal was established, Ms. Ormonde, did you have any
6 discussion with Mr. Dunlop about that payment?
- 7 A. As I said, when the Tribunal was established I understood he phoned me to
8 remind me that he had given me a political donation.
- 9 Q. 736 Mr. Dunlop I think in his statement says at 1924. That "you rang him to
10 confirm that a contribution of 1,000 pounds by way of cheque for your candidacy
11 in the 1993 Senate Election was a legitimate political donation. Confirmed and
12 a short discussion followed about the ridiculousness of the whole affair i.e.
13 the Tribunal and I have not met or spoken to Ann Ormonde since then. I believe
14 the conversation took place in 1999".
- 15:18:50 15 A. I read that too in my preparation but I don't -- I understood it was the other
16 way around.
- 17 Q. 737 All right. Do you agree first of all that you had a conversation with Mr.
18 Dunlop in 1999?
- 19 A. I wasn't sure whether it was a conversation or whether it was to remind me
15:19:07 20 through my answering machine, that I'm not sure whether I had a conversation
21 with him or whether it was through my answering machine.
- 22 Q. 738 In your statement to the Tribunal on this issue at 3430, Ms. Ormonde. You
23 state "at some stage after the Tribunal was established Frank Dunlop telephoned
24 me to remind me that he had give me donation of 1,000 pounds in 1992 general or
15:19:36 25 Seanad election. I did not make contact with him. He initiated this contact.
26 After he advised me of this donation I examined all of my banks accounts
27 records dating back to 1989 when I opened a political account.
28
29 The Tribunal has this bank information already. I could not trace any
15:19:51 30 reference in any of the statements to the donation Mr. Dunlop said he made to

15:19:55 1 me."
2
3 Now, that would suggest that you had a conversation with Mr. Dunlop, isn't that
4 right?
15:20:01 5 A. Well --
6 Q. 739 So when you provide this had information to the Tribunal in February 2003 --
7 A. Yes.
8 Q. 740 -- you appear to have been of the view that you spoke with Mr. Dunlop?
9 A. Might have, yes. I mean as I say, I am terribly unsure whether I had the
15:20:14 10 conversation with him. But that would suggest that I had it with him. But I
11 just am not sure about that.
12 Q. 741 But the conversation that you had with Mr. Dunlop was a conversation about
13 money, is that right?
14 A. Well it was to remind me that he had given me a political donation.
15:20:31 15 Q. 742 In November '92 or for the November '92 election?
16 A. For the Seanad election.
17 Q. 743 Which was in January 1993?
18 A. '93, yes.
19 Q. 744 Now is that the donation that you subsequently told the Fianna Fail inquiry you
15:20:46 20 believed originated from Mr. Owen O'Callaghan?
21 A. That's right, that's probably it, that's right.
22 Q. 745 Now, I think that when you were a member of South Dublin County Council,
23 Ms. Ormonde, the issue of the cap arose again before the Council, isn't that
24 right?
15:21:00 25 A. That's right.
26 Q. 746 And I think the planners recommended that the cap be removed, isn't that right?
27 A. That's right.
28 Q. 747 And a motion was brought by some of your colleagues on South Dublin County
29 Council to reverse that decision by the planners. And you voted against your
15:21:18 30 colleagues and with the planners effectively, isn't that right?

- 15:21:23 1 A. I can't recall that.
- 2 Q. 748 Well at 14931 of Mr. Ciaran Kennedy's statement to the Tribunal in relation to
3 the removal of the cap. At paragraph 16 he says that "at a special meeting on
4 the 24th of September '98, the manager's report on the above motion recommended
15:21:43 5 that the written draft statement be not amended adds proposed. Following
6 discussions the motion was defeated. This had the effect of confirming that
7 the cap could not be reimposed during the process of making its new plan for
8 South County Dublin and confirmed that whilst the Quarryvale lands had the
9 zoning designation D C district centre it would be permitted town centre. It
10 would have permitted town centre uses. The following councillors voted for the
11 motion to reverse the removal of the cap on retail space at Quarryvale.
12
13 And they are listed there and then the following councillors voted against the
14 motion and you were recorded as voting against the motion. The motion being a
15:22:02 15 motion to overturn the planners decision to remove the cap, do you understand?
16 A. Yes.
17 Q. 749 Okay so that your position had changed, Ms. Ormonde, by 1998, isn't that right?
18 A. Yes, well it was a bank -- it was the planners, the manager.
19 Q. 750 Yes.
15:22:34 20 A. Put forward that so and the councillors from the area were happy enough with
21 it.
22 Q. 751 In relation to the removal of the cap. Did you have any meetings with Mr.
23 Dunlop about the removal of the cap?
24 A. No.
15:22:45 25 Q. 752 All right. Did you have any contact or communication with Mr. Owen O'Callaghan
26 about the removal --
27 A. Yes, yes I met him once in the council.
28 Q. 753 And was that in connection with seeking your support for his position?
29 A. Well to alerts us that it was coming up, that was it you know but no more than
15:23:01 30 that. It was just he was around the Council at the time and I can't remember

15:23:06 1 did he actually ask me to support it.

2 Q. 754 Yes. Well I think in September '98, at 13264. He wrote to you, isn't that

3 right?

4 A. I see that now.

15:23:21 5 Q. 755 Yes. And he said "Dear Ann, how are you keeping." This is Owen not Noel and

6 he informed you about the cap?

7 A. Oh, yes.

8 Q. 756 Isn't that right?

9 A. Yes, I remember that.

15:23:31 10 Q. 757 Yes. And he sought your support for his position, isn't that right?

11 A. Yes.

12 Q. 758 And his position was to support the removal of the cap on retail development at

13 Quarryvale, isn't that right?

14 A. Yes.

15:23:41 15 Q. 759 So that he did contact you by correspondence, isn't that right, the position?

16 A. I recall, I am recalling that now.

17 Q. 760 Yes. And also you think you may have had a meeting with Mr. O'Callaghan?

18 A. Oh, I definitely met him. Yes, I definitely met him.

19 Q. 761 You don't recollect having any meeting with Mr. Dunlop in relation to the

15:23:58 20 removal of the cap?

21 A. No, no.

22 Q. 762 Can I ask you. I think that you indicated that Mr. Dunlop was regularly around

23 Dublin County Council?

24 A. Oh, yeah.

15:24:06 25 Q. 763 Do you have a recollection of him being equally around South Dublin County

26 Council?

27 A. No, no.

28 Q. 764 No.

29 A. I didn't really see very much of him at all out there. I don't recall ever

15:24:16 30 meeting him out there.

- 15:24:17 1 Q. 765 Uh-huh. Would be it be fair so day to say, Ms. Ormonde, after the 1993
2 Development Plan was made that you didn't see quite as much of Mr. Dunlop as
3 you had seen up to December 1993?
4 A. Well he was around the Council Chamber all of the time. You couldn't but see
15:24:32 5 him. He was around full stop.
6 Q. 766 Yes. And certainly in Mr. Dunlop's diaries in 1996 at 12667. There is an
7 entry for you on the 3rd of September "Woods and Anne Ormonde" do you see that?
8 A. Yeah, I do.
9 Q. 767 And do you recollect what that meeting was about?
15:24:50 10 A. No, I don't, no.
11 Q. 768 Do you remember having any meeting?
12 A. No.
13 Q. 769 In Mr. Dunlop's office?
14 A. No, no.
15:24:55 15 Q. 770 Can I show you then at 12697, Ms. Ormonde, on the 2nd of October 1996, you are
16 recorded as having a attended a meeting in Mr. Dunlop's office?
17 A. God that's news to me.
18 Q. 771 Yes. You have no recollection is that the position?
19 A. I remember meeting him somewhere around that time. I mean, I bumped into him I
15:25:20 20 think. I have, I don't have any detailed recollection of it.
21 Q. 772 Yes. That particular entry, Ms. Ormonde, on the 2nd of September 1996, would
22 suggest an arranged meeting at the offices of Mr. Dunlop, isn't that right?
23 A. There I go again, I can't recall.
24 Q. 773 Can't recall. And at 12709. On the 9th of October '96, there is a third entry
15:25:44 25 for a meeting with Mr. Dunlop in his diary with, you isn't that right?
26 A. Yeah.
27 Q. 774 And is the position the same there, Ms. Ormonde, that you can't remember what
28 that meeting was about?
29 A. No, I can't. I'm trying to think.
15:25:57 30 Q. 775 That would mean, Ms. Ormonde, that there were three meetings with Mr. Dunlop

- 15:26:01 1 recorded in his diary in September and October 1996 and you have no
2 recollection of any of them.
- 3 A. No, I can't. I'm trying to think now what they would be about now ... I can't
4 think.
- 15:26:13 5 Q. 776 All right.
- 6 A. Unless you prompt me.
- 7 Q. 777 I would if I could, at 12710, Ms. Ormonde. On the 14th of October 1996, on
8 Monday the 14th of October, you will see again there is an entry in Mr.
9 Dunlop's diary for Anne Ormonde?
- 15:26:38 10 And I suggest that's likely to be you and that's the 4th meeting in 1996 that's
11 recorded in build Dunlop's diary between Mr. Dunlop and yourself. And is it
12 the same position, Ms. Ormonde, that you cannot remember?
- 13 A. I don't recall.
- 14 Q. 778 Why you met with Mr. Dunlop on those occasions?
- 15:26:53 15 A. Would it be so. I could meet him socially. I don't know. I can't recall.
- 16 Q. 779 But I would suggest that you are unlikely to behaving a social meeting with Mr.
17 Dunlop at 9:45 a.m. on the Monday the 14th of October 1996, isn't that right?
- 18 A. I can't recall that at all.
- 19 Q. 780 But it follows that there was some business being transacted?
- 15:27:12 20 A. Oh, if I could I would tell you.
- 21 Q. 781 Yes. Is there any possibility that that was in connection with the lifting of
22 the cap?
- 23 A. No, I don't recall he lobbying me at all about the lifting of the cap.
- 24 Q. 782 Did you receive any political donations from Mr. Owen O'Callaghan?
- 15:27:27 25 A. I got a political donation for my golf classic in 1999.
- 26 Q. 783 Of how much?
- 27 A. 500.
- 28 Q. 784 Yes.
- 29 A. 400 or 500, whatever it was at that time.
- 15:27:38 30 Q. 785 Yes. And similarly, did you get a political donation in 1997 from Mr. Dunlop.

15:27:44 1 A. I got 200 I think or 250 I'm not sure which one it was, political donation
2 which came in a cheque form about the middle of May 1997.

3 Q. 786 So that the only cheque donation from Mr. Dunlop that you are unclear about is
4 the one in January of 1993?

15:28:03 5 A. That's right, that's right.

6 Q. 787 And until today you saw the lodgement in your own bank account it was a
7 surprise to you?

8 A. It was a surprise.

9 Q. 788 That you had received this money from Mr. Dunlop?

15:28:11 10 A. Yeah.

11 Q. 789 Although you told the Fianna Fail inquiry you thought that it had come from Mr.
12 O'Callaghan. Is that right?

13 A. Well I'm just going through that thinking.

14 Q. 790 Yes. Thank you very much, Ms. Ormonde. If you would answer any questions
15 anybody else might have.

16

17 JUDGE FAHERTY: Yes just one. Ms. Ormonde, can I just ask you really about
18 your thought process on the Neilstown lands. I think you agreed with
19 Ms. Dillon as far as the Quarryvale proposal was concerned you voted in favour
15:28:36 20 of the 16th of May '91 vote, which effectively transferred the town plan town
21 centre D zoning to Quarryvale from Neilstown.

22 A. That's right.

23

24 JUDGE FAHERTY: And I think we know that there were a number of motions then
15:28:48 25 in the lead up to December '92. And again you voted I think there you said
26 that you voted on the motion to set a cap on Quarryvale.

27 A. Yeah.

28

29 JUDGE FAHERTY: And I think you said to Ms. Dillon that the reason that you
15:29:03 30 did that, it would allow for appropriate development on the Neilstown lands.

15:29:08 1 A. Yes.
2
3 JUDGE FAHERTY: Because we know I think in 1992 Neilstown got the town centre
4 D zoning back as well didn't it albeit with specific objectives.

15:29:21 5 A. Oh, that's right, yes, yes. Yes, yes.
6
7 JUDGE FAHERTY: I think Ms. Dillon will alert me if I misrepresent anything.
8
9 I just want to ask you. By 1998 then I think, whatever, whenever you vote for
15:29:34 10 the removal of the cap on the Quarryvale. You say your objective in voting for
11 the cap in 1992, was to allow for that presumably in conjunction with the
12 Neilstown getting back its zoning was to allow for development on Neilstown.

13 A. Well Blanchardstown more so than, to give a compromise to the 250 in 1991 for
14 me was to give a chance to the Blanchardstown development to take.

15:30:05 15
16 JUDGE FAHERTY: I heard you saying that. But I understood that you wanted all
17 three --

18 A. Well I would have liked all three in the sense of Tallaght town centre the
19 Lucan/Clondalkin, one through Quarryvale and then the Blanchardstown one, that
15:30:19 20 was what my thinking was to allow Blanchardstown to develop at the same time
21 and because I knew there was concern that if it was the cap was 500, it would
22 be too much at that time.
23
24 JUDGE FAHERTY: And did you -- and what about Neilstown?

15:30:36 25 A. Neilstown wasn't part of my thinking at all. Neilstown became Quarryvale.
26
27 JUDGE FAHERTY: I may have misunderstood you.

28 A. Neilstown became Quarryvale.
29
15:30:47 30 JUDGE FAHERTY: Ms. Ormonde.

15:30:48 1 A. Sorry?
2
3 JUDGE FAHERTY: Neilstown wasn't developed, isn't that correct?
4 A. Neilstown was the Ronanstown.
15:30:55 5
6 JUDGE FAHERTY: It was the Lucan/Clondalkin town centre in the 1972 and '83
7 Development Plan.
8 A. Exactly. And that was slow moving that there was an opportunity to fast track
9 that by transferring that town centre over to Quarryvale and make it a district
10 centre and develop it with other uses, that was my thinking in that.
11
12 JUDGE FAHERTY: Develop what with other uses?
13 A. Have it not alone as an industrial zoning but to also have it as a district
14 town centre.
15:31:25 15
16 JUDGE FAHERTY: That was Neilstown we're talking about?
17 A. Yes that was town centre for Neilstown and then it was going to be transferred
18 over to Quarryvale.
19
20 JUDGE FAHERTY: I see.
21 A. Am I right? I think I am.
22
23 JUDGE FAHERTY: I see. Very well. And just one other matter, Ms. Ormonde.
24 You said I think and you agreed that I think it was in 2000 that you told the
15:31:54 25 Fianna Fail inquiry or you agreed with Ms. Dillon that the note in fairness to
26 you, the note that reflects the Fianna Fail inquiry.
27 A. Uh-huh.
28
29 JUDGE FAHERTY: That was conducted I think in 2000. That you told whoever was
15:31:57 30 there, that you presumed the 1,000 pounds you received via Mr. Dunlop in

15:32:02 1 January 1993 came from Mr. O'Callaghan?

2 A. Yeah.

3

4 JUDGE FAHERTY: Is that correct?

15:32:08 5 A. Well I mean it could have. And I presumed what I was saying at that time that

6 it was fresh in my mind, you know. That I would agree with it then. The more

7 you think about these things the more you get confused, you know.

8

9 JUDGE FAHERTY: Yes. That's what I want to ask you. It was nearer the time

15:32:24 10 if you like in terms of --

11 A. Yes that's right.

12

13 JUDGE FAHERTY: But in January. Presumably you had the same presumption in

14 January 1993, when you received the cheque from Mr. Dunlop.

15:32:35 15 A. Yeah. I didn't give it any thought to be quite honest with you. I mean, I was

16 in the middle of campaign, I hadn't time to think and that was my approach at

17 that time was to go and get myself elected. So, you know, I wasn't giving it

18 any thought until questionings were put forward later and then I began to think

19 seriously and reflect and try and work it back into my own thinking as to when

15:32:59 20 it happened.

21

22 JUDGE FAHERTY: You must have had some idea in 1993 when you got the cheque

23 from whence it came?

24 A. I took it Frank Dunlop and then when you have time to think of if at a later

15:33:10 25 stage and time to reflect well it could have been through Owen O'Callaghan.

26

27 JUDGE FAHERTY: Thanks very much

28

29 CHAIRMAN: All right thank you very much

15:33:16 30 A. Thank you.

15:33:17 1 **THE WITNESS THEN WITHDREW.**

2

3

MR. QUINN: Mr. Eamon McElroy, please.

4

15:33:22 5

MR. EAMON McELROY HAVING BEEN SWORN, WAS QUESTIONED BY

6

MR. QUINN AS FOLLOWS:

7

8

CHAIRMAN: Good afternoon Mr. McElroy. Good afternoon

9

15:34:03 10

Q. 791 MR. QUINN: Good afternoon, Mr. McElroy. Mr. McElroy, I think in January 1990 you held a position of general manager branch and corporate banking for the Ireland division of Allied Irish Bank.

11

12

13

A. That's correct.

14

15:34:19 15

Q. 792 And I think you have advised the Tribunal that the decision to sanction facilities to Barkhill on the 19th of January 1990, or sometime shortly thereafter was your decision, isn't that right?

16

17

A. That's right.

18

15:34:34 19

Q. 793 And I think you have provided a statement to the Tribunal at 23423. And I propose to just read that statement to you and just ask you one or two questions arising out of it, if I may?

19

20

21

A. That's fine.

22

15:34:48 23

Q. 794 You say that "your responsibilities included acting as chairman of the corporate banking credit committee which adjudicating on loan applications to the bank within limits determined by the board of directors of the company. You say that the application submitted on the 19th of January 1990, on behalf of Barkhill Limited fell within those designated limits and you recall chairing the committee on that day.

23

24

15:34:48 25

26

27

28

29

15:35:01 30

You say that it was at that time that the responsibilities of the chairman of the committee to determine the decision on applications for loan finance after

15:35:06 1 having taking regard of the advices and opinions expressed by those senior
2 bankers that comprised the committee. You say that the application concerned
3 carried qualified positive recommendation by the team responsible for business
4 development and credit assessment within property construction and allied
15:35:23 5 sectors the positive recommendation was subject to four conditions.

6
7 You say that in the event there was a healthy debate with views being expressed
8 both for and against the bank agreeing to the proposal. You say that it was
9 your decision to withdraw the application from the credit process on that day
15:35:38 10 in order to take time out for reflection as the final decision was yours. You
11 say that you subsequently ruled that the application be sanctioned subject to
12 three of the four conditions attaching to the original positive recommendation.

13 You say that the conditions withdrawn by you was the one which required verbal
14 confirmation from the appropriate government department that designated status
15:35:59 15 would be forthcoming. You withdrew this condition as you did not believe it to
16 be appropriate for the bank to seek such a condition as part of it's credit
17 process assessment .

18
19 You say your reasons for sanctioning the loan application despite the view of
15:36:11 20 the credit committee could be summarised as follows.

21
22 1. You held a high regard for the specialist team who were recommending the
23 application. You knew the location of the site and believed that it was
24 strategically situated to benefit from the increasing development of west
15:36:29 25 Dublin.

26
27 3. You took comfort from the professional valuations on the site which gave
28 significant margins over and above the loan being sanctioned.

29
15:36:38 30 4. You took comfort from the strong written expression of interest to purchase

15:36:50 1 50 per cent of the site whether designation was or was not changed.
2
3 5. You believed that the proposal to be an attractively priced both in respect
4 of the margin of the proposed loan and the arrangement fee. In this respect
15:36:53 5 you considered that the pricing proposed adequately recognised both the risk
6 involved and the reward involved for assuming that risk. You say that at no
7 time either before or after the sanction of the loan application did you meet
8 with or converse with any of the representatives of Barkhill Limited".
9

15:37:13 10 Is that your statement concerning this matter, Mr. McElroy?

11 A. That's correct.

12 Q. 795 Do you want to amend or correct or clarify any aspect of that?

13 A. No.

14 Q. 796 Can I take it from that statement that this matter came before a credit
15:37:25 15 committee meeting, there was no finality at that meeting in relation to whether
16 or not the application could be recommended?

17 A. Yeah.

18 Q. 797 You adjourned it or withdrew it from the meeting. You reflected on it and you
19 subsequently sanctioned it subject to three of the four originals conditions?

15:37:45 20 A. That's correct, yes.

21 Q. 798 Now, when the matter came before the committee I think it was envisaged that
22 verbal confirmation to the designated status would be forthcoming, isn't that
23 right?

24 A. That was on the original recommendation as a condition, yes.

15:38:01 25 Q. 799 As I indicated earlier at 4060 in the document headed risk profile summary?

26 A. Uh-huh.

27 Q. 800 It was suggested that the Minister for the Environment would telephone the bank
28 to confirm designated status would be obtained for the Palmerstown site in the
29 budget of 1990. In that intervening period, Mr. McElroy, did you make contact
15:38:23 30 either directly or indirectly with the minister and get an assurance on the

- 15:38:27 1 designated status of that site?
- 2 A. No.
- 3 Q. 801 If you take the reasons, Mr. McElroy, at 23423 that you give for sanctioning
- 4 the loan application. If we take the first of those. You held a high regard
- 15:38:40 5 for the specialist team who recommended the application. Presumably that's a
- 6 regard you would have had for every team working within your sector at that
- 7 time?
- 8 A. That's correct.
- 9 Q. 802 And that's a reason that existed both on the 19th of January and subsequently?
- 15:38:56 10 A. That's correct, yes.
- 11 Q. 803 Can I just ask you what time lag was there between the consideration on the
- 12 19th of the matter and credit committee and your subsequent decision?
- 13 A. I don't recall my belief was a very short time frame but I don't recall. It
- 14 could have been that afternoon or the next day.
- 15:39:15 15 Q. 804 The 19th I can was a Friday?
- 16 A. Then it would have been the afternoon of the Friday are the Monday. It would
- 17 not have been ...
- 18 Q. 805 You wouldn't have taken the weekend to reflect on it?
- 19 A. I may but I don't recall.
- 15:39:26 20 Q. 806 Was it usual to withdraw applications?
- 21 A. It was unusual.
- 22 Q. 807 Unusual. So this was an unusual step for you to have taken?
- 23 A. That's correct.
- 24 Q. 808 And is that because there was a significant opposition at that credit committee
- 15:39:37 25 meeting to the proposal?
- 26 A. My recollection was that there was opposition from people whose judgement I
- 27 would have represented at the time and still would respect. And there was
- 28 equally strong support from people whose judgement I would accept.
- 29 Q. 809 Yes.
- 15:39:54 30 A. And I certainly did not want the proposition to come down to a vote split of

- 15:40:00 1 2/3 or 4/3 or whatever. In the final analysis of the decision was going to be
2 mine whatever way it went.
- 3 Q. 810 You are suggesting that there would have been five possibly, six, seven people
4 present at that committee meeting?
- 15:40:13 5 A. I don't recall exactly but yes it was a well attended meeting.
- 6 Q. 811 If we look at your second reason. You say that you knew the location of the
7 site and believed that it was strategically situated to benefit from the
8 increasing development in west Dublin. That's something you would have known
9 at the meeting on the 19th, isn't that right?
- 15:40:30 10 A. I would have known in a very general way that that area in Dublin was growing
11 and growing very rapidly and seemed to me to be you know that it was going to
12 continue, that Dublin city was going to be developing in that direction.
- 13 Q. 812 You say you took comfort from the professional valuations on the site gave
14 significant margins over and above the loan being sanctioned?
- 15:40:49 15 A. That's correct yes.
- 16 Q. 813 I think the valuation on the site at the time was 12 million, isn't that right?
- 17 A. Between 12 and 16.
- 18 Q. 814 16 on a phased break up?
- 19 A. 17.5 from Gunnes both of whom I would have considered to be very professional
15:41:03 20 agent.
- 21 Q. 815 What was being sought was sanctioned for a very short period of time, isn't
22 that right, Mr. McElroy?
- 23 A. That's right.
- 24 Q. 816 Not to complete the site acquisition but to partially acquire the site, isn't
15:41:14 25 that right?
- 26 A. That's correct.
- 27 Q. 817 So there would have been still some of the site which wouldn't have been
28 acquired at the due date, isn't that right?
- 29 A. My memory is that we were receiving security in respect of all of the
15:41:28 30 properties that we were funding. And this is my memory and that that was the

15:41:33 1 properties that were being valued by Lisneys and by Gunnes and that was the
2 property that the Arlington Securities people had expressed strong interest in
3 purchasing.

4 Q. 818 You heard Mr. Rogals who felt or whose recollection insofar as he had a
15:41:51 5 recollection of that meeting that the Arlington letter didn't, or the Arlington
6 offer didn't feature very much at the credit committee meeting?
7 A. It figured very much in the discussions that, yes it did figure.

8 Q. 819 You say it did figure?
9 A. It did -- Keypak sorry.

15:42:05 10 Q. 820 Did the issue of designation figure as well, Mr. McElroy?
11 A. Not with me it didn't, no.

12 Q. 821 Well did it figure at the meeting?
13 A. It figured at the meeting to the extent that it was presented to the meeting
14 if -- again if I recall that Mr. Gilmartin had made often made very strong
15:42:23 15 approaches to designation would be forth coming and that he could have that
16 confirmation given to the bank.

17 Q. 822 Why do you think your very well represented team within the bank would suggest
18 that the Minister for the Environment would telephone you to confirm designated
19 status on the site?
15:42:39 20 A. My understanding is that that was, that was a proposal made to that team by Mr.
21 Gilmartin and that the team saw that as an added piece of comfort, if you like,
22 to the positive recommendation that they were giving.

23 Q. 823 Had you ever received a recommendation which you could ring a government
24 minister in order to get confirmation in whether or not a site had been
15:43:06 25 designated?
26 A. I hadn't. But in this instance this is if I may say so -- my memory is that
27 the condition was that the government minister would ring the bank, the bank
28 would not be initiating any phone calls.

29 Q. 824 And at 4060 this is the risk profile summary, that Mr. Rogals appears not to
15:43:26 30 have seen.

- 15:43:27 1 It says "The Minister for the Environment to telephone us to confirm designated
2 status will be obtained for the Palmerstown site."
- 3 A. My understanding is that that was an offer given by Mr. Gilmartin and accepted
4 by the team as such. The team in lending as an additional item of comfort.
- 15:43:44 5 Q. 825 Yes. It was accepted by Mr. Kay and Mr. Donnagh?
- 6 A. That is my understanding.
- 7 Q. 826 And they were suggesting that that would be a condition?
- 8 A. They were yes.
- 9 Q. 827 Yes. And you say that the designation of the site did not feature at all in
15:43:57 10 your decision or the possible designation of the site?
- 11 A. No.
- 12 Q. 828 This was a very short-term facility that was being sought, isn't that right, it
13 was only for six months?
- 14 A. Yes.
- 15:44:07 15 Q. 829 The Arlington letter was no more than an expression of interest, isn't that
16 right?
- 17 A. I read it as a strong expression of interest.
- 18 Q. 830 It wasn't a binding contract, isn't that right?
- 19 A. That's correct.
- 15:44:17 20 Q. 831 It couldn't have been deemed to have been a binding contract?
- 21 A. That's correct.
- 22 Q. 832 This site hadn't been fully assembled and indeed when you made your sanction
23 and advanced monies it still wasn't going to be assembled, isn't that correct?
- 24 A. That's correct yes.
- 15:44:29 25 Q. 833 It had no zoning?
- 26 A. That's correct.
- 27 Q. 834 No planning, isn't that correct?
- 28 A. That's correct, yeah.
- 29 Q. 835 In fact the adjoining Neilstown lands had in fact the correct zoning and at
15:44:39 30 this stage that is the 19th of January 1990, there was outline permission for a

- 15:44:44 1 town centre on that site, isn't that correct?
- 2 A. I had no recollection.
- 3 Q. 836 Permission granted to another customer of Allied Irish Bank?
- 4 A. I went wasn't familiar with that.
- 15:44:53 5 Q. 837 Was that not something you would have thought would have been brought to your
6 attention by Mr. Kay and his team?
- 7 A. I was aware that there was another site.
- 8 Q. 838 Yes.
- 9 A. I was aware that there were discussions taking place between Mr. Gilmartin and
15:45:08 10 Mr. O'Callaghan and that the expected outcome of those discussions would be an
11 agreement.
- 12 Q. 839 In fact -- it was originally anticipated that part of this sanction would go
13 towards paying some of Mr. O'Callaghan's money, isn't that correct?
- 14 A. That's correct, yes.
- 15:45:24 15 Q. 840 And you left in a condition which provided that the balance of the money would
16 be paid after designation came through on the site, isn't that right?
- 17 A. I don't recall that.
- 18 Q. 841 Well if we look at condition No. 4 at ... if I could have 4056.
- 19 A. Yes, it was a condition that part of the payment to O'Callaghan Properties
15:45:54 20 would be deferred.
- 21 Q. 842 And you left that condition in, isn't that correct?
- 22 A. I did, yes.
- 23 Q. 843 If we could have -- sorry. I should have. If I could have the next page,
24 please. 4057. Do you see under the heading summary/recommendations?
- 15:46:11 25 A. I do.
- 26 Q. 844 Do you see the third of those "we are reliably informed that the government is
27 strongly in favour of this project and will grant designated status later this
28 month".
- 29 A. Yes, I read that.
- 15:46:28 30 Q. 845 Do you recall any discussion of the credit committee meeting arising out of

- 15:46:28 1 that?
- 2 A. There would have been discussion about it, yes.
- 3 Q. 846 And did you inquire of the team or the team leader the source of that
- 4 information?
- 15:46:43 5 A. My memory is that the source of that information was Mr. Gilmartin to the team
- 6 himself, themselves.
- 7 Q. 847 And in fact, whilst this credit committee met on the 19th of January, and you
- 8 may have given the sanction by the perhaps the 22nd of January, 23rd of
- 9 January, the loan didn't actually issue I think until February, isn't that
- 15:47:02 10 right, the 19th of February?
- 11 A. I understand that to be the case from Mr. Rogals evidence. I would not have
- 12 been involved in that element of it.
- 13 Q. 848 And I suggest to you that the terms under which the monies were ultimately
- 14 given differed from this sanction. First of all, there was to be no payment to
- 15:47:21 15 Mr. O'Callaghan on foot of the terms, isn't that right?
- 16 A. There was no payment to Mr. O'Callaghan under the terms.
- 17 Q. 849 Yes.
- 18 A. Of the sanction.
- 19 Q. 850 When it ultimately came through, isn't that correct?
- 15:47:33 20 A. Yes.
- 21 Q. 851 Did you know that?
- 22 A. Did I know.
- 23 Q. 852 That Mr.-- that the term requiring payment out of the 8.5 million of 1.35
- 24 million to Mr. O'Callaghan was being left out of the loan offer?
- 15:47:50 25 A. I didn't. I knew that one of the conditions was of the sanction was that that
- 26 would not be paid over until such time as designation.
- 27 Q. 853 No that's the balance of the 1.35 million. But if we go to the document on
- 28 screen please.
- 29 A. Yes.
- 15:48:08 30 Q. 854 4058. Accompanying the mark up was a schedule of land purchase costs do you

- 15:48:13 1 see that?
- 2 A. Yes I have.
- 3 Q. 855 And that schedule provided if we look at the double asterisk that of the will
4 8.5 million it would be used as follows repayment of the Bank of Ireland would
15:48:24 5 balance due on foot of the Vanhoole lands, the Dublin Corporation lands and
6 then part payment to O'Callaghan Properties."
- 7 A. That's correct.
- 8 Q. 856 And I think ultimately when the 8.5 million was ultimately sanctioned and the
9 loan offer issued on the 19th of February 1990, there was no question of any of
15:48:40 10 the money being paid to Mr. O'Callaghan, isn't that right?
- 11 A. I wouldn't be aware of that. I wouldn't have been involved in the follow-up of
12 the drawdown of the loan.
- 13 Q. 857 And I think it was also a feature that the fees payable in relation to the
14 latter matter had increased from the amount referred to in the mark up of 375
15:49:02 15 as sanctioned to 425,000, isn't that right?
- 16 A. I learnt that today for the first time. I would say that it would not have
17 been a matter that would have been referred back to me unless the fee was going
18 to be reduced.
- 19 Q. 858 In fact if we go to the risk summary at 4059. And if we could go to 4060 under
15:49:26 20 the heading repayments?
- 21 A. Yeah.
- 22 Q. 859 You see that it was being considered there that there would have been an
23 advance of 7.25 million. And then underneath that interest 12 months 1,8.25
24 million, do you see that?
- 15:49:40 25 A. I do see that.
- 26 Q. 860 Could it have been the case that at some stage it was he is envisaged that
27 these monies would be given to Mr. Gilmartin over a longer period and a period
28 in excess of six months perhaps maybe 12 months?
- 29 A. I don't recall that.
- 15:49:56 30 Q. 861 Would that document assist in any way in coming to a conclusion on that issue?

- 15:50:00 1 A. I haven't had an opportunity to study that document. It's not been part of the
2 documentation that I have seen.
- 3 Q. 862 I see. The documentation you have seen is documentation?
4 A. The original.
- 15:50:11 5 Q. 863 Sorry.
6 A. The original mark up.
7 Q. 864 Who supplied you with the original mark up?
8 A. The bank supplied with me with a copy of the original mark up.
9 Q. 865 You haven't seen the risk profile summary?
15:50:23 10 A. I haven't.
11 Q. 866 Can you say anything to the Tribunal about a risk profile summary in its
12 overall importance within the banking structure?
13 A. It wouldn't be, it wouldn't have been an approach that would have been taken in
14 every case, going back to my memory, of casework. There would be an endeavour
15:50:48 15 in a case was predicted and viewed as being 50/50 as to whether it should be
16 done or not. There would be an attempt to enumerate or list out the fors and
17 against and to try to come down to a studied decision on where the decision
18 should fall.
19 Q. 867 Do you know if anyone within the bank made contact with the minister or indeed
15:51:11 20 any government minister in connection with the possibility of designation on
21 the site?
22 A. To my understanding absolutely not.
23 Q. 868 The issue of designation hadn't been or the site hadn't been designated in the
24 budget of the 31st of January 1990, isn't that right?
15:51:31 25 A. I ...
26 Q. 869 It was never designated?
27 A. It wasn't designated at the time of this application.
28 Q. 870 Yes. This application went through and was considered sometime between the
29 19th of February and the 22nd of February, if what you say is correct?
15:51:41 30 A. I had no hand, act or part in the process after that date.

- 15:51:45 1 Q. 871 Yes but by the time that the monies came to be drawn down and the loan
2 application filled out on the 19th of February 1990, the budget had come and
3 gone and the site hadn't been designated, isn't that right?
- 4 A. I don't know.
- 15:51:57 5 Q. 872 Mr. --
- 6 A. I don't recall.
- 7 Q. 873 Mr. Kay when he wrote to the -- to Mr. Gilmartin had suggested that the, that
8 he might take up the offer from Arlington in the event of designation not
9 having come through initially by February but if we look at the loan sanction
10 of the 19th of February 1990, and if we go to that which is at page 4143. And
11 if we go to 4149. It was a precondition as recorded here. 4149 paragraph H
12 that Mr. Gilmartin would give an irrevocable letter of undertaking that in the
13 event of the property did not become designated zone on by the 11th of March
14 1990, he that he will accept the Arlington offer". What do you know about
15 that?
- 15:52:49 16 A. I wasn't aware of that but it wouldn't surprise me that Mr. Kay or the team
17 would have made that, would have firmed up on the that Arlington offer and made
18 it a condition.
- 19 Q. 874 Assuming that --
- 15:53:03 20 A. Strengthening the bank's case not weakening.
- 21 Q. 875 Assuming that the agreement between Mr. Gilmartin and Mr. O'Callaghan was the
22 agreement at 14282 of the 31st of January 1989. It would appear that the
23 option that Mr. Gilmartin had over the O'Callaghan lands at Neilstown had to be
24 exercised by the 31st of October '89, by the payment of 1.35 million had a bank
15:53:32 25 guarantee for the balance providing that it would be paid by the 31st of
26 January 1990. So when you came to deal with the application on the 19th of
27 22nd of January 1990. Neither the option, neither had the option been
28 exercised nor indeed had Mr. Gilmartin paid monies to Mr. O'Callaghan, isn't
29 that right?
- 15:53:51 30 A. I had no knowledge of this document at all. My knowledge of the case was as

- 15:53:55 1 presented in the document that you referred to earlier as the mark up.
- 2 Q. 876 Well let's look at the document on screen. There had to have been some
- 3 discussion about monies due to Mr. O'Callaghan, isn't that correct?
- 4 A. There was, yeah.
- 15:54:06 5 Q. 877 And the discussion --
- 6 A. The discussion about monies due for Mr. O'Callaghan was that Mr. O'Callaghan
- 7 was to get 3.5 million.
- 8 Q. 878 What are you reading from?
- 9 A. From the mark updated the 19th of January 1990.
- 15:54:22 10 Q. 879 So you knew that Mr. O'Callaghan --
- 11 A. Proposal --
- 12 Q. 880 You knew that Mr. O'Callaghan had to receive 3.5 million?
- 13 A. That's clearly documented in the proposal.
- 14 Q. 881 Yes. And you knew that he had already received 800,000?
- 15:54:34 15 A. Yes.
- 16 Q. 882 And Mr. O'Callaghan was also a client Riga Limited were a client of the bank
- 17 and we saw earlier a mark up in relation to Riga Limited which recorded the
- 18 agreement between Mr. O'Callaghan and Mr. Gilmartin?
- 19 A. I had no knowledge or never had any dealings with Mr. O'Callaghan other than
- 15:54:49 20 knowing him to be a client of the bank.
- 21 Q. 883 Yes. And you knew that and it was envisaged I suggest to you that when you
- 22 sanctioned this loan that out of the loan a sum of 1.35 million would have to
- 23 be paid to Mr. O'Callaghan, isn't that right? Because we see that at 4058
- 24 under the heading schedule of land purchase costs double asterisks 8.5 million
- 15:55:12 25 to be used, do you see that?
- 26 A. I do, yes.
- 27 Q. 884 So it was envisaged that Mr. O'Callaghan would get 1.35 million out of the
- 28 loan?
- 29 A. That's correct.
- 15:55:20 30 Q. 885 And that left a balance of 1.35 million?

- 15:55:23 1 A. 8.503. Sorry, I don't understand the point or the question you are getting to.
- 2 Q. 886 We are agreed that Mr. O'Callaghan was owed 3 million. In fact it was 2.7
- 3 million at this stage because he had already received 800,000?
- 4 A. Yes.
- 15:55:43 5 Q. 887 On foot of the 8.5 million, isn't that right? He had the zoning on the
- 6 adjoining site?
- 7 A. That's correct.
- 8 Q. 888 He had outline planning permission for that site isn't that correct?
- 9 A. That's my understanding.
- 15:55:55 10 Q. 889 He had a legally enforceable agreement with Mr. Gilmartin for the transfer or
- 11 for an option being granted to Mr. Gilmartin, isn't that right?
- 12 A. I am not ...
- 13 Q. 890 But even if he didn't have an option agreement with Mr. Gilmartin. It was
- 14 unlikely that Mr. Gilmartin's site would get zoning planning whilst Mr.
- 15:56:19 15 O'Callaghan's site, the site which had been zoned and designated for town
- 16 centre since the 70s or even before?
- 17 A. I didn't have a view about that, Sir.
- 18 Q. 891 It was crucial I suggest to you?
- 19 A. No, it wasn't.
- 15:56:34 20 Q. 892 Why was --
- 21 A. If I may answer the question.
- 22 Q. 893 Yes.
- 23 A. Decision taken was one which was to lend money to assemble the site, secured on
- 24 assets valued significantly in excess and with an understanding that if the
- 15:56:49 25 proposition wasn't -- six months the site would be sold.
- 26 Q. 894 First of all you weren't assembling the site you were partially assembling the
- 27 site. Part of site to be assembled?
- 28 A. The parts being assembled were a saleable commodity.
- 29 Q. 895 There was a contract. In fact the Bruton lands that contract wasn't to close
- 15:57:07 30 until September 1990, isn't that correct?

- 15:57:10 1 A. I have no knowledge of that.
- 2 Q. 896 Why were you sanctioning money to be paid to Mr. O'Callaghan? Mr. O'Callaghan
3 wasn't selling any lands, isn't that right?
- 4 A. That was I sanctioned the proposition that came to me.
- 15:57:23 5 Q. 897 Yes. That proposition that provided that out of the sanction that 1.35 million
6 would be paid to Mr. O'Callaghan and a balance would be owed to Mr.
7 O'Callaghan, isn't that correct?
- 8 A. Yes, that's correct.
- 9 Q. 898 And you knew or you must have known or it must have been explained to you why
15:57:36 10 that money was to be paid to Mr. O'Callaghan why it was due to Mr. O'Callaghan?
- 11 A. It's not in the document and I have no recollection. It is nearly 20 years
12 ago.
- 13 Q. 899 But it's in the mark up, isn't it?
- 14 A. It's not in the mark up.
- 15:57:48 15 Q. 900 I suggest to you that it is. If we go to 4057 second page under proposals?
- 16 A. Yes.
- 17 Q. 901 It says in 1988 Tom Gilmartin identified Palmerstown site and commenced its
18 assembly. He had already spent 4.4 million on land purchases/deposits and on
19 initial payment of 800,000 pounds to O'Callaghan Properties. The arrangement
15:58:17 20 with O'Callaghan involves total payment of 3.5 in return for O'Callaghan not
21 proceeding with a rival retail development of Clondalkin which had outlining
22 planning and which had secured tenants Dunne Stores and Quinnsnorth."
- 23 A. I see that.
- 24 Q. 902 So I suggest to you that whatever arrangement Mr. Gilmartin had with Mr.
15:58:38 25 O'Callaghan, it was crucial to your considerations to sanction this facility?
- 26 A. My memory of it is that, is as I said almost 20 years ago, is I sanctioned the
27 facility on the reasons that I have given on my narrative statement and that
28 was a round valuations, it was a round attaching, taking a lot of comfort from
29 the Arlington letter. And the strong recommendation that it was coming from
15:59:09 30 the specialist team.

15:59:09 1 Q. 903 You see, you postponed the second payment to Mr. O'Callaghan until after
2 designation was obtained, isn't that right?
3 A. That was one of the conditions.
4 Q. 904 Yes.
15:59:17 5 A. One of the conditions of the application.
6 Q. 905 What was to happen if the site was not to be designated?
7 A. It was going to be sold.
8 Q. 906 That was the original intention?
9 A. That was my understanding. Arlington were prepared to pay 10 million pounds
15:59:29 10 for --
11 Q. 907 But there was no enforceable agreement with Arlington, isn't that right?
12 A. There was a very strong letter or a letter interpreted by me as being a strong
13 letter coming from a very respectable --
14 Q. 908 To --
15:59:42 15 A. Public company.
16 Q. 909 Mr. Rogals says that the letter didn't feature very much, if at all?
17 A. Well it featured -- I took the decision not Mr. Rogals and it featured in my
18 decision I have to say, Sir.
19 Q. 910 Thank you very much.
15:59:56 20 A. Thank you.
21
22 CHAIRMAN: Thank you very much.
23
24 **THE WITNESS THEN WITHDREW.**
16:00:04 25
26 CHAIRMAN: The Tribunal isn't sitting tomorrow. So we sit again on Tuesday at
27 10 o'clock.
28
29 MS. DILLON: 10.30 on Tuesday.
16:00:12 30

16:00:12 1 CHAIRMAN: All right. Thank you.

2

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

4 **TUESDAY, 12TH FEBRUARY 2008, AT 10.30 A.M.**

16:01:21 5

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