

12:39:26 1

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 PM:

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3

CHAIRMAN: Ms. Dillon.

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14:08:26 5

MS. DILLON: Good afternoon, Sir. Mr. O'Callaghan please.

6

7

MR. OWEN O'CALLAGHAN CONTINUED TO BE QUESTIONED

8

BY MS. DILLON AS FOLLOWS:

9

14:08:46 10

CHAIRMAN: Good afternoon, Mr. O'Callaghan. Now, Ms. Dillon.

11 Q. 1

MS. DILLON: Good afternoon, Mr. O'Callaghan. I think on the last occasion you had given evidence in relation to a portion of the meeting of the 16th June 1993, which related in particular to the consideration of a schedule of transactions that had been identified by Deloitte & Touche and attached to a letter dated 3rd May 1993, isn't that right?

16 A.

Yes.

17 Q. 2

Now, also at that meeting, on the 16th June 1993, Mr. Gilmartin didn't attend that meeting, isn't that right?

19 A.

Yes.

14:09:21 20

Q. 3

At 9746, Mr. Deane we note wasn't in attendance either, isn't that right?

21 A.

That is correct.

22 Q. 4

And under the very first paragraph it says "Tom Gilmartin did not attend the board meeting. He had contact Seamus Maguire earlier that morning and had indicated that he was not going attend as he was unhappy with the way the situation was developing. He did not have full details and indicated he was not aware that an application had been made to the bank for an increase in facilities "Isn't that right?

14:09:44 25

26

he was not aware that an application had been made to the bank for an

27

increase in facilities "Isn't that right?

28 A.

Yes.

29 Q. 5

I think those complaints were made by Mr. Maguire on behalf of Mr. Gilmartin at that meeting, isn't that right?

14:09:59 30

14:10:02 1 A. Yes.

2 Q. 6 And I think the actual record of the minutes of the meeting at 9739,
3 signed by yourself as Chairman, under paragraph 8 any other business
4 records "Seamus Maguire on behalf of Tom Gilmartin expressed
14:10:20 5 Mr. Gilmartin's concerns that he was not being kept informed and kept up
6 to date with the affairs of Barkhill. He expressed particular concern
7 about not being informed that a loan application had a been made on behalf
8 of Barkhill to AIB. Michael O'Farrell responded that the matter had been
9 discussed at a previous meeting which was attended by Tom Gilmartin. Owen
14:10:36 10 O'Callaghan rejected any suggestion that he was not forthcoming with
11 information and he undertook to have forwarded to Tom Gilmartin a detailed
12 set of plans". Is that right?

13 A. Yes.

14 Q. 7 Did you understand from that that the complaint that was being made by
14:10:49 15 Mr. Maguire on behalf of Mr. Gilmartin was that you were in some way
16 preventing Mr. Gilmartin from being provided with full information?

17 A. That was the impression from Mr. Gilmartin, yes.

18 Q. 8 And was that relayed to the meeting by Mr. Seamus Maguire?

19 A. Yes.

14:11:04 20 Q. 9 All right. Now, I think subsequently, at 9759, on the 17th June on the
21 day following the meeting, Mr. O'Farrell of the bank telephoned
22 Mr. Gilmartin and if we could have the first paragraph increased please.
23
24 "He expressed disappointment that Mr. Gilmartin had not attended the board
14:11:25 25 meeting yesterday. He indicated that at that meeting Seamus Maguire had
26 implied that AIB might not be keeping Tom Gilmartin fully advised of the
27 position." And would it seem from that, Mr. O'Callaghan, that insofar as
28 you believed you were being criticised by Mr. Maguire about not keep
29 building Gilmartin fully appraised, Mr. O'Farrell thought criticism was
14:11:47 30 being levelled against Allied Irish Bank, isn't that right

14:11:50 1 A. Yes.

2 Q. 10 So it would seem if you are both correct, that the complaint made by

3 Mr. Maguire at that meeting was a complaint that you, on the one hand and

4 Allied Irish Bank on the other hand were not keeping Mr. Gilmartin up to

14:12:01 5 date with the information in relation to Barkhill?

6 A. Yes.

7 Q. 11 Right. Now, I think in that memorandum of the 17th June at 9759,

8 Mr. O'Farrell pointed out to Mr. Gilmartin, and it's halfway down that

9 paragraph "In this regard I indicated to him that the matter of the

14:12:21 10 application to the bank for additional finance had been discussed at the

11 last board meeting, contrary to what Seamus Maguire had indicated

12 yesterday on behalf of Tom Gilmartin. Tom indicated that he had already

13 agreed that this was the case with Seamus Maguire."

14

14:12:35 15 That would suggest that Mr. Maguire might have been incorrect in what he

16 had been suggesting, isn't that right?

17 A. Yes, yes.

18 Q. 12 And in the second last paragraph Mr. O'Farrell records Mr. Gilmartin in

19 the following terms "Basically he is unhappy that Riga are running the

14:12:48 20 project and I indicated that there was nothing we could do about that. He

21 asked if we would look at any proposal he would bring forward". Isn't

22 that right?

23 A. Yes.

24 Q. 13 Would it be fair to say and was it your understanding that Mr. Gilmartin

14:13:01 25 was unhappy with the fact that Riga were appointed project managers?

26 A. Yes.

27 Q. 14 And that Mr. Gilmartin maintained a view, be it right or be it wrong, that

28 information was not being provided to him in a timely fashion from the

29 time that Riga were appointed project managers of Barkhill?

14:13:17 30 A. Yes.

- 14:13:17 1 Q. 15 And did Mr. Gilmartin ever complain to you, Mr. O'Callaghan, about the
2 fact that he felt that matters were being kept from him?
3 A. Not at all.
- 4 Q. 16 So that insofar as he makes these complaints, he does so at meetings
14:13:30 5 through his solicitor, isn't that right?
6 A. He would make them through his solicitor or he would ring Mary Basquille,
7 he would never make that complaint to members of the bank like McGrath, or
8 O'Farrell or myself or John Deane.
9 Q. 17 But he did do so through Mr. Maguire, isn't that right?
14:13:47 10 A. Yes.
11 Q. 18 And he did do so later through Mr. Sheeran when Mr. Sheeran was appointed
12 effectively as an alternate director to act on behalf of Mr. Gilmartin,
13 isn't that right?
14 A. That's correct.
- 14:13:58 15 Q. 19 Now, I think Mr. O'Farrell, at 9760 on the following page, in the third
16 line in relation to the loan offer that was being made to Barkhill in
17 connection with the letter of offer Mr. O'Farrell said "In this context
18 while Barkhill Limited could accept the letter of offer we would be going
19 further than that this and seeking shareholder agreement. Accordingly I
14:14:20 20 indicated to him that I would send him a copy of the letter of offer and I
21 hoped he would attend the board meeting next week. If this consent was
22 not forthcoming and consent of all the shareholders I would not be
23 allowing any draw down". Isn't that right?
24 A. Yes.
- 14:14:36 25 Q. 20 And is it fair to say that Mr. O'Farrell appears to have taken that step
26 in the light of fact that dissatisfaction had been expressed by
27 Mr. Maguire be on behalf of Mr. Gilmartin at the board meeting?
28 A. I would say that Michael O'Farrell's dissatisfaction was because Tom
29 Gilmartin did not turn up to the board meeting.
- 14:14:55 30 Q. 21 No, with respect, Mr. O'Callaghan, the step that Mr. O'Farrell is

14:14:57 1 outlining to Mr. Gilmartin in this memorandum is an additional step, in
2 other words, what Mr. O'Farrell is saying to Mr. Gilmartin that not alone
3 will Barkhill have to accept the letter of loan offer from the bank, but
4 in addition the shareholders will have to give their agreement, isn't that
14:15:11 5 right?

6 A. Yes.

7 Q. 22 I am suggesting to you that he is advising Mr. Gilmartin of this because
8 of the fact that complaints had been made by Mr. Gilmartin about, as
9 Mr. O'Farrell understood it, the way the bank were conducting the
14:15:24 10 business, isn't that right?

11 A. Yes.

12 Q. 23 You had understood that that was a complaint that encompassed yourself,
13 isn't that right?

14 A. Yes.

14:15:31 15 Q. 24 Because that's what you have recorded in the board minutes, isn't that the
16 position?

17 A. Correct.

18 Q. 25 Now, I think that Mr. O'Farrell did indeed write on the 21st June 1993, at
19 9777 please, he referred to that telephone conversation, in relation to
14:15:46 20 the letter of loan offer and explained to Mr. Gilmartin that there had
21 been a series of meetings at which the -- before the letter of loan offer
22 had issued, isn't that right?

23 A. Yes.

24 Q. 26 He sets out the reason why the monies were required and in the last
14:16:03 25 paragraph he said "We understand that a board meeting is scheduled for
26 Thursday next at 3 pm at Bank Centre and we hope --

27 A. Sorry, I haven't got that.

28 Q. 27 It's at the bottom in the third paragraph "We understand a board meeting
29 is schedule for Thursday next" that's the 24th June "At 3 pm in Bank
14:16:23 30 Centre and we obviously hope that you as a significant shareholder can

- 14:16:26 1 attend and provide the required consent". That is a consent to accepting
2 the letter of loan offer, isn't that right?
- 3 A. Yes.
- 4 Q. 28 "If you are unable to attend let me have your consent by fax in the
14:16:37 5 attached format prior to the meeting". Isn't that right?
- 6 A. Yes.
- 7 Q. 29 I think by additional letter on the same day he confirms that the bank
8 would discuss any financing options that Mr. Gilmartin could bring to the
9 bank, isn't that right?
- 14:16:50 10 A. Yes.
- 11 Q. 30 And I think that on the 24th June at 9796, the board approved the letter
12 of loan offer, isn't that right, and at paragraph 6 you will see that a
13 draft letter from the shareholders relating to the borrowing was
14 considered and Tom Gilmartin was telephoned for his opinion on the matter
14:17:13 15 and he approved of same, subsequently the shareholders letter of consent
16 was signed by those present and sent by fax, by Tom Gilmartin to Allied
17 Irish Bank duly signed, isn't that right?
- 18 A. Yes.
- 19 Q. 31 So that what Mr. O'Farrell had outlined to Mr. Gilmartin would happen in
14:17:31 20 view of Mr. Gilmartin's stated unhappiness with the way the bank were
21 conducting themselves came to pass, isn't that right?
- 22 A. Yes.
- 23 Q. 32 Wouldn't it be fair to say, Mr. O'Callaghan, that this was the first time
24 a step like this had been taken by the bank to obtain Mr. Gilmartin's
14:17:45 25 signature in relation to a letter of loan offer, isn't that right?
- 26 A. Yes.
- 27 Q. 33 Prior to this when the loans had been made there had been no documentation
28 other than the directors attending meetings, isn't that right?
- 29 A. Yes.
- 14:17:59 30 Q. 34 And a decision of the board, and do you agree with me that this was a step

- 14:18:03 1 that was taken by Mr. O'Farrell in response to the complaints that had
2 been made to the bank and yourself about Mr. Maguire on behalf of
3 Mr. Gilmartin?
- 4 A. I can't speak for Mr. O'Farrell, I'm not sure of that.
- 14:18:17 5 Q. 35 Yes but doesn't follow from the sequence of documentation that I have just
6 shown you, following on Mr. O'Farrell's telephone conversation with
7 Mr. Gilmartin, on the day after the board meeting, and the correspondence,
8 that the reason this step was taken because it was the bank reaction to
9 Mr. Gilmartin's complaints or criticisms as expressed by Mr. Maguire?
- 14:18:39 10 A. Well, you could say that, but you could also say it was a reaction to the
11 fact that Tom Gilmartin did not turn up to board meetings.
- 12 Q. 36 Yes. At 9799, you will see there a letter of the 24th June '93, addressed
13 to Mr. O'Farrell signed by Mr. Gilmartin referring to the letter of offer
14 dated 18th June '93 addressed to Barkhill, and in the second paragraph
15 stating "As a shareholder in the company I hereby consent to the company
16 borrowing the additional funds as set out in the letter of offer on the
17 terms specified in that letter plus any additional borrowings deemed
18 necessary up to a maximum additional amount of 250,000 pounds" isn't that
19 right?
- 14:19:22 20 A. Yes.
- 21 Q. 37 Was this the first occasion on which such a letter had been obtained from
22 Mr. Gilmartin?
- 23 A. I'm not sure, it looks like that but I'm not certain of that.
- 24 Q. 38 To your knowledge prior to this was any similar letter obtained from
25 Mr. Gilmartin?
- 14:19:36 26 A. I don't think so.
- 27 Q. 39 I see. Would you agree that it appears to arise as a result of what were
28 the perceived criticisms of Allied Irish Bank as explained by
29 Mr. O'Farrell to Mr. Gilmartin when he contacted him on the 17th June
14:19:52 30 1993?

14:19:53 1 A. No I wouldn't agree, this was -- this all came about because Tom Gilmartin
2 would not turn up to board meetings and help to us run the company
3 properly. You can't blame the banks for this or anybody for this except
4 Gilmartin.

14:20:07 5 Q. 40 Right. Perhaps if I show you, Mr. O'Callaghan, 9760, and this is the
6 continuation of Mr. O'Farrell's telephone conversation with Mr. Gilmartin
7 on the 17th June 1993, the day after the board meeting, at which
8 Mr. Maguire made his complaints and I just quote to you what Mr. O'Farrell
9 says of his note of his telephone conversation with Mr. Gilmartin, he
14:20:34 10 says:

11
12 "I indicated that we would not let any drawdown of facilities unless all
13 the shareholders accepted the rational and the reasoning behind the
14 additional borrowings and supported same. In this context while Barkhill
14:20:46 15 could accept the letter of offer we would be going further than this and
16 seeking shareholder agreement". Isn't that right?

17 A. Yes.

18 Q. 41 And do you agree with me that this arose because of the complaints that
19 were expressed at the meeting the previous day?

14:21:01 20 A. No I don't think so, no, I don't agree with that.

21 Q. 42 Therefore you disagree with Mr. O'Farrell's memorandum at 9759?

22 A. The reason why this --

23 Q. 43 Just a continuation, if you just a moment?

24 A. Sorry.

14:21:14 25 Q. 44 Yes. You disagree with the content of Mr. O'Farrell's memorandum at 9759,
26 where he identified at the commencement of his telephone conversation the
27 problem that he was contacting Mr. Gilmartin about, namely "I indicated
28 that at that meeting Seamus Maguire had implied that AIB might not be
29 keeping Tom Gilmartin fully advised of the position".

14:21:37 30 A. Yes.

14:21:38 1 Q. 45 And that it is in that context that Mr. O'Farrell proceeds then in the
2 course of the phone conversation to reassure Mr. Gilmartin and then to
3 take the additional step of protecting the bank's position by requiring
4 Mr. Gilmartin to sign as a shareholder a document saying that he agrees
14:21:57 5 with the loan, isn't that right?
6 A. That's correct.
7 Q. 46 Right. Now did you sign such a document, Mr. O'Callaghan?
8 A. I presume if I was asked I did, yes.
9 Q. 47 Yes. Can you recollect being furnished with a document?
14:22:10 10 A. Oh God no.
11 Q. 48 Right. But you were nonetheless at the meeting, isn't that right --
12 A. Yes.
13 Q. 49 -- on the 24th June at which you verbally expressed as a director, the
14 fact that you were in support of the letter of loan offer, isn't that
14:22:20 15 right?
16 A. Yes.
17 Q. 50 And I think that that is recorded at 9796, and I think together then with
18 Mr. Maguire, Mr. Pitcher and I think possibly yourself but I'm not sure,
19 at 9798, there is a formal acceptance and I think it is likely yours was
14:22:45 20 probably the first signature, Mr. O'Callaghan, but clearly I can't state
21 that --
22 A. Possibly, yes.
23 Q. 51 I can't state that positively, isn't that right?
24 A. Yes.
14:22:52 25 Q. 52 Now, also at these meetings I think an issue arose in relation to Connell
26 Wilson, isn't that right?
27 A. Yes.
28 Q. 53 And the position in relation to Connell Wilson, Mr. O'Callaghan, appears
29 to have been that Connell Wilson had originally been retained by
14:23:08 30 Mr. Gilmartin and they had not been paid their money, isn't that right?

14:23:13 1 A. Yes.

2 Q. 54 And I think that at that meeting of the 16th June, 1993 at 9749, in the
3 third paragraph please, the issue, the following is stated:
4

14:23:32 5 "The issue of further fees was discussed in the context of the letter
6 recently received from Connell Wilson. It was indicated by Owen
7 O'Callaghan that we were not aware of the existence of this liability and
8 indeed questioned liability of same. It had not been included by Tom
9 Gilmartin at the time Riga or indeed AIB CM had become involved in the
14:23:50 10 company. It was agreed that Seamus Maguire would take the matter up
11 directly with Connell Wilson by way of a letter to them seeking more
12 information". Isn't that right?

13 A. Yes.

14 Q. 55 Now I that I subsequently, correct me at any stage, Mr. O'Callaghan, if
14:24:04 15 you are wrong -- if I am wrong in relation to this, but the position was
16 that Mr. Gilmartin raised the issue of the Connell Wilson fees at a board
17 meeting, isn't that right?

18 A. Yes.

19 Q. 56 And subsequently correspondence from the solicitors for Connell Wilson was
14:24:19 20 received, isn't that right?

21 A. Yes.

22 Q. 57 And they wrote, I think on the 26th May 1993, in relation to the sum of
23 150,000 pounds saying they would institute proceeding if they weren't
24 paid, isn't that right?

14:24:31 25 A. Yes.

26 Q. 58 Now I think a summons issued on the 8th July 1993 against Barkhill by
27 Connell Wilson, isn't that right?

28 A. Yes.

29 Q. 59 And a meeting was held at Bank Centre, attended by yourself, I think the
14:24:43 30 bank, Mr. Maguire and Mr. Deane, in which the view was that O'Connell

14:24:49 1 Wilson was likely to succeed, isn't that right, against Barkhill?

2 A. Yes.

3 Q. 60 And Mr. O'Farrell was to contact Mr. Gilmartin to see if he could progress

4 matters, isn't that right?

14:25:01 5 A. Yes.

6 Q. 61 I think Mr. Gilmartin swore an affidavit, isn't that right, in support of

7 the Connell Wilson claim against Barkhill, isn't that right?

8 A. I think so, yes.

9 Q. 62 Isn't that right?

14:25:10 10 A. Mm-hmm.

11 Q. 63 And I think a settlement was entered into whereby you would pay 125,000

12 pounds in three instalments and that agreement was made around November

13 1993, isn't that right?

14 A. Was it 125 or 100?

14:25:24 15 Q. 64 125.

16 A. Okay.

17 Q. 65 Right. And I think Mr. Gilmartin swore his affidavit on the 29th November

18 1993, in relation to supporting effectively the Connell Wilson position,

19 isn't that right?

14:25:35 20 A. Yes, yes.

21 Q. 66 On the 10th December 1993, a further settlement was reached in the sum of

22 100,000 pounds in four instalments, isn't that right?

23 A. Yes.

24 Q. 67 That's a sterling amount.

14:25:44 25 A. Yes.

26 Q. 68 Right. And at the same time I think you retained Connell Wilson initially

27 on a short-term contract in order to see could they assist in procuring

28 investor funding for the onward development of Barkhill?

29 A. Yes.

14:25:59 30 Q. 69 In other words, what you were bringing in Connell Wilson for on a

14:26:04 1 professional basis was to see about the introduction of English investors
2 or the English market into the development of Barkhill, preferably by
3 introducing a development partner, isn't that right?
4 A. Yes.

14:26:16 5 Q. 70 And I think would you agree that ultimately a development partner was
6 introduced and a number of development potential partners having
7 previously been introduced?
8 A. Yes.

9 Q. 71 Right. I think that ultimately and it was much later, in 1996, you
14:26:32 10 entered into an agreement with a development partner, isn't that right?
11 A. Yes.

12 Q. 72 That was Grosvenor?
13 A. Yes.

14 Q. 73 Now, who do you say introduced Grosvenor into the situation vis-a-vis
14:26:44 15 Barkhill?
16 A. I did.

17 Q. 74 You did. And it was through your contacts that Grosvenor were brought
18 into the Barkhill development?
19 A. Yes.

14:26:53 20 Q. 75 Right. Would you dispute what Mr. Gilmartin has said and which
21 Mr. Gilmartin claims it was as a result of his contacts that the ultimate
22 investor was found in relation to Barkhill?
23 A. Completely wrong.

24 Q. 76 Right.

14:27:07 25 A. Any investor that Gilmartin and Forman approached ran away from the place,
26 we were lucky that they didn't go to Grosvenor we would have lost them as
27 well.

28 Q. 77 Right. Did you I think recommend to the bank that Connell Wilson should
29 be retained, isn't that right?
14:27:22 30 A. Only because Tom Gilmartin wanted them, we did not want them there. We

- 14:27:25 1 didn't have a choice.
- 2 Q. 78 And I think that you did consider at a number of board meetings, together
- 3 with Mr. Deane, various contacts that had been introduced by Connell
- 4 Wilson, isn't that right?
- 14:27:38 5 A. Yes.
- 6 Q. 79 None of them materialised ultimately, into a deal that was acceptable,
- 7 isn't that right?
- 8 A. Not alone did they not materialise, they were damaged because of the
- 9 approach made by Connell Wilson and -- in particular.
- 14:27:52 10 Q. 80 When you say --
- 11 A. They were put off getting involved in Quarryvale actually.
- 12 Q. 81 Are you saying that Connell Wilson deliberately put people off
- 13 investigating in Quarryvale having been retained by you to bring in
- 14 investors, particularly outside investors?
- 14:28:07 15 A. No not deliberately, they just were not capable of handling that
- 16 situation, they were the wrong people for that job. They were basically
- 17 industrial surveyors who would deal with people in industrial units and
- 18 things like that, they absolutely no knowledge at all of retail
- 19 development.
- 14:28:25 20 Q. 82 And did you retain anybody on your behalf to bring in this type of
- 21 development, whether it was in this country or it was in England?
- 22 A. Oh, yes.
- 23 Q. 83 Who did you retain?
- 24 A. A company called Erman Lewis.
- 14:28:38 25 Q. 84 Yes and who within in that company, Mr. O'Callaghan, was instrumental in
- 26 bringing in the Grosvenor deal?
- 27 A. A man by the name of Charles Lee.
- 28 Q. 85 Did you pay Mr. Lee effectively a success fee?
- 29 A. A fee? Of course I did, yes.
- 14:28:51 30 Q. 86 Did you pay that fee to Mr. Charles Lee or did you pay it to the company?

- 14:28:55 1 A. I think it was the company, I'm not certain of that now, it was either him
2 or the company, I can't say for definite.
- 3 Q. 87 Is it possible that that was a direct payment to Mr. Lee?
4 A. It could have been, I can't say for definite.
- 14:29:05 5 Q. 88 In other words, that you didn't make a payment to the company in relation
6 to effectively the finder's fee?
7 A. I can't be positive, it's possibly was to Mr. Lee, yes.
- 8 Q. 89 All right. In that case it would mean that you had retained Mr. Lee
9 rather than the company, isn't --
- 14:29:18 10 A. It yes.
- 11 Q. 90 Would you agree with that, that that is probably what you did?
12 A. Possibly but I can't be certain of that.
- 13 Q. 91 Can you remember when it was, Mr. O'Callaghan, that you retained Mr. Lee?
14 A. Probably '95 I'd say, '95 or '96, I can't be certain, '95 or '96.
- 14:29:36 15 Q. 92 At this stage in 1993, late '93 you had retained or agreed to Connell
16 Wilson being retained?
17 A. We had to agree Connell Wilson, Tom Gilmartin wanted them to be kept in
18 place for a while and we did that knowing that we were probably making a
19 mistake but didn't have an alternative but to do that, or any other choice
14:29:52 20 but to leave them on board for a while. It might be hard to explain this
21 but those people, at the level Connell Wilson were at would not have been
22 in the position to attract any of the people like British Land or
23 Hammerson or Heron or any of those people to Quarryvale, they wouldn't
24 have known how to go about it and they would have done more damage than
14:30:11 25 good and they actually did that I'm afraid.
- 26 Q. 93 Yes, is it your position then, Mr. O'Callaghan, to the Tribunal that in
27 the knowledge that these were not the right people for the job and in the
28 knowledge that they would more than likely do damage to the Quarryvale
29 development, you nonetheless agreed to them being retained?
- 14:30:27 30 A. Begrudgingly, yes.

- 14:30:30 1 Q. 94 As a favour in effect to Mr. Gilmartin?
- 2 A. Absolutely.
- 3 Q. 95 Notwithstanding your belief as you say transpired to be the case that they
- 4 would in effect damage these attempts, is that the position?
- 14:30:39 5 A. Absolutely, yes.
- 6 Q. 96 Right. Do you regard that as a good business decision can I ask you,
- 7 Mr. O'Callaghan?
- 8 A. No, very, very poor business decision actually.
- 9 Q. 97 Now also at this time I any July 1993 the audit was still continuing,
- 14:30:50 10 isn't that right, the audit in relation to the first period in Barkhill?
- 11 A. Yes.
- 12 Q. 98 And I think that Mr. Deane, we have seen was in correspondence with
- 13 Mr. Fleming, 9915, in this letter he asks Mr. Fleming to let him know if
- 14 he received all the information to enable the accounts to be prepared,
- 14:31:13 15 isn't that right?
- 16 A. Yes.
- 17 Q. 99 And this is in relation to the first audit period and we see at 9944, in a
- 18 document dated 3rd August 1993, that Mr. Fleming lists out matters which
- 19 he describes as "unresolved matters" and at 9946 we see that item 45,
- 14:31:39 20 which is the second last item on that page relates to two amounts on the
- 21 AIB number 2 account re sundry of 10,000 which were to be transferred to
- 22 the directors loan, isn't that right?
- 23 A. Yes.
- 24 Q. 100 They were the two items I think being the payment to Mr. Lawlor and
- 14:31:56 25 Mr. McGrath, isn't that the position?
- 26 A. Yes.
- 27 Q. 101 Item 76 at 7479, we see that item 76 being the Shefran invoices of 25, 40
- 28 and 15 totalling 80,000 pounds, the note is "Shefran invoices see C55 not
- 29 available", isn't that right?
- 14:32:19 30 A. Yes.

- 14:32:20 1 Q. 102 And then it's referred to in the letter. That would suggest, would you
2 agree with me, Mr. O'Callaghan, that by the 3rd August 1993, those
3 invoices were -- had not been produced to Deloitte & Touche?
4 A. Yes, they were probably still with me at that stage, yes.
- 14:32:35 5 Q. 103 All right. Now you would have known of course, from the earlier meetings
6 that they were looking for those invoices, isn't that right?
7 A. I can't say that, I'm not certain.
- 8 Q. 104 You must have --
9 A. I wouldn't have taken any great notice of it.
- 14:32:48 10 Q. 105 That's an entirely different matter, Mr. O'Callaghan, but what I am
11 putting to you is you must have known from your consideration of the
12 schedule of unresolved transactions which you considered because you made
13 notations on it, that those Shefran invoices had not been produced, isn't
14 that right?
15 A. What notations are they?
16 Q. 106 We spent some time looking at that documentation?
17 A. Yes, but again those notations were not made at that meeting.
- 18 Q. 107 Regardless, Mr. O'Callaghan, not wishing to argue with you, regardless of
19 when the notations were made, it follows from a consideration of the
14:33:20 20 document at all, you must have known, 9539 please, from the heading on the
21 document, which is entitled "Payments transaction for which Deloitte &
22 Touche have received no supporting documentation" that they had not
23 received any supporting documentation in relation to those three Shefran
24 invoices, do you agree with that?
14:33:43 25 A. Yes.
26 Q. 108 Right. And you had received that document and you had considered it in
27 whatever manner you had considered it, Mr. O'Callaghan, before you
28 attended at the board meeting on the 16th June '93, isn't that right?
29 A. Was that document at the board meeting, I'm not too sure if it was?
- 14:34:02 30 Q. 109 The document I think is regarded as having been noted?

- 14:34:07 1 A. I don't know it was produced at the board meeting, I have been thinking
2 about this since we discussed it on Thursday, and I don't think it was.
- 3 Q. 110 Well you -- insofar as the documentation, Mr. O'Callaghan, was attached to
4 the letter of the 3rd May 1993?
- 14:34:21 5 A. Yes.
- 6 Q. 111 Isn't that right?
- 7 A. Yes.
- 8 Q. 112 And insofar as you were furnished I think with that letter, would you
9 agree with me you must also have been furnished with the schedule
10 attached?
- 11 A. I can't say for definite that I was, yeah, I can't say I was, I certainly
12 don't remember it.
- 13 Q. 113 But do you agree that you had it at some stage because you wrote on it?
- 14 A. I had of course, yes.
- 14:34:42 15 Q. 114 Doesn't it following that once you considered it at any stage,
16 Mr. O'Callaghan, you must have alerted yourself to the fact that Deloitte
17 & Touche didn't have the invoices, isn't that right?
- 18 A. Yes.
- 19 Q. 115 Certainly by the 3rd August '93 at 7479, item 76 wherever the invoices
14:34:58 20 were, would you agree with me they had not at that stage been given to
21 Deloitte & Touche?
- 22 A. Yes.
- 23 Q. 116 Isn't that right? Now I think that on the, in July of 1993,
24 Mr. O'Callaghan, following the approval of the number 3 Barkhill loan and
14:35:22 25 the agreement to the implementation of that loan that we have just seen, a
26 new system in relation to authorising invoices came into play between
27 yourself and the bank, do you agree with that?
- 28 A. Yes, it was more regularised, yes.
- 29 Q. 117 Do you agree that it became a more formal operation than had been in
14:35:41 30 existence up to that point in time?

- 14:35:42 1 A. Yes, I do.
- 2 Q. 118 Right. And if we look for example at 9805, on the 28th June 1993 you
3 wrote to Ms. Basquille of Allied Irish Bank and you enclosed for her
4 attention invoice for payments made since February last by Riga on behalf
14:36:04 5 of Barkhill for the Quarryvale project. As you know the payments had to
6 be made by Riga as the new Barkhill facilities had not been sanctioned,
7 these payments are itemised under the headings of the most recent Barkhill
8 sanctioned schedule. This invoice must be countersigned by Barry Pitcher,
9 isn't that right?
- 14:36:23 10 A. Yes.
- 11 Q. 119 Up to this particular point in time, Mr. O'Callaghan, insofar as the
12 Barkhill number 2 loan was concerned, such a system as is outlined here by
13 you was not in place, isn't that right?
- 14 A. That's right.
- 14:36:34 15 Q. 120 So can you just explain to the Tribunal what led to the change in the
16 system between yourself and the bank insofar as claiming expenses was
17 concerned or ensuring that bills were paid?
- 18 A. Well, you know, it's a long, long time ago, but as far as I can recollect
19 at this stage the land, it wasn't zoned officially, but it was as good as
14:36:56 20 zoned, and I think this is June of '93, and prior to that it was a real
21 struggle to get fund at any stage to do anything from AIB and we were only
22 prepared to proceed with this provided the whole thing was regularised
23 properly, we didn't want to be struggling like we were to get money
24 sanctioned for Quarryvale, I think that's how that came about.
- 14:37:22 25 Q. 121 Yes, sorry attached to that letter, Mr. O'Callaghan, at 9806, we see a
26 breakdown.
- 27 A. Yes.
- 28 Q. 122 The first item relates to paying Westside Construction a sum of 8,300, the
29 second is enclosing of entire site and removal of itinerants, isn't that
14:37:40 30 right?

14:37:41 1 A. Yes.

2 Q. 123 Then a planning application fees to Mr. Ambrose Kelly, signed by yourself
3 and Mr. Pitcher, isn't that right?

4 A. Yes.

14:37:49 5 Q. 124 Now, at 9823 on the 1st July it would appear that your letter of the 28th
6 June '93 that we just looked at, crossed with a letter from Ms. Basquille,
7 isn't that right?

8 A. Yes.

9 Q. 125 Because in the first paragraph graph you say "I am in receipt of the your
14:38:06 10 letter of the 28th June regarding drawdown instructions for the above,
11 obviously our letters have crossed" isn't that right?

12 A. Yes.

13 Q. 126 "Having spoken to you this morning on the telephone I now enclose the
14 following.

14:38:17 15 1. Drawdown request signed by myself.
16 2. Copy invoices and correspondence to substantiate the Riga invoice
17 separately sent to you". Isn't that right?

18 A. Yes.

19 Q. 127 Then beneath that "Westside Construction Limited invoices for the months
14:38:30 20 of February, March, April, May and June". And then beneath that:
21 "3. Dublin County Council itinerant committee copy letter enclosed to Dan
22 O'Sullivan Dublin County Council.
23 4. Westside Construction form embankment etcetera copy invoice enclosed.
24 5. Reg Brogan in removing itinerants, this amount was paid in "cash."
14:38:53 25 there is no invoice available.
26 Reg Brogan and his "crew" we the people who actually removed the
27 itinerants from the site.
28 6. Ambrose Kelly see copy invoice enclosed.
29

14:39:05 30 You also return, signed by yourself, Seamus Maguire's request for legal

- 14:39:09 1 fees and can please add this amount to the invoice?"
- 2 Then you included an ESB invoice and the total of the invoice after those
- 3 adjustments should 59,456 pounds. Isn't that right?
- 4 A. Yes.
- 14:39:20 5 Q. 128 Now, do you agree with me that following on the letter that had been
- 6 written by Ms. Basquille and your telephone conversation what the bank
- 7 were now requiring from you, Mr. O'Callaghan, was the back up
- 8 documentation in relation to the invoices?
- 9 A. Yes and what we were requiring from the bank was a regular system.
- 14:39:34 10 Q. 129 Right.
- 11 A. Sorry, it went both ways, there were two sides to this situation.
- 12 Q. 130 Yes. According to the letter of the 1th July '93, following your
- 13 discussion with Ms. Basquille, you were sending her in the first instance
- 14 the drawdown, but then thereafter the invoices to substantiate the Riga
- 14:39:52 15 claim, is that right?
- 16 A. Yes.
- 17 Q. 131 Prior to this system being introduced at this stage in July of 1993, what
- 18 had happened was when Riga made payments on behalf of Barkhill, it
- 19 informed the bank of those payments and then got a payment back to Riga,
- 14:40:07 20 isn't that right?
- 21 A. That's right.
- 22 Q. 132 And there was no detailed accounting between the bank and Riga in relation
- 23 to those payments, isn't that right?
- 24 A. There was, indeed there was.
- 14:40:18 25 Q. 133 In relation to the earlier period?
- 26 A. Yes.
- 27 Q. 134 Yes. There would have been an authorisation by you I think,
- 28 Mr. O'Callaghan, and possibly co-signed on some occasions or sent to
- 29 England or retrospective signing by Mr. Gilmartin, isn't that right?
- 14:40:32 30 A. Yes.

- 14:40:33 1 Q. 135 But insofar as what you are now providing here in this letter at 9823, you
2 are sending under item two, the copy invoices and correspondence to
3 substantiate the Riga invoice, isn't that right?
- 4 A. That's correct.
- 14:40:50 5 Q. 136 What you had on the first instance on the 28th June '93 at 9805, sent to
6 Ms. Basquille was the Riga invoice at 9806, isn't that right?
- 7 A. Yes.
- 8 Q. 137 Yes. In other words what you had done is you had made up an invoice
9 itemising within it the expenses for which you required to be reimbursed
10 which had been paid by Riga?
- 11 A. Yes, I sent this to Barkhill.
- 12 Q. 138 You did. And then on the following on your discussion with Ms. Basquille
13 and her letter to you on the 1st July, you then sent her all of the back
14 up documentation in relation to those items, isn't that right?
- 14:41:32 15 A. Yes.
- 16 Q. 139 Right. That was not something that had been happening I suggest to you,
17 Mr. O'Callaghan, up to this particular point time?
- 18 A. That's because Riga was being paid.
- 19 Q. 140 Yes and attached to this --
- 14:41:44 20 A. Can I just say every month, every penny that was paid was with the
21 knowledge of the bank, either before that date or after that date.
- 22 Q. 141 But the point I am making to you, Mr. O'Callaghan, is that it is at this
23 point when the Barkhill number 3 loan come into operation that this system
24 that we see now for the first time on the 1st July '93 comes into place,
14:42:05 25 isn't that right?
- 26 A. Yes that's correct, at our request.
- 27 Q. 142 Yes. And what you are now doing with the bank on the 1st July '93, is you
28 are sending the drawdown request, which is in the Riga format that we see
29 on screen, but in addition to that, you are sending them the back up
14:42:22 30 documentation, 9826 please, you are sending them these invoices,

14:42:28 1 Mr. O'Callaghan, isn't that right?

2 A. Yes.

3 Q. 143 And these are the Westside Construction invoices, 9827 please, 9828, 9829,
4 9830, 9831 is the letter to Mr. O'Sullivan in relation to the removal of
14:42:51 5 the itinerants from the site and the payment of 5,000 pounds, isn't that
6 right?

7 A. Yes.

8 Q. 144 Then at 9832 is another invoice from Westside Construction, 9833 is the
9 invoice from Ambrose Kelly, isn't that right?

14:43:09 10 A. Yes.

11 Q. 145 So what you are providing to the bank on this occasion for the first time
12 are all of the invoices at 9806, that in effect back up your request for
13 payment, isn't that right?

14 A. Yes.

14:43:25 15 Q. 146 Right. And that was not something that had happened previously,
16 Mr. O'Callaghan?

17 A. Not in that type of detail.

18 Q. 147 Not in that detail. And I think that allowing an adjustment for the
19 payment of the two and a half thousand pounds to Mr. Maguire at 9490 in
14:43:44 20 July 1939, a cheque for 56,956 pounds issued to Riga in relation to the
21 payments that Riga had made and which you had itemised on the invoice at
22 9806, do you agree with that?

23 A. Yeah that's right. That was Riga being -- that's right, that's correct,
24 Riga reimbursed.

14:44:02 25 Q. 148 Yes. With the exception of the two and a half thousand which I think was
26 paid directly Mr. Seamus Maguire, isn't that right?

27 A. I think so, yeah.

28 Q. 149 So the system that's in place here is now you are sending the
29 authorisation which has to be countersigned by Mr. Pitcher together with
14:44:17 30 all of the back up documentation substantiating the payments that Riga had

- 14:44:21 1 made on behalf of Barkhill, is that right?
- 2 A. Yes.
- 3 Q. 150 On foot of that then those payments are made, isn't that right?
- 4 A. Yes.
- 14:44:28 5 Q. 151 And we see again at 9984, on the 17th August '93, you sent invoices for
6 payment and at 9985, sorry 9986 they are also itemised, isn't that right?
- 7 A. Yes.
- 8 Q. 152 And I think you furnished the back up documentation and in October of '93
9 we see at 10225, you again sent 10226.
- 14:45:04 10 A. Yes.
- 11 Q. 153 The breakdown and with these you provide the back up documentation and
12 then the cheque issues, isn't that right?
- 13 A. Yes.
- 14 Q. 154 So it would be fair to say, Mr. O'Callaghan, that by this stage you have
14:45:15 15 put your relationship in relation to the payment of expenses on a more
16 formal footing than had been the case prior to the Barkhill number 3 loan,
17 do you agree that?
- 18 A. Yes as I said at our request, yes, that's correct.
- 19 Q. 155 Fine. And I think it is the case that that doesn't seem to be minuted at
14:45:32 20 any of the meetings, the board meetings that took place, but it was
21 something that was agreed, either in correspondence or in conversation?
- 22 A. Conversation.
- 23 Q. 156 Between yourself and Ms. Basquille, is that right?
- 24 A. And Mr. O'Farrell.
- 14:45:45 25 Q. 157 Between Mr. O'Farrell and yourself, is that right?
- 26 A. Yes.
- 27 Q. 158 And that was because there was a concern in the bank following on the
28 complaints of Mr. Gilmartin about the accounting as between yourself and
29 the bank?
- 14:46:00 30 A. No because of my concern I'm afraid.

- 14:46:03 1 Q. 159 Well, did your concern arise, Mr. O'Callaghan, because of the complaints
2 that had been made by Mr. Gilmartin?
3 A. Absolutely not. Mr. Gilmartin's complaints, Mr. Gilmartin was complaining
4 about anything as far as I was concerned really, because he was sitting in
14:46:17 5 Luton doing absolutely nothing. These were my problems, I was sick and
6 tired of going to the bank and asking and requesting and begging for money
7 for Barkhill when in reality I shouldn't be doing that at all. It was --
8 I wanted this system set up, otherwise we weren't going to continue with
9 Barkhill, this was the reason for this.
- 14:46:33 10 Q. 160 So you wanted this system set up?
11 A. Of course I did.
- 12 Q. 161 Which tracked effectively all of the payments that Riga made on behalf of
13 Barkhill?
14 A. Absolutely I was tired of Riga funding Barkhill it wasn't it's job really.
- 14:46:45 15 Q. 162 Yes. In support of that as between yourself and the bank, you were now
16 providing the bank with the invoices that had originally been paid by Riga
17 on behalf of Barkhill?
18 A. Yes.
- 19 Q. 163 And that system comes into place if I understand the sequence correctly,
14:46:59 20 Mr. O'Callaghan, for the first time in July of 1993, is that correct?
21 A. I'm not sure when it came in.
- 22 Q. 164 At 9805 was the first correspondence in the sequence, and that is changed
23 by a letter of yours of 9823 that I have shown you where you provide the
24 first series of detailed information, I think on the 1st July 1993, isn't
14:47:29 25 that right?
26 A. Yes.
- 27 Q. 165 And do you say that that has nothing to do with the complaints that had
28 been made at the meeting at which Mr. Maguire made complaints on behalf of
29 Mr. Gilmartin to you and to the bank?
14:47:42 30 A. Absolutely nothing.

14:47:44 1 Q. 166 Right. That meeting I think took place on the 16th June 1993, isn't that
2 right, I think I showed you --
3 A. Yes, you did.
4 Q. 167 The date --
14:48:01 5 A. I thought it was coming up again.
6 Q. 168 I think you had signed the minutes of the meeting, isn't that right, of
7 the 16th June which records the complaints that were made by Mr. Maguire,
8 isn't that right?
9 A. Yeah well, okay.
14:48:14 10 Q. 169 I think you had signed those minutes, Mr. O'Callaghan, isn't that right?
11 A. Yes.
12 Q. 170 And the bank itself had made it's own notes and they had subsequently
13 contacted Mr. Gilmartin about their concerns, isn't that right?
14 A. Yes.
14:48:30 15 Q. 171 9738, this is the record of the minutes of the meeting of the 16th June
16 '93, isn't that right and at 9739 you can satisfy yourself,
17 Mr. O'Callaghan, that you signed the minutes, isn't that right?
18 A. Yes, yes.
19 Q. 172 Recorded at paragraph 8 were Mr. Maguire's complaints in relation to what
14:48:55 20 Mr. Gilmartin had obviously said to him, isn't that right?
21 A. Yes.
22 Q. 173 Where you reject any suggestion, you are not forthcoming with information,
23 is that right?
24 A. That's correct, indeed.
14:49:05 25 Q. 174 And do you say the subsequent change in the invoicing system between
26 yourself and the bank which occurs on the 1st July 1993, is unconnected to
27 the complaints that were made by Mr. Maguire on behalf of Mr. Gilmartin
28 about lack of information?
29 A. With the greatest of respect, I took very little notice of what was said
14:49:26 30 by Tom Gilmartin because it was totally untrue. As I said to you he was

14:49:29 1 doing absolutely nothing except making silly complaints like this which
2 were totally wrong. The reason why the system was changed because I
3 wanted it changed, I was sick and tired of approaching the bank and asking
4 them for fees to pay the, monies to pay the Barkhill outstanding accounts.
14:49:45 5 If it wasn't changed I wasn't going to continue. It had nothing do with
6 Gilmartin who was sitting on his backside in Luton making complaints like
7 this.
8 Q. 175 So your answer then I think, Mr. O'Callaghan, to be fair to you is that
9 the change in the system that takes place on the 1st July 1993 is
14:50:02 10 unconnected to Mr. Gilmartin's complaints as recounted by Mr. Maguire?
11 A. Totally, totally.
12 Q. 176 At the meeting of the board on June '93, is that right?
13 A. Yes.
14 Q. 177 Now, I think there was also, at 9848, I think you have already dealt with
14:50:16 15 this, Mr. O'Callaghan. You record in the schedule of payment by
16 O'Callaghan Properties as political contributions a payment on the 9th I
17 think of July 1993, a sum of 5,000 pounds in relation to the Lord Mayor's
18 pond fund?
19 A. '93, is it? I'm sorry.
14:50:40 20 Q. 178 Yes, it's the third last entry in the sum of 5,000 pounds, isn't that
21 right?
22 A. Yes.
23 Q. 179 Now, I think that is the payment that you had originally mixed up with the
24 payment to Mr. Michael Martin in 1989?
14:50:53 25 A. That is correct, yes. In 1991?
26 Q. 180 In 1991 yes, I think the position is that this is the time at which you
27 make this particular donation, is that right?
28 A. That's correct there. Yes, yes.
29 Q. 181 And this was a payment that was recorded in the O'Callaghan Property books
14:51:10 30 at 9849?

14:51:10 1 A. Yes.

2 Q. 182 Being the second entry down please, can we have it highlighted, and this
3 is the Atlantic Pond fund, isn't that right?

4 A. Yes.

14:51:25 5 Q. 183 And it's described as the Lord Mayor, analysed under advertising and
6 subscriptions, isn't that right?

7 A. Yes.

8 Q. 184 Now I think, Mr. O'Callaghan, at 20644, you will have seen in the brief,
9 this document which is a record of a meeting of the executive committee of
10 the Labour Party on the 21st July 1993, and I don't propose to go through
11 that in detail with you, other than to indicate to you at 20645 this is
12 the date on which Councillor O'Halloran had his membership of the Labour
13 Party withdrawn as a result of his support for the Quarryvale project,
14 right?

14:52:16 15 A. Yes.

16 Q. 185 And you have already told the Tribunal that subsequent, later in 1993
17 Mr. O'Halloran approached you, isn't that right?

18 A. Yes.

19 Q. 186 And he sought support from you, particularly in view of the fact that he
14:52:30 20 had been expelled from the Labour Party as a result of his support for
21 Quarryvale, isn't that right?

22 A. That's correct.

23 Q. 187 And this is the documentation, Mr. O'Callaghan, that shows that on the
24 21st July 1993, Mr. O'Halloran was expelled I think from the Labour Party,
14:52:45 25 isn't that right?

26 A. Yes.

27 Q. 188 Now, I think also at 22648, Mr. O'Callaghan, in July of 1993 you will have
28 seen this documentation in the brief, but I suggest to you it's likely
29 that you would have seen it at the time when it was published, isn't that
14:53:06 30 right, this particular article by Mr. McDonald of the Irish Times was

14:53:12 1 published on the 12th July 1993, isn't that right?

2 A. Yes.

3 Q. 189 And this series of articles concerned the Development Plan review in

4 Dublin and the advantage to a landowner to the rezoning of land and the

14:53:28 5 change in value it could bring, isn't that right?

6 A. Yes.

7 Q. 190 Right. Now, this in this particular article, if we go to the next page

8 there is a quote as follows "Minister tell me this, is money changing

9 hands?

14:53:46 10 Councillor: Well, Minister, I couldn't deny it". Now, would you agree

11 with me, Mr. O'Callaghan, that apart from reading anything else within the

12 article if one was to look at that headline, clearly what is being

13 discussed there is corruption, isn't that right?

14 A. Yes.

14:54:01 15 Q. 191 Right. Do you remember these articles being published?

16 A. Very, very vaguely actually. I didn't follow them. At the time I think

17 this was '93.

18 Q. 192 Yes.

19 A. I wouldn't have been following the Irish Times very closely, like most

14:54:21 20 Cork people I read The Examiner and I just, I didn't follow them, but I

21 have seen them recently.

22 Q. 193 Yes. Well, do you think it's likely that somebody might have drawn to

23 your attention halfway down the first column of the present page, that's

24 on screen at 22649, if that could be increased please.

14:54:45 25

26 Here they are talking about objections and representations and the

27 following is stated "The bulk of them, about 16,800 related to the

28 Council's controversial decision in May 1991 to rezone a site at

29 Quarryvale north of Clondalkin for a motorway shopping complex. Another

14:55:03 30 5,000 or so were in support of retaining the Phoenix Park race course

- 14:55:07 1 lands for open space and recreational use and the remaining 2,000 were
2 miscellaneous including numerous rezoning proposals".
3
4 Do you think it's likely, Mr. O'Callaghan, in view of the fact that you
14:55:19 5 didn't take the Irish Times yourself, that somebody might have drawn it to
6 your attention at the time that your development at Quarryvale was in fact
7 named within the context of an article which was primarily an article
8 about corruption?
- 9 A. Well, I don't remember that particular piece, no, but yes those articles
14:55:36 10 at the time were mentioned to me.
- 11 Q. 194 Yes. And isn't it likely that you would have read those articles,
12 Mr. O'Callaghan, at the time?
- 13 A. No.
- 14 Q. 195 No. In any event, would you have known from whoever it was that told but
14:55:48 15 these articles that in general that these were articles suggesting that
16 there was corruption in Dublin County Council?
- 17 A. That was said at the time, I think those articles were mentioned at the
18 time, but I did actually, what I did when I heard about them was I
19 mentioned it first to Frank Dunlop and they were dismissed very quickly as
14:56:06 20 I think it was Frank McDonald on a rant again, it was left at that,
21 dismissed very quickly and left at that.
22
- 23 I also felt that most of these articles from what I remember, or recollect
24 of them, is that they were about residential developments in North County
14:56:22 25 Dublin, possibly Lucan if I remember correctly, but they had very little
26 to do with commercial developments like Quarryvale in particular, I hadn't
27 noticed that piece that you have just pointed out to me there now, but as
28 far as I recollect they were mainly residential rezoning issues, more so
29 than commercial.
- 14:56:45 30 Q. 196 And if I could have 22650, do you think it's likely, although this is

- 14:56:54 1 again in the Irish Times, Mr. O'Callaghan, that somebody might have drawn
2 to your attention this article of the 13th July that the Gardaí were now
3 to investigate the claims that had been in the previous article by
4 Mr. McDonald, where money was alleged to be changing hands, that the
14:57:11 5 Minister Michael Smith had asked for the Gardaí to investigate these
6 rezoning claims?
- 7 A. Yes, I recall that, yes.
- 8 Q. 197 Would you have become aware, I think that Mr. Pat Rabbitte who was
9 Chairman of the council wrote to each councillor in July 1993 asking them
14:57:25 10 to cooperate with the Gardaí in their inquiries?
- 11 A. No, I wasn't aware of that.
- 12 Q. 198 You weren't aware of that. Would Mr. Dunlop have informed you, do you
13 think from his contacts with the County Councillors of the fact that the
14 councillors had all been contacted by the Chairman, Mr. Rabbitte?
- 14:57:41 15 A. No I wasn't told that.
- 16 Q. 199 If we look very briefly at the article that's on screen, in the bottom of
17 the first paragraph, the first column "Mr. Smith said yesterday that he
18 was asking the Garda commissioner, Mr. Patrick Culligan to investigate
19 urgently the reports of money changing hands with a view to the Director
14:58:00 20 of Public Prosecutions deciding whether criminal prosecutions should be
21 instituted. He viewed the matter with "With the utmost gravity" he said."
22 he goes on to say "It is vitally important that our democratic system,
23 that the planning system operates and is seen to operate in an open and
24 accountable fashion and that the highest standards of personal integrity
14:58:21 25 are observed by all those involved, landowners, developers, public
26 representatives and official". Isn't that right?
- 27 A. Yes.
- 28 Q. 200 Do you think it's likely that you would have considered this report in the
29 newspaper and the fact that there was going to be a Garda investigation
14:58:36 30 into allegations of irregularity and corruption, isn't that right?

14:58:41 1 A. Yes.

2 Q. 201 Right. And when you considered that, Mr. O'Callaghan, did it bring mind
3 to you the allegations that you had previously heard from Mr. Gilmartin in
4 1989, about corruption in the planning process?

14:58:57 5 A. Well, I don't want to make light of this, but these articles were treated
6 very lightly at this particular time by in fact by the councillors I don't
7 know whether any councillor even mentioned them to me at that particular
8 time, as I said to you I did mentioned them to Frank Dunlop and I told you
9 what his response to it was. And I repeat again, I assumed this was all
14:59:15 10 about residential rezonings and I didn't think it, as far as I was
11 concerned I didn't have any involvement or any relationship with
12 Quarryvale.

13 Q. 202 Would you have mentioned or discussed the matter with Councillor McGrath
14 for example?

14:59:29 15 A. No.

16 Q. 203 Or with Mr. Gilbride?

17 A. I don't know if I discussed them at all with anybody actually. I did hear
18 it being discussed all right. It could be as vague as inside in a bar
19 probably some night, amongst councillors and that's why I mentioned it to
14:59:47 20 Frank Dunlop but that was as far as it went.

21 Q. 204 And at 9921 and I think Ms. O'Raw will check for me, this document was
22 provided to the Tribunal by Councillor McGrath, this is the letter from
23 Mr. Rabbitte who was then Chairman of Dublin County Council to each
24 councillor on the 26th July within that he sets out as follows:

15:00:11 25
26 "Dear councillor, I am writing to you at the request of Inspector Michael
27 Guiney of Store Street Garda Station. Inspector Guiney has been put
28 charge of the investigation initiated by the Minister for the Environment,
29 Mr. Michael Smith into certain allegations arising from the recent series
15:00:25 30 of articles in the Irish Times.

15:00:27 1 Inspector Guiney is concerned that any councillor with information
2 relevant to his investigations would make contact with him as early as
3 possible. He can be written to at Store Street or telephoned.
4

15:00:37 5 I would appreciate it if any councillor who feels he or she can be of
6 assistance in any way in this matter would make contact with Inspector
7 Guiney without delay. I am sure you agree that it is not desirable that
8 this investigation should hangover the council for any longer than is
9 necessary"

15:00:52 10

11 Would you agree with me, Mr. O'Callaghan, that it is likely that all 78
12 members of Dublin County Council received that letter?

13 A. Oh I'm sure they did, yes.

14 Q. 205 And among those would have been councillors with whom you had a reasonably
15 close relationship, such as Councillors McGrath and Councillor Gilbride?

16 A. I had a lot more as well actually.

17 Q. 206 And indeed there were a number of councillor who is on a social basis you
18 used to go out for dinner with a number of councillors such as Councillor
19 Ridge, Councillor Devitt, Councillor Elliott on occasion, isn't that
20 right?

15:01:24 21 A. That is correct.

22 Q. 207 I think Mr. Dunlop to the Tribunal, has described them as being part of
23 the two by four club, is that right?

24 A. That is correct, yes.

15:01:31 25 Q. 208 You would have known those councillors very well on a social basis, isn't
26 that right?

27 A. Yes indeed.

28 Q. 209 Now, did you have occasion with any of these councillors with whom you had
29 inter-reaction to discuss the fact that there was now a Garda
30 investigation into planning corruption?

15:01:43

- 15:01:45 1 A. I didn't know that letter existed or that letter was sent around to
2 anybody, nobody ever told me about it.
- 3 Q. 210 So your position then is apart from having the article drawn to your
4 attention insofar as the first one is concerned, and knowing about the
15:02:00 5 fact that a Garda inquiry had been initiated, other than discussing it
6 with Mr. Dunlop, you didn't discuss it with any of the councillors, is
7 that right?
- 8 A. No and it was not discussed with me.
- 9 Q. 211 Right. And what about Mr. Lawlor, would Mr. Lawlor have raised this with
10 you?
- 11 A. Not at all, no, no, no.
- 12 Q. 212 Now, at the time that this inquiry was initiated by the Gardai in July of
13 1993, you had already made a number of payments to councillors, isn't that
14 right?
- 15:02:26 15 A. Yes.
- 16 Q. 213 Right. For example, I mean, you had made the payments to Mr. Gilbride and
17 they is ceased at this stage, isn't that right?
- 18 A. Yes.
- 19 Q. 214 You had made payments to Councillor McGrath and you made payments to
15:02:38 20 Mr. Lawlor, isn't that right?
- 21 A. Yes.
- 22 Q. 215 Were those, was that a matter that concerned you, Mr. O'Callaghan, when
23 you became aware of the fact that a Gardai inquiry into planning
24 corruption had been launched?
- 15:02:50 25 A. No because these are all political contributions these payments that you
26 have just mentioned there, referred to there were made to help Gilbride,
27 McGrath and Lawlor get elected. These were political contributions as far
28 as I was concerned.
- 29 Q. 216 Although I think it is the case they were not recorded as political
15:03:08 30 contributions in the books and records?

- 15:03:10 1 A. Well Gilbride's payments were or should have been political contributions,
2 so was Lawlors and the one to McGrath, McGrath's payment for the '91
3 election contribution, the other was a loan.
- 4 Q. 217 But insofar as you had made these payment Mr. O'Callaghan, was it of
15:03:28 5 concern to you that there was now a Garda inquiry into planning corruption
6 in which Quarryvale had been named according to the newspaper and that
7 payments had been made to councillors by you, was that not a matter of
8 concern to you?
- 9 A. No, in Quarryvale was barely mentioned. As I said to you and repeat
15:03:44 10 again, the little that I picked up about this was this had to do with
11 residential rezonings in other parts of Dublin, Quarryvale a commercial
12 development, was not involved in this as far as I was concerned.
- 13 Q. 218 Would you have discussed this with the bank -- would the bank have
14 discussed this with you, Mr. O'Callaghan?
- 15:04:04 15 A. It might have been mentioned once by Michael O'Farrell, I'm not sure, I
16 think he did actually, on one occasion, I'm not certain when.
- 17 Q. 219 When Mr. O'Farrell raised it with you what was Mr. O'Farrell's concern?
- 18 A. I think again he would have, I am trying to recollect this now, it's a
19 long time ago, he might have suggested to me, he probably asked me had I
15:04:24 20 read the Times and what, did I know anything about it. As far as I was
21 concerned yes, I didn't read all the articles I looked at some of them, as
22 I said to you I don't read the Times very often, and I would have told him
23 what I have just told you now, that it had nothing to do with Quarryvale,
24 as far as I was concerned.
- 15:04:44 25 Q. 220 Did Mr. O'Farrell ever discuss with you or ask you whether in fact you had
26 made any payments to any councillors leaving aside now the context of
27 which any such payments might have been made?
- 28 A. I wouldn't have asked me, no, he wouldn't, he probably wouldn't want to,
29 he didn't ask me actually.
- 15:05:01 30 Q. 221 Within the bank at 9920, Mr. O'Callaghan, on the 26th July I think

- 15:05:07 1 Mr. O'Farrell is the author of this document which you will have seen in
2 the brief, headed up re Barkhill?
- 3 A. Yes.
- 4 Q. 222 Would you agree with me then that the concerns that are expressed by
15:05:17 5 Mr. O'Farrell in this memorandum arise in the context of his being the
6 banker for Barkhill, is that right?
- 7 A. Yes.
- 8 Q. 223 So he says "some issues arising from the recent articles in the Irish
9 Times on planning". So it's clear what the subject matter of
15:05:41 10 Mr. O'Farrell's concerns are from the outset?
- 11 A. Yes, sorry is this an internal memo?
- 12 Q. 224 This is an internal memo.
13
14 He says "What are the expected objections to the Barkhill zoning arising
15:05:44 15 from the present public display of the Draft Development Plan?"
16
17 At this stage the matter had come back in, in June 1993 and was gone back
18 out on the second display, isn't that right?
- 19 A. Yes.
- 15:05:56 20 Q. 225 Now the next point he says "Minister Michael Smith is encouraging the
21 County Council to review their rezoning decisions in the light of number
22 of same. He has been critical of the county council in this regard. What
23 is O'Callaghan's relationship with Michael Smith? Does O'Callaghan have
24 any indication of Smith's view of the proposed Barkhill zoning?"
- 15:06:15 25
26 Now, was that something that Mr. O'Farrell drew to your attention,
27 Mr. O'Callaghan, as he has clearly identified you as the person who would
28 have the answers to those two questions, is that right?
- 29 A. Certainly didn't ask me those questions.
- 15:06:26 30 Q. 226 But it is clear that he considered you are the person who had the answers

15:06:30 1 to those question?

2 A. Well, from that memo it looks as if he is going to ask me those questions

3 but he certainly did not.

4 Q. 227 Is that your position that Mr. O'Farrell never raised this concern he has

15:06:40 5 articulated in this memorandum with you?

6 A. No.

7 Q. 228 Right in the next paragraph it says "The Irish Times of Tuesday 13th July

8 indicate" --

9 A. Sorry I have lost.

15:06:52 10 Q. 229 The third black dot.

11 A. Tiff yes.

12 Q. 230 "The Irish Times of Tuesday 13th July 1993 indicated "It is believed that

13 the Minister for the Environment Mr. Smith, is prepared to direct the

14 County Council to change at least part of it's Development Plan because of

15:07:05 15 the scale of the rezonings involved. This ministerial power under section

16 22 of the 1963 Planning Act has never been exercised before. Is there a

17 possibility if the County Council refuse to amend their decision

18 themselves could such a process cause delays". Do you remember him

19 raising that with you?

15:07:23 20 A. That came up, yes.

21 Q. 231 Right. What was Mr. O'Farrell's concern?

22 A. He was concerned in case Quarryvale's zoning would be held up for some

23 reason.

24 Q. 232 So your position then is he didn't ask you about your relationship with

15:07:35 25 Mr. Smith but he did ask you about whether or not the minister might

26 exercise his power under section 22?

27 A. That's all Michael O'Farrell would be concerned about.

28 Q. 233 All right. You agree with me, would you agree with me, Mr. O'Callaghan,

29 that he is unlikely to have asked you whether or not the minister would

15:07:51 30 exercise his power under section 22 if he hadn't already asked what your

- 15:07:56 1 relationship was with the Minister?
- 2 A. No, he didn't ask me that question but he was -- obviously he was
- 3 concerned about Quarryvale.
- 4 Q. 234 In the next paragraph looking at the little black dot "In the same context
- 15:08:05 5 the Irish Times of Monday 12th July indicated the following, in 1983 under
- 6 the spotlight of the media as well as pressure from the public and from
- 7 the then Taoiseach, Garreth Fitzgerald who whipped Fine Gael councillors
- 8 into line, the County Council voted to rescind about 80 per cent of it's
- 9 planning decisions. This may happen again depending on the public's
- 15:08:24 10 response to the current exhibition of the amendments of the draft county
- 11 plan".
- 12
- 13 Next point: Quote Irish Times 13th July 93" then it sets out there part of
- 14 the article that I have already quoted to you, isn't that right?
- 15:08:37 15 A. Yes.
- 16 Q. 235 It's a full quote, leading down to the next point which is the question at
- 17 the end of the quote in which Mr. Farrell asks the question "Does any of
- 18 the foregoing have implications for Barkhill." Isn't that right?
- 19 A. Yes.
- 15:08:51 20 Q. 236 Beneath that "Plans are due to be submitted on the 30th July 1993, where
- 21 is O'Callaghan at vis-a-vis the planners and the County Manager? What
- 22 kind of PR strategy is in place by O'Callaghan and what kind of PR impact
- 23 do they expect their application to have?
- 24
- 15:09:07 25 In view of Corcoran's recent resignation from Green's are there any
- 26 implication in this for Barkhill? What implications will their planning
- 27 application have in this regard?
- 28
- 29 How do we deal with the Tom martin factor?"
- 15:09:20 30

- 15:09:20 1 Do you agree with me what is set out here in this document is a series of
2 questions hat are being posed by Mr. O'Farrell?
- 3 A. Yes.
- 4 Q. 237 Right. And these are questions in which I would suggest to you you are
15:09:32 5 the person who is in the best position to answer them?
- 6 A. Yes.
- 7 Q. 238 Isn't that right? Is it your evidence to the Tribunal, Mr. O'Callaghan,
8 that with the exception of the query about section 22 of the 1963 Planning
9 Act, which you recollect, that the only matter discussed with you by
10 Mr. O'Farrell?
- 11 A. Yes.
- 12 Q. 239 Right. That he did not deal with the question of the Tom Gilmartin
13 factor?
- 14 A. I don't know what he means by that.
- 15:09:57 15 Q. 240 Right. Insofar as the other matters I have outlined to you and the other
16 questions hat are posed in this memorandum are concerned, Mr. O'Farrell
17 did not raise any issue with you other than whether or not you had a view
18 on whether Mr. Smith would exercise section 22 of the 1963?
- 19 A. That's as much as I recollect about that.
- 15:10:16 20 Q. 241 Can I suggest to you, Mr. O'Callaghan, that it is likely that these were
21 all matter that is were raised with you by Mr. O'Farrell following on the
22 publication of the articles in the Irish Times and the initiation of the
23 Garda inquiry? Can I suggest to you that that is likely, that is what is
24 likely to have happened?
- 15:10:33 25 A. I don't recollect any of that actually.
- 26 Q. 242 But you --
- 27 A. Those questions asked by Michael O'Farrell to me.
- 28 Q. 243 Right. Now on the 28th July 1993 at 9934, this is a record,
29 Mr. O'Callaghan, of a meeting that took place between Mr. Chambers,
15:10:57 30 Mr. McGrath and yourself and if you look at the very top it says "points

15:11:02 1 raised by O O'Callaghan in meeting with D Chambers/" And it looks like D
2 McGrath, possibly Mr. McGrath, would you agree with that? Could the top
3 corner be highlighted?

4 A. Yes.

15:11:17 5 Q. 244 You will see that's dated 28th July?

6 A. Yes.

7 Q. 245 And the document does not record any discussion in relation to the matters
8 that are outlined by Mr. O'Farrell in his memorandum of the 26th July,
9 isn't that right?

15:11:39 10 A. Yes.

11 Q. 246 And would you agree that two things appear to have been discussed, one is
12 Barkhill and the other is Riga?

13 A. Yes.

14 Q. 247 And insofar as Barkhill is concerned, there is a reference to the planning
15 application is okay, that full planning was expected in early January,
16 Marks & Spencers lined up, Quinns worth keen, want Pennys also, Roches,
17 keeping options open, it seems to be a discussion about potential anchors,
18 isn't right?

19 A. Yes.

15:12:09 20 Q. 248 Can I ask you when you met with Mr. Chambers what led to the meeting with
21 Mr. Chambers?

22 A. Very brief meeting with, casual meeting with Mr. Chamber, I think I met
23 Mr. Chambers twice. Once in the bank, sorry once on the street when he
24 picked me up and gave me a lift. Secondly, in the bank casually one
15:12:31 25 morning, I don't think the meeting was even arranged. There was a casual
26 meeting, obviously I must have been with Dave McGrath when that meeting
27 took place and we just had a brief chat. Mr. Chambers left his business
28 to be carried out by Dave McGrath and Michael O'Farrell.

29 Q. 249 Was there any discussion about the matters that were raised of concern to
15:12:56 30 Mr. O'Farrell which was raised in his memorandum of the 26th July?

15:13:04 1 A. Not --

2 Q. 250 Do you know how the meeting was arranged with Mr. Chambers?

3 A. As I said I think it was casual I was in the building, to the best of my

4 knowledge I am not 100 per cent certain of this. I've had two meetings

15:13:14 5 with Mr. Chambers as I said one when he picked me up and gave me a lift,

6 the second was in the bank that was not arranged I am assuming I was with

7 Dave McGrath and we bumped into him and had a casual a brief meeting

8 that's the best of my knowledge, I am pretty sure I'm accurate on that

9 one.

15:13:34 10 Q. 251 Ms. O'Raw is checking, but I believe the position to be, Mr. O'Callaghan,

11 subject to what Ms. O'Raw will say, that this is the only memorandum of

12 any meeting that exists in Allied Irish Bank for the 28th July 1993?

13 A. Sorry I don't understand.

14 Q. 252 This is a document that is provided to the Tribunal by the bank.

15:13:55 15 A. Yes.

16 Q. 253 It is the only record as far as I know, of a meeting on the 28th July

17 1993, so if you had another meeting in the bank that day, is the meeting

18 that's not record, do you understand?

19 A. Yes.

15:14:11 20 Q. 254 Right. If there is no other record, Mr. O'Callaghan, of any meeting in

21 the bank, on the 28th July 1993, isn't it likely that the reason you are

22 in the bank is for this meeting?

23 A. No.

24 Q. 255 No.

15:14:24 25 A. No, not to meet -- as I said to you I think this is very important I will

26 repeat it again. All my transactions with the bank were carried out with

27 Michael O'Farrell and David McGrath, Donal Chambers did not get involved,

28 that meeting was a casual meeting in the bank. A casual meeting, I must

29 have been meeting somebody else that day, whether it's recorded or not I

15:14:49 30 can't tell you, I can't answer that. More than likely I was meeting

- 15:14:49 1 McGrath, it looks like that.
- 2 Q. 256 Can I suggest to you, Mr. O'Callaghan, that if one looks at the sequence
3 of documentation and if one considers the note that was prepared by
4 Mr. O'Farrell on the 26th July 1993 at 9920 that Mr. O'Farrell is there
15:15:11 5 expressing his concerns about the implications arising from the inquiry
6 that has commenced with the Gardaí arising from the articles in the Irish
7 Times?
8 A. Yes.
- 9 Q. 257 Isn't that right? Within two days of that meeting you have a meeting with
15:15:27 10 a senior official of Allied Irish Bank, Mr. Chambers together with
11 Mr. McGrath, isn't that right?
12 A. Yes.
- 13 Q. 258 Is it your evidence to the Tribunal that there is no discussion between
14 you of this issue that has arisen, namely the inquiry into corruption and
15:15:44 15 it's possible adverse consequences for Barkhill?
16 A. None whatsoever. I hate to say this, I don't want to be clever but you
17 putting two and two together and getting five, that is completely and
18 utterly wrong that assumption, completely wrong.
- 19 Q. 259 If the bank were taking seriously the matters that were outlined in
15:16:07 20 Mr. O'Farrell's memorandum, it's your position then if I understand you
21 correctly, Mr. O'Callaghan, that those concerns were never brought to your
22 attention by the bank.
23 A. No.
- 24 Q. 260 Right. And that notwithstanding what is identified in that memorandum as
15:16:24 25 a series of questions to be put to you, none of those questions were in
26 fact put to you?
27 A. Not by Michael O'Farrell, Dave McGrath or Donal chambers.
- 28 Q. 261 Right.
29 A. Or anybody else for that matter.
- 15:16:37 30 Q. 262 Yes. And would you agree with me, that if the concerns that are

- 15:16:42 1 identified in that memorandum were concerns that were genuinely held by
2 the bank in relation to their investment in Barkhill, that it is something
3 that one would have expected them to have approached you about?
- 4 A. No and again that's a very short answer. No because this -- I wasn't
15:17:02 5 aware of this memo that Michael O'Farrell had, I wasn't aware he had these
6 concerns in his mind. If I was aware of it, yes my answer to your
7 question would be yes, but I was not aware of this.
- 8 Q. 263 No but you misunderstand me, Mr. O'Callaghan, what I am putting to you is
9 if these concerns were considered to be so serious by Mr. O'Farrell, that
15:17:22 10 he poses a series of questions that can really only be answered by you,
11 would you agree with me that you would have expected him, as a
12 conscientious banker to have brought those questions to you so that could
13 you have answered them?
- 14 A. I don't think he would have wanted to ask me that because he might have
15:17:39 15 felt that he would be probably insulting me a little bit maybe by even
16 suggesting that.
- 17 Q. 264 Why would Mr. O'Farrell not want to ask you those questions,
18 Mr. O'Callaghan?
- 19 A. God I don't know, he probably wouldn't like to ask those questions, I
15:17:55 20 don't know but I'm sure he can answer that question himself.
- 21 Q. 265 Why would he not like to have asked you those questions face-to-face,
22 which is what you are suggesting, isn't it?
- 23 A. I don't know, he is not a very shy person, so I don't know.
- 24 Q. 266 If Mr. O'Farrell has identified these as issues for himself and issues for
15:18:14 25 consideration within the bank because they are on the file for anybody who
26 might read it, there wouldn't have been any reason why he couldn't have
27 addressed those issues with you or indeed with Mr. Deane, isn't that
28 right?
- 29 A. Yes.
- 15:18:26 30 Q. 267 Right. And these are issues that Mr. O'Farrell has identified as arising

15:18:30 1 from the publication of the two articles on corruption and on the Garda
2 inquiry, isn't that right?

3 A. Yes.

4 Q. 268 Now, if for example allegations of corruption were to be made about
15:18:39 5 Barkhill or about Quarryvale, that is a matter that would have had a very
6 serious effect on the bank and on yourself, is that right?

7 A. Yes.

8 Q. 269 And it was something that in July of 1993, could have adversely affected
9 the progress of the Barkhill rezoning through to completion, isn't that
15:18:56 10 right?

11 A. Yes.

12 Q. 270 And we have seen, I think on the last occasion, that the matter came back
13 in before the council for further consideration in October 1993, isn't
14 that right?

15:19:05 15 A. Yes.

16 Q. 271 If any allegations of corruption surrounding either Barkhill or Quarryvale
17 had come into the public arena this time, potentially it could have very
18 seriously adversely affected the rezoning of the Quarryvale lands, isn't
19 that right?

15:19:22 20 A. Yes.

21 Q. 272 And if that had happened and the rezoning had not gone through that could
22 adversely effect your financial position through Riga and the bank's
23 financial position as banker and shareholder, isn't that right?

24 A. Yes.

15:19:33 25 Q. 273 So would you agree with me that both yourself and Mr. O'Farrell and the
26 bank had a very great common interest in July of 1993 in ensuring that no
27 taint of allegation of corruption attached either to Barkhill or to the
28 Quarryvale development?

29 A. It wasn't there basically so I don't see how -- that's a hypothetical type
15:19:55 30 of question again actually, because like those Times articles that you are

15:19:59 1 talking about, as far as I was concerned applied, referred to I'm afraid
2 referred to residential zoning issues in County Dublin, not a commercial
3 development like Quarryvale. As far as I am concerned that's the way AIB
4 Bank felt as well. I am surprised to see that Michael O'Farrell has a
15:20:15 5 note like that written, because that is news to me, I didn't realise he
6 even felt like that about it. Quarryvale was a commercial development, in
7 our opinion not in anyway associated with these articles and as I said and
8 repeated again, these were, if they did apply to anything they applied to
9 residential developments in Dublin.

15:20:31 10 Q. 274 Is it your position that you disregarded the articles, Mr. O'Callaghan, at
11 the time?

12 A. At the outset, I told that you, I did disregard them.

13 Q. 275 Is that disregard that same disregard that you expressed in relation to
14 the visit by the bank to see Mr. Gilmartin in December 1992, when
15:20:48 15 according to the bank Mr. Gilmartin threatened to go to the newspapers?

16 A. I didn't disregard that because I wasn't told about that, the banks did
17 not make me aware of that at the time.

18 Q. 276 By the time, July 1993 came around, Mr. O'Callaghan, and these articles
19 are published in the newspapers, you were by that stage of course aware of
15:21:06 20 the threats by Mr. Gilmartin the previous December?

21 A. No nobody believed a word Tom Gilmartin said, not a word, you can't put
22 that into the equation, not a word.

23 Q. 277 Do you understand the question, Mr. O'Callaghan, which is a simple
24 question, by the time these articles were published in July 1993, were you
15:21:23 25 aware of the fact that Mr. Gilmartin had threatened to go to the
26 newspapers in December 1992 and bring the entire Quarryvale project down?

27 A. I can't say whether I was or not, but it's possible that I was, but I
28 wouldn't have taken the slightest notice of it because they were total
29 rubbish.

15:21:40 30 Q. 278 Yes. Would you -- previously of course I think you have agreed you were

15:21:43 1 aware of the allegation that is were made by Mr. Gilmartin in 1989, isn't
2 that right.

3 A. Which ones are they?

4 Q. 279 The allegation concerning Mr. Lawlor, isn't that right, in 1989?

15:21:54 5 A. Yeah, whatever he was talking about, yes.

6 Q. 280 Yes and you yourself of course had been interviewed by the Gardaí in that
7 connection but you had dismissed I think it's fair to say the allegations
8 made by Mr. Gilmartin at that time, isn't that right?

9 A. Yes.

15:22:06 10 Q. 281 And did you also dismiss these allegations that are recounted in the Irish
11 times in July of 1993 as not being of any significance?

12 A. These, first of all I hardly read them actually, secondly when they were
13 brought to my attention and when they were mentioned as far as I was
14 concerned they were allegations with regard to, as I repeat, other zoning
15:22:25 15 residential zoning developments in County Dublin, mainly North County
16 Dublin and had nothing to do with Quarryvale as such.

17 Q. 282 Do you agree with me, Mr. O'Callaghan, that if any taint of illegality or
18 corruption had attached to the rezoning of Quarryvale in July of 1993
19 prior to the rezoning being confirmed, it would have had serious adverse
15:22:46 20 financial implications both for yourself and the bank?

21 A. Whether it would not or we didn't want that to be the case.

22 Q. 283 Yes. I think also around this time in July 1993 at 9927, Barkhill
23 received it's first invoice from Marine & General insurances, isn't that
24 right?

15:23:10 25 A. Yes.

26 Q. 284 That was Mr. Tyndall's company, isn't that the position?

27 A. That is correct, yes.

28 Q. 285 And I think that was the first payment was made on foot of that, I think,
29 by Riga and that was the first payment that was made in your relationship
15:23:24 30 with Marine & General insurances, isn't that right?

- 15:23:27 1 A. Yes, I think so, yes.
- 2 Q. 286 I think at 9932, you furnish to Allied Irish Bank on the 2nd September
- 3 1993, an invoice from Riga referring to that site insurance, isn't that
- 4 right?
- 15:23:43 5 A. Yes.
- 6 Q. 287 Presumably you provided them with the appropriate documentation, because
- 7 the payment is in fact made, isn't that right?
- 8 A. Yes.
- 9 Q. 288 At 9933, you see from the Barkhill number 3 account, the debit for Marine
- 15:23:59 10 & General Insurances, isn't that right?
- 11 A. Yes, I have it, yes.
- 12 Q. 289 Now I think you have agreed me that you did have a social relationship
- 13 with a number of councillors, isn't that right?
- 14 A. Yes, got to know them very well.
- 15:24:11 15 Q. 290 That's councillor Ridge, I think, Ms. Devitt, Ms. Elliott, Olivia
- 16 Mitchell, is that right?
- 17 A. Yes.
- 18 Q. 291 And on occasion I think Mr. Liam Cosgrave, isn't that the position?
- 19 A. Well rarely, very rarely.
- 15:24:25 20 Q. 292 Now, these were social occasions, Mr. O'Callaghan, but a number of them
- 21 took place in July at 99 -- one of them I beg your pardon, 9916, you will
- 22 see there a dinner with Ms. Therese Ridge, Anne Devitt, Mary Elliott I
- 23 think, Olivia Mitchell and yourself, it was probably organised I think by
- 24 Mr. Dunlop?
- 15:24:51 25 A. Yes.
- 26 Q. 293 Now, that takes place within a fortnight of the publication of the
- 27 articles on corruption, published by the Irish Times and takes place two
- 28 days after Mr. Rabbitte writes at 9921 to each councillor, you will see
- 29 there the letter of the 26th July 1993 addressed to each councillor,
- 15:25:15 30 marked confidential, that I have already read to you and which is signed

- 15:25:19 1 by Mr. Pat Rabbitte, isn't that right?
- 2 A. Yes.
- 3 Q. 294 And then I think at 9916, two days later you have dinner with four county
4 councillors, isn't that right?
- 15:25:33 5 A. Yes.
- 6 Q. 295 Now, is it your evidence to the Tribunal, Mr. O'Callaghan, that that Garda
7 inquiry which had now been initiated and about which those four
8 councillors had been informed, was never discussed at the meeting that you
9 had or the dinner party that you had with them on the 28th July?
- 15:25:51 10 A. That is my evidence, yes.
- 11 Q. 296 All right. Is that a meeting at which Mr. Dunlop also attended, a dinner
12 I beg your pardon?
- 13 A. He would have been there, yes.
- 14 Q. 297 Mr. Dunlop would have organised, is that right?
- 15:26:09 15 A. Organised, yes.
- 16 Q. 298 Right. And there were a series of those over the period of the
17 Development Plan, isn't that the position?
- 18 A. Could have been, four or five or six of them.
- 19 Q. 299 Yes, and Mr. Dunlop at 22047, in this letter of the 6th November 2002,
15:26:25 20 paragraph A(2) says "the reference to the four by two club refers to a
21 group of individuals Ms. Olivia Mitchell, Therese Ridge, Liam Cosgrave and
22 Anne Devitt, I think on this occasion Mary Elliott". Isn't that right?
- 23 A. Well Liam Cosgrave as far as I was concerned whenever I was there he was
24 not there and vice versa.
- 15:26:51 25 Q. 300 But on the 28th July at 9916?
- 26 A. That's the one we have, yes.
- 27 Q. 301 Which is the one that was on screen?
- 28 A. I was there, yes.
- 29 Q. 302 You were there and Ms. Ridge, Ms. Devitt, Ms. Elliott and Ms. Mitchell?
- 15:27:03 30 A. That's correct.

15:27:03 1 Q. 303 Were they all senior members of Fine Gael?
2 A. Yes.
3 Q. 304 All members of the same political party?
4 A. Yes.
15:27:09 5 Q. 305 Right. And is your position that at that meeting which is two days after
6 those four individuals have been informed of the institution of a Garda
7 inquiry into corruption, there is no discussion about that inquiry?
8 A. That is my evidence, that is correct.
9 Q. 306 All right.
15:27:25 10 A. Maybe they hadn't received the letters, but that is correct.
11 Q. 307 Now, I think that in July 1993 and heading into --
12
13 JUDGE FAHERTY: Sorry Ms. Dillon, one small question that I'd like to ask
14 Mr. O'Callaghan and apropos what you were asking him about.
15:27:44 15
16 Mr. O'Callaghan, you said a little while ago that, as I understand your
17 evidence, and I stand to be corrected, that you had a discussion or
18 certainly there was a reference made by Mr. O'Farrell to a concern that
19 the bank might have if the Minister Smith would have exercised his
15:28:05 20 statutory power and rescind any Development Plan that was made?
21 A. Yes.
22
23 JUDGE FAHERTY: Could I just ask you, Mr. O'Callaghan, in what context do
24 you say Mr. O'Farrell raised this matter with you?
15:28:20 25 A. He just mentioned that on it's own. I think it was in the context of when
26 we would get our planning permission, when we would achieve our planning
27 permission, and he just mentioned that -- to the best of my recollection
28 now, is it possible that the Minister could actually rescind it, that's
29 just the extent of it.
15:28:41 30

15:28:41 1 JUDGE FAHERTY: Now Mr. O'Farrell is a banker obviously.

2 A. Sorry?

3

4 JUDGE FAHERTY: We know that there is a reference to the Minister and a

15:28:51 5 reference to, in his memo, there is a reference to, in Mr. O'Farrell's

6 memo to a possibility that the minister might do this, not a possibility

7 but query if something like that could happen, isn't that correct?

8 A. Yes.

9

15:29:15 10 JUDGE FAHERTY: So when do you say Mr. O'Farrell would have discussed this

11 with you, Mr. O'Callaghan, it certainly was live in Mr. O'Farrell's mind,

12 certainly in July of 1993, isn't that correct?

13 A. Yes, whatever meeting we would have had at that time. His query would

14 have been, his main thing in his mind all the time is when we would we get

15:29:34 15 planning permission so it would help the financial situation, if we were

16 discussing at the time the achieving of the planning permission, he would

17 have possibly have said at this stage could the minister have rescinded.

18 Following on what was said in the articles.

19

15:29:49 20 JUDGE FAHERTY: Yes but that's the point I'd like to pursue with you,

21 Mr. O'Callaghan. There must have been some context to the discussion or

22 the raising of it by Mr. O'Farrell, so the context was the articles?

23 A. Oh, yes he would have said, yes, he would have more than likely said he

24 seen this in this article.

15:30:09 25

26 JUDGE FAHERTY: Are you still saying, are you saying as I understand it

27 that that was nothing else in the articles was discussed, save

28 Mr. O'Farrell asking you about whether or not this could be a likelihood

29 on the part of the minister?

15:30:23 30 A. That's all that was discussed and that is all that would be in Michael

15:30:26 1 O'Farrell's mind ever is when would we get the planning permission and was
2 there anything to get in the way of preventing us getting planning
3 permission.
4

15:30:35 5 JUDGE FAHERTY: Very well. Thank you.
6

7 Q. 308 MS. DILLON: Just on that point, Mr. O'Callaghan, in July of 1993, I think
8 you paid 10,000 pound to the Ambrose Kelly Group, being the payment to go
9 with the planning application, isn't that right, 9938?

15:30:59 10 A. Yes.

11 Q. 309 And I think that cheque, at 9941 is the 30th of the 7th '93, isn't that
12 right?

13 A. Yes.

14 Q. 310 And that is all happening in the same month that the publication in the
15 newspaper and the institution of the Garda inquiry, isn't that right?

16 A. Is that all the same month, yes, okay?

17 Q. 311 July 1939, isn't that right so, at the end of July 1993 you are ready to
18 launch your planning application, isn't that right?

19 A. Yes.

15:31:39 20 Q. 312 And I think at 9949, this is your planning application and I think at the
21 very bottom you note, signature and the date is the 4th August 1993, isn't
22 that right?

23 A. Yes.

24 Q. 313 So in the context of the concern that Mr. O'Farrell articulated to you
15:32:03 25 arising from the Irish Times article which was what effect the article
26 might have on the planning that was a discussion that had to be current
27 between yourself and Mr. O'Farrell because at that time the planning was
28 imminent, isn't that right?

29 A. Yes.

15:32:17 30 Q. 314 Right. So you were doing two things in July of 1993, you were waiting for

15:32:23 1 the public, second public display to be finished so that the zoning could
2 come back in before the council as it did in October '93, and at the same
3 time you are preparing your planning application, isn't that right?

4 A. Yes.

15:32:36 5 Q. 315 And the planning application you put Mr. Kelly in funds by the end of
6 July, and you make the planning application formally on the 4th August
7 '93?

8 A. Yes.

9 Q. 316 And isn't it likely then that whatever conversation you had with
10 Mr. O'Farrell was a conversation that you more than likely had by the end
11 of July of 1993?

12 A. Yes.

13 Q. 317 And that the only context in which Mr. O'Farrell would have raised that
14 was a concern by Mr. O'Farrell that there might be something that could
15 effect the safe passage of either the planning or the zoning, isn't that
16 right?

17 A. That would answer the judge's question actually.

18 Q. 318 Isn't that right?

19 A. Yes.

15:33:10 20 Q. 319 Therefore it's likely and can I suggest it to you, Mr. O'Callaghan, that
21 he did discuss with you what Mr. Smith had said and whether or not Mr.
22 Smith was likely to take certain steps and whether you knew the minister,
23 Mr. Smith, isn't that right?

24 A. Yes.

15:33:26 25 Q. 320 And he was probably also likely to have discussed with you what he
26 describes in his memorandum as the Tom Gilmartin factor?

27 A. No that didn't come up at all, but that was all -- Tom Gilmartin factor
28 was always there.

29 Q. 321 Would you excuse me for a moment please, Mr. O'Callaghan.

15:33:51 30

15:33:51 1 I think the position is, Mr. O'Callaghan, that the only record that exists
2 of a meeting involving you, immediately after Mr. O'Farrell's memorandum
3 is that handwritten note that was put on screen and there doesn't appear
4 to have been any other meeting recorded that was attended by you of that
15:34:08 5 date, which would suggest, if that's correct, that you went to the bank to
6 meet with Mr. Chambers would you agree with that?

7 A. No, no, no, absolutely not. It's quite possible and I can't be definite
8 about this, it's quite possible that I had a meeting with Dave McGrath
9 that day and he didn't record the meetings. He didn't record his meetings
15:34:33 10 as well as Michael O'Farrell did, but certainly Donal chambers I met as I
11 said twice, I am adamant about this, once when he gave me a lift and
12 secondly when I was in casually in the bank. He had nothing to do -- of
13 course he had a lot to do with Quarryvale but he left all his dealings
14 strictly with his two deputies, that's McGrath and O'Farrell.

15:34:50 15 Q. 322 In August of 1993, Mr. O'Callaghan, after the planning application had
16 been lodged, I think that at 9982 Mr. O'Farrell wrote to Mr. Gilmartin and
17 in this he says as follows.

18
19 "Dear Tom, I am aware you had had a number of conversations recently with
15:35:11 20 Mary in relation to inter alia the payment of certain outstanding fees
21 relating to the Quarryvale site and having reviewed our files on the
22 matter and for clarity, I feel it appropriate to write to you setting out
23 the position as follows".

15:35:24 25 Now, would you agree with me first of all, Mr. O'Callaghan, that
26 Mr. Gilmartin appears to have had some concern in or around August 1993 in
27 relation to outstanding fees to do with Barkhill?

28 A. Yes, payment to Connell Wilson and that I think, yes.

29 Q. 323 He had discussed those with Ms. Basquille?

15:35:45 30 A. Yes, quite possible -- yes, he would have of course, more so most of his

15:35:49 1 discussion were with Mary Basquille, yes.

2 Q. 324 Mr. O'Farrell in this letter sets out then the position as he see it is as

3 follows: And the first point he makes is; "loan facilities were

4 sanctioned by AIB for Barkhill in September 1991 to enable the company

15:36:08 5 progress the Quarryvale development up to the obtainment of planning

6 permission." And that would relate, Mr. O'Callaghan, isn't that right, to

7 the number 2 Barkhill loan, isn't that right?

8 A. I think so, yes.

9 Q. 325 And the Riga subordinated one million pounds loan, is that right?

15:36:21 10 A. Yes.

11 Q. 326 "Next point: This facility incorporated the advance of additional funds

12 to complete site acquisition and pay professional fees. Our understanding

13 is that it was the expectation of all parties that specified outstanding

14 creditors at the time of the company's restructuring would either be paid

15:36:38 15 within the terms of the facility or that appropriate arrangements would be

16 made with them regarding the amounts due." Do you agree with that?

17 A. Yes.

18 Q. 327 "Next point: Funds were subsequently advanced by the bank to meet various

19 cost at the company's request, which you confirmed in accordance with

15:36:53 20 mandates held." Do you agree with that?

21 A. Sorry just one second please, yes.

22 Q. 328 And what Mr. O'Farrell is discussing here with Mr. Gilmartin, are the fees

23 that were paid by the bank on behalf of Barkhill, isn't that right?

24 A. Yes.

15:37:15 25 Q. 329 Right. What he is talking about is the money that was paid out following

26 on the September 1991 arrangement, isn't that right?

27 A. Yes.

28 Q. 330 That would have included the monies spent by Riga on behalf of Barkhill

29 under the one million pound Riga subordinated loan and funds advanced and

15:37:34 30 paid directly by Barkhill, isn't that right?

15:37:37 1 A. Yes, I suppose so, yes.

2 Q. 331 "In the next point: The decision as to which creditors were paid and the
3 timing of such payments rested with the company at all times. In this
4 regard the subsequent changes in the site zoning which led to delays in
15:37:48 5 the time scale anticipated for obtainment of planning permission and to
6 increase costs may presumably have impacted on the company's ability at
7 that pay various amounts due."

8 A. That's correct.

9 Q. 332 Would you agree with me that there Mr. O'Farrell seems to be addressing a
15:38:03 10 complaint of Mr. Gilmartin about the selection of creditors for payment,
11 would you agree with that?

12 A. That is correct, yes.

13 Q. 333 And therefore what this entire memorandum so far is concerned about is how
14 the Barkhill monies were spent, isn't that right?

15:38:18 15 A. Yes.

16 Q. 334 All right. In the next point Mr. O'Farrell says: "In June last, the bank
17 agreed increase and extend the company's facilities with the additional
18 advance to be used for outlay specified in our letter of offer of the 18th
19 June 1993". That is something we have already seen, isn't that right?

15:38:35 20 A. Yes.

21 Q. 335 That was the Barkhill number 3 loan, isn't that the position?

22 A. Yes.

23 Q. 336 Mr. O'Farrell then goes on to say: "You are aware of the terms of this
24 facility having signed an acceptance of the bank's letter. You are also
15:38:49 25 aware that we were not particularly attracted to increasing our facilities
26 to the company but felt we had limited choices in the overall
27 circumstances. Accordingly, the additional facilities provided were to
28 meet only the fees identified as being absolutely necessary to bring the
29 project to planning permission. Our understanding was and remains, that
15:39:07 30 appropriate arrangements had been made by the company with any outstanding

15:39:10 1 creditors other than Connell Wilson see next point.

2

3 Next point Connell Wilson this matter was raised by you on the 28th April

4 '93. It was subsequently discussed on the 16th June last and it was

15:39:22 5 agreed Seamus Maguire would take the matter up with Connell Wilson."

6

7 I think summarise the position in relation to Connell Wilson earlier,

8 isn't that right?

9 A. Yes.

15:39:32 10 Q. 337 On the following page "I trust the foregoing sets out our understanding of
11 the position vis-a-vis fees". He deals with in the next paragraph "This
12 leads me to a broader issue regarding indications by you that you are not
13 being kept advised of developments in the company. There have been
14 numerous discussions and communications between us in this regard and we
15:39:51 15 would again urge that you make the appropriate arrangements with the
16 project manager to be kept advised of developments. In this regard and as
17 you are aware I was invited to attend the last few board meetings of the
18 company at which a full and detailed update was given by project manager
19 on the situation."

15:40:08 20

21 And he asks Mr. Gilmartin to attend the board meetings. Now, do you agree

22 with me first of all that what Mr. Gilmartin is being told here is if he

23 came to the board meetings he would be kept fully informed?

24 A. Oh, yes.

15:40:19 25 Q. 338 And that what Mr. O'Farrell is also recounting here is a series of
26 complaints that are set out in discussions and communications between the
27 bank and Mr. Gilmartin and that those discussions and communications had
28 to relate to the payment of fees?

29 A. The fees that Gilmartin wanted paid to Connell Wilson and people like that

15:40:39 30 we could not afford to pay.

- 15:40:41 1 Q. 339 Think it's wider than that I think, Mr. O'Callaghan, because various
2 points are made by Mr. O'Farrell before he gets to address the question of
3 Connell Wilson. And in view of the fact that Mr. O'Farrell refers in his
4 letter to there having been numerous discussions and communications
15:41:00 5 between the bank and Mr. Gilmartin, would you agree if Mr. O'Farrell is
6 accurate, that it follows from that there had been a series of
7 communications between Allied Irish Bank and Tom Gilmartin with complaints
8 about fees?
- 9 A. The fees that were not paid to Ove Arup, Ciaran O'Malley and Connell
15:41:18 10 Wilson.
- 11 Q. 340 Do you agree, Mr. O'Callaghan, that if Mr. O'Farrell is accurate in what
12 he sets out in the letter to Mr. Gilmartin, there must have been a series
13 of communications which he describes as "Numerous discussions and
14 communications between us in this regard" that that means that there had
15:41:38 15 to have been a series of communications between the bank and Mr. Gilmartin
16 about fees, do you agree with that?
- 17 A. Yes.
- 18 Q. 341 And one would expect therefore for the file to have recorded all of those
19 communications and discussions, isn't that right?
- 15:41:51 20 A. Yes.
- 21 Q. 342 Right. Now, I think, Mr. O'Callaghan, that in August of, yes August of
22 1993, Mr. Dunlop raised an invoice at 10038, now do you remember -- could
23 we have the full invoice please, thank you. Do you remember this invoice?
- 24 A. Yes, I should actually, I think.
- 15:42:27 25 Q. 343 This invoice is slightly different to the previous invoices that had been
26 provided by Mr. Dunlop, isn't that right?
- 27 A. Oh, yes, this was in connection with the planning application.
- 28 Q. 344 Yes. I wanted to ask you about that, Mr. O'Callaghan, about the services
29 that Mr. Dunlop had provided in connection with the planning application,
15:42:43 30 what were they?

- 15:42:44 1 A. Yes. Well basically because we were making the planning application
2 before the plan was ratified, this was August '93, we decided that we
3 would go and contact, the councillors and explain to them what we were
4 doing, that we were making the planning application before, well before we
15:43:06 5 could officially make it, because we couldn't make it until after the plan
6 was ratified obviously, but because of the pressure to get the thing going
7 and to try and get planning permission we were putting it in as you know,
8 as I have said we were putting it in a bit earlier than we were entitled
9 to, but I got permission from the County Council to do that. What that
10 was about, is that we decided tell as many councillors as we could what we
11 were doing so the Blanchardstown people could not start an argument about
12 it when they saw the planning application.
- 13 Q. 345 You already had approval, verbally from the manager, isn't that right, and
14 his official that could you make the application in advance of the zoning
15:43:46 15 being confirmed you so told the bank, isn't that right?
- 16 A. Oh, yes.
- 17 Q. 346 I think when this invoice came in, it was paid initially by Riga, is that
18 right?
- 19 A. I think so, yes.
- 15:43:51 20 Q. 347 At 10041, isn't that correct?
- 21 A. Yes.
- 22 Q. 348 It was recouped at 10044 by you from the Barkhill number 3 loan, isn't
23 that right?
- 24 A. Yes.
- 15:44:10 25 Q. 349 And I think you recouped by arrangement with the bank, I think the
26 arrangement that you had insofar as an invoice contained VAT, that the VAT
27 element was retained by Riga and the net amount of the invoice was paid by
28 Barkhill is that the situation?
- 29 A. Yes I think so, yes.
- 15:44:27 30 Q. 350 I think there was a reconciliation at the year end between Mr. Fleming of

- 15:44:32 1 Deloitte & Touche and Mr. Lucey of Riga in relation to VAT, isn't that the
2 position?
- 3 A. Yes.
- 4 Q. 351 Right. And I think Mr. Lucey has given his evidence in relation to that,
15:44:40 5 isn't that right?
- 6 A. I believe so, yes.
- 7 Q. 352 And that explains why the net amount was paid by Barkhill, isn't that the
8 position?
- 9 A. Yes.
- 15:44:48 10 Q. 353 Right. Now, you say that that related to Mr. Dunlop informing all of the
11 councillors?
- 12 A. No, no, a certain amount, as many as we could, certain amount of
13 councillors.
- 14 Q. 354 Can I ask you in relation to that what was the formal nature of the
15:45:03 15 approach made that was made to the councillors?
- 16 A. To explained to them what we were doing and that we were making a planning
17 application ahead of our time. It was mainly for the councillors to be
18 aware of what we were doing before the Blanchardstown councillors would
19 have caused an argument over it actually and maybe started saying the
15:45:22 20 wrong thing about it. And we also, in the process we also wanted to let
21 them know that we weren't really jumping the gun, I suppose, we were
22 telling the councillors that we had permission from the official to make
23 the application.
- 24 Q. 355 And at this time, Mr. O'Callaghan, at the time that this invoice was
15:45:43 25 raised by Mr, raised by Mr. Dunlop, had you made any other arrangements
26 with Mr. Dunlop in relation to the payment of fees?
- 27 A. I'm not sure whether the retainer had been set up at that stage or not.
- 28 Q. 356 The cheque at 10033 is dated the 23rd August 1993, isn't that right?
- 29 A. Yes.
- 15:46:06 30 Q. 357 And the invoice is dated 25th August at 10038, so would you agree that

- 15:46:16 1 it's likely that the invoice came after the cheque?
- 2 A. It's possible, yes.
- 3 Q. 358 And that therefore what must have happened is that you had made some
- 4 arrangement with Mr. Dunlop to pay him in advance of Mr. Dunlop producing
- 15:46:32 5 the invoice?
- 6 A. I can't remember but that's possible, yes.
- 7 Q. 359 Yes. And isn't that likely to have been the case when the invoice is
- 8 dated the 25th August and the cheque is dated the 23rd August so, that
- 9 even though it's only a two day lapse, isn't that right?
- 15:46:47 10 A. Yes.
- 11 Q. 360 And at 9990 on the 25th August Mr. Dunlop's diary records you being in
- 12 attendance and then a note that says "Discussed fees with OOC and agreed
- 13 2,500 pounds per month until end of December"?
- 14 A. Yes.
- 15:47:11 15 Q. 361 Is that right, total 10K?
- 16 A. Yes.
- 17 Q. 362 Would you agree with me that it is likely that at that meeting Mr. Dunlop
- 18 produces his invoice of the 25th August 1993 to you?
- 19 A. Possibly, yes.
- 15:47:23 20 Q. 363 And that you had already written the cheque on the 23rd August, in fact
- 21 Mr. Lucey I think wrote the cheque on the 23rd August?
- 22 A. Possibly.
- 23 Q. 364 It would follow from that then that you had paid Mr. Dunlop or been
- 24 prepared to pay Mr. Dunlop in advance of the production of the invoice,
- 15:47:38 25 isn't that right?
- 26 A. Yes, it was agreed in advance, yes.
- 27 Q. 365 Just looking at that note that's contained in Mr. Dunlop's diary,
- 28 Mr. O'Callaghan, I think and I think you agree with me that invoices did
- 29 issue thereafter for a retainer by Mr. Dunlop, isn't that right?
- 15:47:57 30 A. Yes.

- 15:47:57 1 Q. 366 Right. And if we see at 10198 this is an invoice for September, it's an
2 invoice for October dated end of September and then at 10199 there is an
3 invoice for October for November, and then at 10200 there is an invoice
4 dated 30th November for December, isn't that right?
- 15:48:26 5 A. Yes.
- 6 Q. 367 And I think Riga paid all three invoices together, isn't that the
7 position?
- 8 A. Yes.
- 9 Q. 368 And I think that can be seen as an extract from the cheque payments book
10 at 10201 and that's about halfway down the page, the analysis is under
11 creditors, and the sum is 9,075 pounds, is that right?
- 12 A. Yes, that's correct.
- 13 Q. 369 Now, in relation to the retainer at 9990, what discussion did you have
14 with Mr. Dunlop about the retainer, Mr. O'Callaghan?
- 15:49:15 15 A. Well, as usual we did not have a Dublin office and we wanted to maintain,
16 we did not have a Dublin office and we wanted to maintain a presence in
17 Dublin, we wanted to use his office as our office in Dublin, which we did
18 for the next couple of years, and so we agreed pay him so much per month
19 retainer per month, 2,500 pounds which was increased after a period, in
15:49:37 20 fact we agreed pay to him more than that but all we could afford was to
21 pay him 2,500 pounds a month at the time and have the use of his office,
22 his staff and his telephones etcetera, etcetera and that whatever PR work
23 was to be done that he would handle that as well, all included in that
24 retainer. It was the provision of an office or a base in Dublin for us.
- 15:49:58 25 Q. 370 Well, do you agree insofar first of all that as far as Mr. Dunlop records
26 this in his diary, you agree that what you agreed to pay Mr. Dunlop was
27 2,500 pounds a month with a total up to 10,000 pounds up to December '93?
- 28 A. That's what's there. Yes.
- 29 Q. 371 That's correct. Do you agree with me it does not record an agreement to
15:50:17 30 pay Mr. Dunlop any greater amount?

- 15:50:19 1 A. It's not there but we had agreed we'd pay him more.
- 2 Q. 372 So you anticipate me. Just take it in stages, do you agree that it does
- 3 not record any agreement between yourself and Mr. Dunlop for the payment
- 4 of an amount greater than two and a half thousand pounds?
- 15:50:33 5 A. Yes.
- 6 Q. 373 Right. And that in the following year, when you changed the retainer
- 7 relationship again with Mr. Dunlop, I think we'll see that his diary
- 8 records the amount also, isn't that right?
- 9 A. We didn't pay him any money the following year.
- 15:50:50 10 Q. 374 Yes, when you come to an arrangement towards the end of 1995 in relation
- 11 to it, there is an arrangement in relation to the retainer, isn't that
- 12 right?
- 13 A. Yes.
- 14 Q. 375 And the amount Mr. Dunlop records in his diary is the amount that in fact
- 15 is paid, isn't that right?
- 15:51:03 16 A. Yes.
- 17 Q. 376 And in Mr. Dunlop's diary records of these meetings with you,
- 18 Mr. O'Callaghan, there is no reference to a greater amount other than the
- 19 amount that Mr. Dunlop records, isn't that right?
- 15:51:13 20 A. Yes.
- 21 Q. 377 Can you think of any reason why, if you had made an agreement to pay Mr.
- 22 Dunlop a sum greater than two and a half thousand pounds, or that there
- 23 was an outstanding sum, why Mr. Dunlop didn't record it in his diary?
- 24 A. I don't know, but the agreement was we'd pay him 5,000 pounds a month as
- 15:51:30 25 long as we were using his office. The only problem was we couldn't afford
- 26 it at the time and we settled on two and a half thousand pounds to be paid
- 27 at that particular time and when and if we were in a position at a later
- 28 stage to pay him the full amount we would pay it.
- 29 Q. 378 You agree I think, Mr. O'Callaghan, as you must, that there is -- that is
- 15:51:47 30 not recorded by Mr. Dunlop in this memorandum of his retainer agreement

15:51:51 1 with you?

2 A. Absolutely, yes.

3 Q. 379 Isn't that right. Indeed Mr. Dunlop, when he gave his evidence to the

4 Tribunal in relation to the sum of 100,000 pounds paid by you in 1988,

15:52:02 5 told the Tribunal that he believed that that was part of the success fee

6 and he did not give any evidence to the Tribunal about it being back money

7 in relation to unpaid retainers, is that right?

8 A. Yes.

9 Q. 380 All right. Now, excuse me --

15:52:22 10

11 JUDGE FAHERTY: That should be 1998. The transcript records, I think in

12 fairness you said '88, I assume you mean '98.

13

14 MS. DILLON: Yes, indeed. Just one small point in relation to that entry

15:52:35 15 made by Mr. Dunlop in his diary at 25056 -- before it's taken off the

16 screen, do you see where something is redacted, I think -- could I have

17 that last document there? Can I have the diary entry that you took off

18 the screen, could I have that back on please?

19

15:53:02 20 CHAIRMAN: What's the number?

21

22 JUDGE FAHERTY: 9990, I think.

23

24 MS. DILLON: 9990, yes. You see beneath your initials, Mr. O'Callaghan,

15:53:19 25 Mr. Dunlop has written over something, do you see that?

26 A. Yes.

27 Q. 381 If we look at 25056, what was written beneath that has been now I think

28 has been deciphered, even though it's hard to read it on that document, as

29 "LL/OOC 10 o'clock". Do you see that?

15:53:45 30 A. Yes.

- 15:53:45 1 Q. 382 Right. And that that is what was overwritten by Mr. Dunlop. Was
2 Mr. Lawlor at the agreement that you made with Mr. Dunlop on the 25th
3 August, 1993?
- 4 A. I can't recollect, but I would say this to you, any agreement I made with
15:54:03 5 Mr. Dunlop, Mr. Lawlor was not present.
- 6 Q. 383 Now I think insofar as the payment of those invoices are concerned, while
7 the earlier invoice, that is the one in the sum of 9310 was paid out of
8 the Barkhill number 3 loan, these invoices were paid by Riga, isn't that
9 the position?
- 10 A. Yes.
- 11 Q. 384 Right. Now just excuse me for a moment Mr. O'Callaghan, just in relation
12 to that overwriting by Mr. Dunlop, can you think of any reason,
13 Mr. O'Callaghan, why, when Mr. Dunlop was overwriting in his diary he
14 removed any reference to Mr. Lawlor having contact with yourself?
- 15 A. I really genuinely really don't know why he should even attempt to do
16 that, I just don't know.
- 17 Q. 385 Was there any reason why you could see where Mr. Dunlop would be anxious
18 in some way to protect you from the scrutiny of the Tribunal by virtue of
19 your relationship with Mr. Lawlor, as recorded in Mr. Dunlop's diary?
- 15:55:09 20 A. I don't know, because in particular my relationship with Mr. Lawlor was
21 extremely limited from '93, early '93 on actually, or as soon as the
22 stadium proposition collapsed. I hardly met him, so I don't know. I
23 haven't a notion.
- 24 Q. 386 You will have seen in Mr. Dunlop's diary, that he has made redactions
15:55:31 25 where he has either altered Mr. Lawlor's name, where it's in conjunction
26 with yours, or where he has deleted as he did on this occasion, references
27 to Mr. Lawlor's name in conjunction with yours, isn't that right?
- 28 A. Yes, I don't know why he did it. I would have had very few meetings
29 actually with Mr. Dunlop and Mr. Lawlor. Mr. Frank Dunlop and Liam Lawlor
15:55:51 30 had a their own arrangements and their own business, I was very rarely

15:55:55 1 privy to it actually.

2 Q. 387 In August, I think, of 1993 you lodged the planning application as we have
3 seen, isn't that right?

4 A. Yes.

15:56:02 5 Q. 388 And I think ultimately planning issued in relation to the stadium, isn't
6 that right?

7 A. Yes.

8 Q. 389 Not the stadium. In relation to Quarryvale, isn't that right?

9 A. Yes.

15:56:13 10 Q. 390 And in September of 1993, and I'm not going to go through it again because
11 you have already dealt with it in detail, you received a request from
12 Fianna Fail for a payment of a substantial sum of money, which was
13 followed on by a visit, I think, by a senior member of Fianna Fail to you,
14 Mr. Mac Sharry, is that right?

15:56:31 15 A. Yes, that's correct.

16 Q. 391 And I think that letter at 10075, is the letter that initiated the request
17 to you which ultimately culminated in the payment of 80,000 pounds by you
18 and 10,000 pounds at the Cork private dinner in March '94 and 10,000
19 pounds to Mr. Crowley, isn't that right?

15:56:53 20 A. That's right.

21 Q. 392 Right. Now, and we have already dealt with that. In September also
22 Mr. O'Callaghan, you paid 25,000 pounds to Mr. Dunlop at 14228, isn't that
23 right?

24 A. That was the final payment on the stadium I think, was it?

15:57:23 25 Q. 393 At 10118 there was an invoice of the 10th June, which is marked "paid" on
26 the 14th September?

27 A. Yes.

28 Q. 394 I think you have already dealt with that Mr. O'Callaghan, I don't want to
29 take you through it, but there is only one issue that I want to deal with.
15:57:40 30 At 10113, on the 17th September according to the bank, that is Allied

15:57:47 1 Irish Bank, and Mr. Dunlop, Mr. Dunlop cashed that cheque, left the bank
2 with 25,000 pounds in cash and can't assist the Tribunal as to what he did
3 with it. You are aware of that evidence?
4 A. Yes.

15:58:00 5 Q. 395 Right.
6 A. You told me that.
7 Q. 396 Yes, because that is Mr. Dunlop's evidence and it is the Allied Irish Bank
8 evidence that Mr. Dunlop cashed the cheque, isn't that right?
9 A. Yes.

15:58:10 10 Q. 397 I had previously shown you, at 4280, an entry in Mr. Dunlop's diary for
11 1990 for an Owen O'Callaghan on the 8th June, isn't that right?
12 A. Sorry, can I see that please? On the 8th June 1990? Couldn't be me, yes,
13 ok.
14 Q. 398 Yes. And beneath that something had been redacted, isn't that right?

15:58:35 15 A. Yes.
16 Q. 399 And I think at 25587 we had seen previously, I think, Mr. O'Callaghan,
17 that that redaction was a reference to "G and M", Guinness and Mahon, do
18 you remember that now?
19 A. Oh, yes, yes.

15:58:47 20 Q. 400 And I think that if we go back to the 17th September at 10113, you will
21 remember I asked you, had you any connection to Guinness and Mahon or
22 could you think of any reason why your name was left and Guinness and
23 Mahon was redacted, isn't that right?
24 A. Yes.

15:59:08 25 Q. 401 I just want to show you that on, at 2.30 on the 17th September the person
26 who Mr. Dunlop is identified as meeting in the Westbury was a person who
27 worked for Guinness and Mahon. Do you see that in Mr. Dunlop's diary?
28 A. Yes.
29 Q. 402 Right. And I was wondering, Mr. O'Callaghan, does that assist you at all
15:59:30 30 at helping the Tribunal as to what Mr. Dunlop might have done with,

15:59:35 1 effectively what initially was your 25,000 pounds, isn't that right?

2 A. Initially, but his when I gave it to him.

3 Q. 403 Yes?

4 A. I haven't a notion, I know nothing about Guinness and Mahon.

15:59:49 5 Q. 404 The --

6 A. Sorry, are you looking at "2.30 Westbury".

7 Q. 405 Yes?

8 A. What's next it to, what's the name?

9 Q. 406 Martin LOK?

15:59:59 10 A. No, I can't give you any assistance.

11 Q. 407 All right. And when Mr. Dunlop made the redaction that's contained in his

12 1990 diary at 4280?

13 A. Yes.

14 Q. 408 If your evidence is correct and that of Mr. Dunlop's is correct, by that

16:00:20 15 stage you hadn't met Mr. Dunlop, isn't that right?

16 A. That's June.

17 Q. 409 Of 1990?

18 A. No, I had not met him.

19 Q. 410 Isn't that right?

16:00:28 20 A. That's correct.

21 Q. 411 There is some difference between yourself and Mr. Dunlop as to precisely

22 when you met. Mr. Dunlop places it prior to the 22nd January of 1991, you

23 place it later?

24 A. End of February 1991.

16:00:38 25 Q. 412 Yes, I think Mr. Gilmartin refers to a meeting April of 1991, isn't that

26 right?

27 A. Yes.

28 Q. 413 Both of you are in agreement that the meeting took place after January of

29 1991, isn't that right?

16:00:49 30 A. Yes.

16:00:49 1 Q. 414 You will be aware that Mr. Gilmartin maintains you were known to each
2 other prior to January of 1991?
3 A. No, impossible. Yes.
4 Q. 415 Do you disagree or dispute Mr. Gilmartin when he suggests that you knew
16:01:01 5 Mr. Dunlop prior to January of 1991?
6 A. Yes, I do.
7 Q. 416 Right. And I think Mr. Gilmartin said that he saw you talk with Mr.
8 Dunlop in the Dail at some stage?
9 A. So I believe. Not at all, totally wrong.
16:01:16 10 Q. 417 Do you say that didn't happen?
11 A. Not at all.
12
13 MS. DILLON: I understand it's -- I understand it's 4 o'clock, sir.
14
16:01:23 15 CHAIRMAN: It's 4 o'clock. So we'll see Mr. O'Callaghan tomorrow at half
16 past ten, is that right?
17
18 MS. DILLON: Yes, sir.
19
16:01:32 20 CHAIRMAN: All right.
21
22 **THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY,**
23 **WEDNESDAY 8TH OCTOBER 2008 AT 10.30 AM.**
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