

THE HEARING RESUMED ON THE 6TH OF DECEMBER, 2000, AS

FOLLOWS:

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CHAIRMAN: Good morning everyone.

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MR. HANRATTY: Mr. Barry please.

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OLIVER BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE
EXAMINED BY MR. HANRATTY AS FOLLOWS:

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1 Q. MR. HANRATTY: Good morning Sir. Mr. Barry, good morning

Mr. Barry?

A. Good morning.

2 Q. Can I ask you first, Mr. Barry, about the various queries

that we had in relation to the capital account yesterday,
and you were going to get information for us in relation to
a number of documents, and will we start perhaps with page
226?

A. Mr. Hanratty, at the outset I might as well be frank, but a
lot of the documentation that you have asked me to look at,
I thought might be readily available. Unfortunately that
is not the case. If we proceed I will tell you what help I
have succeeded in getting overnight.

3 Q. Right. Well the first piece of information that we hoped

we would have is how the three credits on page 226 are made
up, the credit to yourself of ú85,000 which we know that
you subsequently increased to 141, the credit to
Mr. Stafford of 120 and the credit to Mr. Mulhearn of 105.
Have you been able to --

A. - I am afraid I can be of very little assistance, perhaps no

assistance on this one at the moment. These are the figures that were given by James Stafford on the day of the rights issue and there was lots of professional people involved at that stage at the rights issue. We had the accountancy firm that you mentioned yesterday, I think they confirmed some figures before that, but to be quite honest with you I can't verify what Mr. Stafford's credits.

4 Q. Well, from whatever researches you were in a position to do, can you throw any light at all on the credit of £85,000 which he attributed to you?

A. I can't. That was his figure and, obviously, I am sure he has sound reasons for putting that figure there.

5 Q. I appreciate that. But what I have in mind is this, Mr. Barry; we know that you told us yesterday that you considered that the £85,000 was insufficient?

A. I did.

6 Q. And you added to it the 26,250 and the 35?

A. That's correct.

7 Q. Well, if you don't know what the £85,000 is, how do you know that it didn't include those two already, do you know what I mean?

A. I do know what you mean. That is a very fair question. I assume that it didn't, that it didn't include those two figures. What my grounds were at the time for assuming it I can't remember but I am sure that all of this will be clarified when Jim Stafford, you know, produces his side of the story.

8 Q. Yes. The credit of 120 to Mr. Stafford himself, I take it you, were you able to verify, for example, that that may well be the £260,000 lodgements which he made to this joint

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account?

A. It certainly looks like that. Mr. Hanratty, may I say this document was as a result of the capital investment in Century. Prior to that there was accountants and bankers crawling all over these figures.

9 Q. I appreciate that?

A. And I would be - these figures were acceptable at the time and I am sure they are perfectly correct now.

10 Q. Well then, looking at Mr. Mulhearn's credit of £105,000, now, we already know that Mr. Mulhearn put in £25,000 to the capital account more than yourself or Mr. Stafford, even making allowance for the deductions that you both made?

A. Yes.

11 Q. He put in £300,000, as we know?

A. Yes.

12 Q. It seems very likely, does it not, that the £105,000 includes the 25 excess which he paid in?

A. I couldn't - I can't comment on that.

13 Q. It seems a reasonable --

A. -- to be honest with you, getting back to what I said yesterday, I don't want to be talking about figures here unless I am absolutely certain.

14 Q. If you don't mind, I will explore them as far as they can be explored and we will find out the parameters of what, if any, information you can give us about it.

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What I was going to put to you in relation to Mr.

Mulhearn's figure is that in the course of his evidence it appeared, and in the course of the Tribunal's researches,

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it appears that there was a payment by, by Mr. Mulhearn at some stage of ú80,000, or at least it came out of some account attributable to him?

A. I am not aware of that.

15 Q. Yes. And we are still waiting on further information in relation to that payment. But it might possibly be, for example, that the credit of 105 constitutes that ú80,000 which he may well have put in to Century because on your evidence yesterday you were all contributing in the difficult circumstances in which the company found itself. It may well be that that was added to the 25,000 excess in the capital account, that is why he got a credit for 105.

Are you in a position to assist on that one way or another?

A. It sounds very plausible and it sounds correct. If you said to me 'That is a fact', Mr. Hanratty, I cannot say so.

16 Q. Yes. Well, do you know anything about the ú80,000?

A. Nothing whatsoever.

17 Q. It doesn't appear from the joint account, which we went through yesterday, that Mr. Mulhearn's money went into that account?

A. I can't comment on that, I don't know.

18 Q. Well, did he provide you with any cash or cheque or anything during this difficult period to assist with the disbursements and outgoings of the company?

A. I have certainly no recollection of that, no.

19 Q. Well, are you satisfied that he did, notwithstanding the fact that you don't have any recollection of it?

A. I am satisfied that Mulhearn - Mr. Mulhearn was due a credit of 105 on the closing day of Capital, because of all of the scrutiny that went on prior to that day.

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20 Q. Yes. Well, the evidence you gave us yesterday was that all three of you were putting in money, there was no fixed arrangement, it was a gentleman's agreement, I think was the evidence you gave, but that each of you would contribute, share and share alike, with the expenses which had to be provided out of your own pockets?

A. That was the general spirit of the thing, yes.

21 Q. Is it the position that Mr. Mulhearn was party to that understanding or gentleman's agreement?

A. Yes, it was a three-way split, Mr. Hanratty.

22 Q. So that presumably he then therefore would have contributed something?

A. If he is credited here with 105,000 he must have contributed something.

23 Q. Well then, may I take it that your, you are assuming that insofar as he is given a credit here of 105, it could only relate to monies that he provided to the company over and above his capital investment?

A. It would certainly sound like that.

24 Q. Perhaps including --

A. I think we are going around in circles. You, I am sorry I can't be of more assistance to you, I genuinely wish I could. I think it's an accountancy matter, if the accountants of the respective parties sit around a table for an hour I am sure they would work it out very fast.

25 Q. I have no doubt that is so, Mr. Barry, albeit that you, perhaps you are not in a position to deal with the specific figures, you can tell us about the factual background from which perhaps we might be able to deduce certain relationships between the figures.

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Now, we know at least from the evidence that you have given, that Mr. Mulhearn was, as you - and Mr. Stafford was- putting money out of your pockets in this 1990 period, really the first half of 1990 it seems to be?

A. - yes.

26 Q. - to pay staff. But to deal with other outgoings that had to be dealt with as well?

A. Yes.

27 Q. We know that it doesn't appear from the joint account that any of Mr. Mulhearn's money went into the account. And what I want to ask you is this; is it reasonable to assume or suppose or infer that whatever monies Mr. Mulhearn did put up, he was given credit for in this credit figure of 105, albeit that you don't know precisely how it was made up?

A. I would certainly say that Mulhearn was given credit for every shilling he put into Century Radio.

28 Q. Is it safe for us to assume that whatever credit he was given was put into that figure there, there was no opportunity for him to get any credit?

A. That would be correct, I would say, yes.

29 Q. So whatever he was getting credit for, under whatever heading and by reference to whatever sums --

A. -- surely, Mr. Hanratty, Mr. Mulhearn can throw more light on this matter than I can? I mean, I can't go back to see exactly what cheques he wrote and what sums he put in. I don't have that information at hand. I am sure Mr. Mulhearn - like, I can account for what I put in, I am sure he can account for what he put in.

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30 Q. Up to now he can't but we are awaiting further information and hopefully that aspect of it will be resolved.

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Can I just go back for a moment to your own credit. We know that - just to refresh your memory - that on the primary liability, subject to any credits that might be payable, the primary liability was to put up a cash backing for a guarantee of ú690,000 or ú230,000 each?

A. That's right.

31 Q. That was quite a separate item, that it had to be because of its nature a guarantee had to be dealt with separately?

A. Yes.

32 Q. In addition to that there was additional cash 'to close', as it was described in one of your documents, 83,000 for each of the investors?

A. That's right, yes.

33 Q. As far as there would be anything to be credited it would have to be credited against that figure?

A. Yes.

34 Q. Obviously?

A. Yes.

35 Q. In your case we do know that on closing you appear to have paid over ú52,040 and some pennies?

A. Yes.

36 Q. We know that because on the date of closing, which was the 27th of September there was the purchase of a bank draft and a debit on your account - or on the Quality Artistes Management account - in that sum?

A. I wouldn't - I am not disputing that.

37 Q. That is the case. We also know that from a document which

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we had yesterday in Miss Maeve McManus's handwriting, where she kept a running balance of the various disbursements that you were making?

A. Mm-hmm.

38 Q. If I can just refer you to it. It is on page 225. Sorry it is not page 225. It is on page 244.

A. Yes, I see this one, yes.

39 Q. The third last item on the page, the closing of ú52,420?

A. Yes.

40 Q. Appears to refer to the ú52,040, but it seems that there was some question of ú380 expenses added to the 52,040 which would make that sum. In any event, 52,420 or 52,040 appears to have been handed over by you on the closing, isn't that so?

A. It was certainly due by me. If it happened on that day - I don't know when it exactly happened.

41 Q. All the indications are that that is so. You indicated to us yesterday that you were making up a shortfall in respect of Mr. De Burgh and Mr. Wogan in the sums of 15, sorry, 25 and ú15,000 respectively?

A. That was my - that is what I assume I did at the time, yes.

42 Q. Yes. They make a total of ú40,000. So you were paying, in effect, ú40,000 on behalf of these two pending receipts of, receipts of their monies which they subsequently made to you directly.

A. I didn't - .

43 Q. -- that appears on page 244, the last two items on the page?

A. Yes.

44 Q. That you were in receipt, in fact, of two such sums from

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them?

A. Yes.

45 Q. That means then going back to the 52,420 figure, that of that, 40,000 was attributable to two other individuals?

A. Yes, well, yes.

46 Q. And the remaining balance of 12,420 was attributable to you?

A. Yes.

47 Q. So that on the closing date the cash that would have been due from you to close would have been ú84,000. All that you actually put up attributable to yourself was 12,420 indicating that you took credit for the balance?

A. What sheet are we on now?

48 Q. We are not really on any sheet. We know that the ú84,000 was the cash figure to close, isn't that so?

A. Yes.

49 Q. We know that you produced a cheque of ú52,420 or a cheque - or a bank draft and a cheque - amounting to 52,420?

A. Yes, so I was getting 12.420 less the legal fees, credit --

50 Q. ú40,000 of that was attributable to Mr. De Burgh and Mr. Wogan, the balance being 12,420 was attributable to you?

A. It looks like that, yes.

51 Q. That appears to be the only money that you paid over on closing, as far as we are aware?

A. Yes, that looks - well --

52 Q. Which presumably means that you took credit for the difference between the 84 which would have been your cash to close and the 12 that you actually put up?

A. I am afraid I am lost there.

53 Q. Well, of the 52,420 that you paid over, ú40,000 of that was

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Mr. De Burgh and Mr. Wogan?

A. If we can go back to Mr. Stafford's sheet again on the closing it might be helpful, I would say.

54 Q. Yes, page 225, no - 226.

A. 223, is it? No.

55 Q. If Mr. Wogan and De Burgh did not have a shortfall, if they had come up with their money, all you would have been putting in on the 27th of September was 12,420, isn't that right?

A. Yes.

56 Q. That is the difference between 52,420 and --

A. If you ask me how I arrived at that figure, I don't know, but I am sure there is a perfect explanation for it, Mr. Hanratty.

57 Q. But you can't help us with it?

A. I can't, not at the moment, no.

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CHAIRMAN: There was a shortfall from the institutional investors - there was a surplus at the end, wasn't there?
I don't know if it related to the surplus.

58 Q. MR. HANRATTY: I know that you calculated the surplus in one of your own documents. We will come to that in a moment?

A. Yes.

59 Q. If it be the case, as it appears, that the only value, as it were, that flowed from you on the 27th was 12,420, then it clearly follows that you had taken credit for the difference between that sum and the 84,000 which was the sum that you were suppose to provide in cash, before

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credits were taken?

A. I can't - I mean, I had an account, on the account from Mr. Stafford I had a credit of 85.

60 Q. I am just talking about the arrangements between Capital Radio and the others. Capital Radio were coming in with 1.5 million. 1.2 million had to be come up from somebody else, including yourself and your colleagues Mr. Stafford and Mr. Mulhearn?

A. Yes.

61 Q. So some of it was to be produced by institutional investors and some of it to be produced by Mr. Wogan and Mr. De Burgh?

A. Yes.

62 Q. There was a shortfall from Mr. Wogan and Mr. De Burgh and the institutional investors, amounting to ú182,000?

A. Was it not three times - was there a shortfall, was the 84323 not related to the shortfall?

63 Q. If you look at the top of page 226?

A. Yes.

64 Q. You can see the shortfall there on the right-hand at the top column at the top, 78 from the institutional investors, 40 from Mr. Wogan, that was added to the 825 that yourself and Mr. Stafford and Mr. Mulhearn had to come up with, isn't that right?

A. Yes.

65 Q. Making in total a total figure of 943,000 that the three of you had to come up with. That is shown on the bottom of the second column on the first section of the document?

A. Yes.

66 Q. So between the three of you, you had to come up with

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ú943,000 to close?

A. Yes.

67 Q. We know that ú690,000 of that was by way of bank guarantee?

A. Yes.

68 Q. The balance therefore was 253,000?

A. Yes.

69 Q. And the way that you were going to come up with that was to pay ú84,000 each in cash?

A. Yes, and then take whatever credit was due to us.

70 Q. Subject to any credits that you were entitled to?

A. Yes.

71 Q. What I am pointing out to you that on the actual closing date and removing from the equation monies that you paid on behalf of the other two, that is Mr. De Burgh and Mr. Wogan, you yourself paid ú12,420, not ú84,000, isn't that so?

A. It certainly looks like that because I withdrew 52,000, yes.

72 Q. Which means you took credit for the balance?

A. Of the 12,420 or whatever it was.

73 Q. Between the 12 and the 84. You were due to pay 84, you didn't pay 84, you paid 12?

A. Was I due to pay 84 when I had a credit of 85?

74 Q. 84 before credits were taken. Each of the three of you were due to pay --

A. -- that was our obligation.

75 Q. Your obligation was to pay 84 subject to any credits that you were going to take?

A. Yes.

76 Q. We know that you took credit for the difference between 84

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and 12?

A. Yes.

77 Q. Because you paid 12 - 12,420?

A. Do you know I took credit for that?

78 Q. Well, it is fairly clear from the documents that you did?

A. Okay. I don't want to be too defensive here because I am one hundred percent happy that these figures are correct but unfortunately I don't have the expertise to really go - continue, Mr. Hanratty. If I can be helpful, I will be helpful.

79 Q. So the figure for which you took credit, if our calculation is correct, appears to be 71,580?

A. Yes.

80 Q. That is my calculation of the difference between 84 and 12,420?

A. Yes.

81 Q. Do you have any idea on what basis you took credit for that particular figure? Or to put it another way, on what basis you decided that the amount that you were going to pay on your own behalf was 12,420?

A. Well, if you tell me that I was, if it is here that I was suppose to pay 84 and if you tell me that I gave myself credit for 12,000, da, da --

82 Q. You did not take credit for 12, you paid 12 on your own behalf?

A. I deducted the 12 from the 84.

83 Q. Yes?

A. Yes, that sounds okay.

84 Q. That is the figure for which you took credit?

A. Is that --

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85 Q. I am sorry this is confusing for you, Mr. Barry?

A. That not the figure --

86 Q. It seems to be fairly straightforward

MR. WALSH: I don't think it is fair to ask the witness that he took credit. I think he was given credit, he wasn't personally involved.

CHAIRMAN: Put it another way, a sum, if Mr. Wogan and Mr. De Burgh had paid their own bill, as I understand the situation is the witness is credited with paying 12,000 some odd pounds, there is no doubt about that. It is there. Now, the question is what, what happened the remaining 70, what was the figure ú70,000?

MR. HANRATTY: 71,580.

CHAIRMAN: How is that accounted for? Either is it outstanding, or was it, was it - was a credit given for it in some manner? I mean, I want to find out what the credit is. It has to be either outstanding or some alternative method of discharge found. That is really the inquiry

MR. WALSH: That is a perfectly legitimate line of inquiry. I am not complaining about the line of inquiry. I am complaining about the language used in the question. I don't think it is fair to the witness to say that he took credit when he has already said factually, in fact, there were accountants involved. Mr. Stafford who was a --

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CHAIRMAN: -- nobody is being pejorative of the witness in any sense at the moment. We are just trying to sort out a mathematical problem.

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MR. WALSH: I know. This witness has already said he is not that good on the figures. There were other people --.

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CHAIRMAN: We will have to find out who is good on the figures, that is the only thing I can say.

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MR. HANRATTY: Can I just say two thing by the way of reply? The first thing I don't know what Mr. Walsh is complaining about at all. Mr. Barry is not Mr. Walsh's client. That is the first point.

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The second point is, when I said to Mr. Barry that he took credit, I am not for a moment suggesting or did I ever suggest that was not with the agreement of Capital Radio. Obviously everything was done with agreement by everybody or Capital Radio would not have closed the deal. If the monies that they regarded was properly due to them under the Shareholder's Agreement were not put up on the day of closing there would have be no closing. It is implicit and obvious that whatever figures were done on that date were agreed between the parties. Lest Mr. Walsh be any way confused about that, I am not suggesting that he took something that he was not entitled to.

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CHAIRMAN: I certainly didn't take you up to be in any way suggesting that there was anything pejorative to the

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witness in relation to it. It is a matter of acquainting the witness with what transpired. It is nothing more and nothing else.

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MR. WALSH: Mr. Hanratty obviously took it up wrong.
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87 Q. MR. HANRATTY: Mr. Barry, I don't want to spend too much time on this but I just --

A. -- I am sorry I can't be more helpful.

88 Q. -- I want to reach a consensus. I think it is fairly clear, we are all agreed, I understand, that there was ú84,000 cash to be put up by three of the original investors?

A. Yes.

89 Q. We know that you didn't put up ú84,000 on the day because you were due certain credits?

A. Yes.

90 Q. I know that there is some difficulty about the figures as to what credits you were due but what I am seeking to establish simply at this stage is what credit you actually took, on whatever basis it may have been calculated, do you understand me?

A. Yes.

91 Q. Now we do know that the monies that you put up on your own behalf were 12,420?

A. That certainly looks like that, yes.

92 Q. And it follows from that, that the amounts for which you took credit by agreement, I fully accept, with Capital Radio, was 71,580, being the difference between the two figures?

A. If you say so, yes.

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93 Q. Now, somebody must have done a calculation of how much you were going to have to pay on your own behalf on the closing date. And what I want to know, first of all, did you do that calculation? And secondly, and in any event, did you agree that calculation in advance with Capital Radio?

A. I can't remember but I do remember that the day of closing Mr. Stafford wasn't there, Mr. Moore was there and whatever funds were required that day, and believe me, Capital were quite sticky about it, everything more or less had to be on the table. I was the only director present. Whatever was necessary to be done on the day, to get, to save Century was done. I am not saying for a moment there was anything improperly done.

94 Q. No, not at all?

A. Whatever had to be done had to be done.

95 Q. Yes. All we are doing, Mr. Barry, is trying to understand what was, in fact, done and why it was done. That is really what we are doing?

A. I am so sorry. I mean, it is a long time ago and I can't remember exactly, precisely.

96 Q. I understand that. Let's just continue to explore the factual surrounding circumstances as far as you can remember them. We do know, for example, that Mr. Moore has told us that it was his instructions on closing date to pay 201- odd thousand having deducted from the 230 a sum of ú28,985.70. Mr. Stafford was claiming to be entitled to a credit of ú28,985.70, so he was deducting certain, making that deduction from the monies that he was putting up. We know that, Mr. Moore has told us that he had a number of phone calls with you in the run up to this closing meeting,

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in the course of which at your behest he put up the full amount, having the power of attorney and therefore authority to do so, he put up the full amount of ú230,000 on your undertaking that you would repay the difference to him within the following few days?

A. I don't have a recollection of that, Mr. Hanratty, I am not saying that I didn't do it but I just don't have a recollection of it.

97 Q. Mr. Moore is a reputable accountant. He has told us that he recalls these events and these events did occur.

A. I don't have a recollection, I don't recall it, no.

98 Q. Yes. Well, you are not in a position to deny them then, I take it?

A. I am not in a position to deny them, no.

99 Q. Well, do you recall for example telling him that you would repay this balance of ú28,985.70 within a matter of days of the closing date?

A. I don't recall that. I know that I was very hard pushed financially to come up with whatever was necessary and I don't recall saying that to Mr. Moore at all.

100 Q. Well, we do know for example that on his instructions he wasn't to pay the full 230 but he was to make a deduction of ú28,985.70, isn't that right, that is what he has told us?

A. Yeah.

101 Q. And we also know that that happens to be the same figure as is contained in this page 226?

A. Yes, it would be yes.

102 Q. Would that suggest to you that that document may have been produced prior to the closing date, or perhaps even on the

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closing date?

A. I can't comment on that. I don't know - I would say it wasn't on the closing date because Mr. Stafford was out of the country on closing date and that certainly came from his office.

103 Q. So if it was produced prior to the closing date it would have had to have been prior to Mr. Stafford's departure?

A. I suppose so.

104 Q. In fact, just to correct something, it is not exactly the same figure, there is an error on that figure of 226 of \dot{u} 1,000. That is a typographical error?

A. Yes.

105 Q. The calculation yielding the figure of 28,985.70 is the figure that was, in fact, the figure that Mr. Moore was instructed to deduct from the 230 to come up with the figure that he was instructed to pay over, which was 201,000 odd, being the difference between the two.

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Now, --

A. I wouldn't know about Mr. Moore's instructions on the day.

106 Q. Obviously not. Presumably you were there when Mr. Moore did, in fact, pay over the 230, and at your request, according to himself?

A. I don't remember requesting Mr. Moore to do that. As I say, I am not denying it.

107 Q. We know that there was correspondence between yourself and Mr. Stafford afterwards and Mr. Stafford took issue with the fact that you had, having requested Mr. Moore to make, to make this additional payment, and having, as he asserts, undertaken to repay it within a few days, you hadn't done

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so and he was taking issue with you on that?

A. I believe that I had a disagreement with Mr. Stafford about that very point, that I didn't agree with what Mr. Moore' report on that was.

108 Q. Mr. Stafford ultimately - Mr. Stafford at all times was seeking repayment of this figure of 28,985.70 from you, isn't that so.

A. Yes.

109 Q. He ultimately sued you for it after the collapse of Century?

A. That's correct.

110 Q. But he always persisted in his insistence that you owed it to him?

A. He did, yes.

111 Q. Accepting fully that you disputed Mr. Stafford's entitlement to it, did you understand the basis upon which he was claiming it from you?

A. To be honest with you I didn't. I didn't agree with it at the time. I knew that I wasn't getting credit for the 13,333 from it.

112 Q. Yes?

A. So therefore I, maybe that was one part of it. I think that there is a sheet of mine there where it tells you how, what my assessment of it at the time is.

113 Q. Are you referring to page 223?

A. Yes, 233, yes.

114 Q. Yes?

A. 233.

115 Q. You work out a balance for each of the three of you there at the bottom of the page?

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A. That's right, yes. If you notice at the bottom I deduct a third of 40,000 from right across the line. So I think that I felt that Mr. Stafford's surplus was 15,000, not 28 or 29, as you say. My surplus was 43,000 and Mr. Mulhearn's surplus was $\acute{u}7,000$. I think that was --

116 Q. -- yes?

A. - I think that was my assessment of the sheet, of the original sheet that I got from Mr. Stafford. We modified it to show --

117 Q. -- well, that is a slightly different document.

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MR. O'CONNOR: Sir, by way of assistance I think page 239 might be more helpful to the Tribunal on this particular issue.

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118 Q. MR. HANRATTY: 239 is your, as it were, reworking of Mr. Stafford's document?

A. Yes.

119 Q. In which you incorporate your own amendments, the first of which being the increase of the credit to, from 85 to 141 and the second of which being the incorporation of the division of the 40,000, being the 35 and 5 into three thirds of $\acute{u}13,333.33$?

A. That's right.

120 Q. Yes?

A. Yes.

121 Q. So that is an identical sheet, we have established that yesterday, we have been there. Can we go back for a moment to page 223 which is the document which you just referred us a moment ago?

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A. Yes.

122 Q. That would bring us to the second query which you were going to resolve, over, namely, the basis of calculation of your lodgement figure there of 339,707.66 pence. If you look at the bottom of the page under the three columns, Oliver Barry, James Stafford and joint?

A. Yes.

123 Q. The first figure is 230,000, which is equal to each three, each of the three, isn't that so?

A. Yes.

124 Q. Then the second figure are lodgement figures?

A. Yes.

125 Q. You come up with three lodgement figures and one of the matters which I asked you yesterday, if you wouldn't mind finding out would be how these figures for lodgements were calculated.

A. My total lodgements was 339.

126 Q. 339707.66.

A. I think I had an explanation for that.

127 Q. Yes.

A. Was that in the running total of Maeve McManus's --

128 Q. -- no, not quite. There is a running total which is close to it which I think is about 341, perhaps, or within a few thousand of it.

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If you look at, if you look at the 11th of January, after the Lisney's figure there is the Dublin 1 and Fianna Fail debit of 26 --

A. Which one are we on, Mr. Hanratty?

129 Q. Page 224.

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A. Yes, yes.

130 Q. After the payment back by QAM to Century of the ú26,250 on the 11th of January of 1990, the balance is 338,809.98?

A. Yes.

131 Q. So it is within a thousand or so pounds of, certainly within ú2,000 of the total lodgements figure which you have referred to. Are you saying that that is the source of that figure or --

A. -- again, you see, I am assuming it, look, I must have been able to substantiate that figure. The only thing is that that figure, when was that document - that document isn't dated. That seems to be my position much later than the, than the end of September, does it?

132 Q. Your figure at the end, your figure in January of 1990, if we just look at page 244?

A. Yes.

133 Q. Clearly the Lisney's expenses is listed for the 11th of January. I believe that the, although the date is obscured the Dublin 1 and Fianna Fail 26,250 is also January of 1990. We know that that figure was repaid by QAM to Century in January, isn't that so?

A. Yes.

134 Q. There is no transaction on the page between January of 1990 and November of 1990, isn't that right?

A. That looks -- yes.

135 Q. So we must assume that given that, as we understand it, you were doing an exercise here to calculate what you were owed, it was done before November, after January but before November, presumably around the time of the closing?

A. Yes.

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136 Q. That means that the relevant figure is actually $\text{€}336,830$, which is the balance as of January?

A. I mean, it looks very close to the other figures so there must be some strong relationship between them.

137 Q. Well, is it your opinion then that this figure of, while they are not identical, that this is essentially the source of it and that perhaps the difference might be accounted for by some difference in calculation or some expenses item that may or may not have been taken into account?

A. That is certainly a possibility, yes.

138 Q. But essentially the total lodgements figure there is represented by the balance or the calculation of what you had put in as indicated on this sheet at page 244?

A. Yes, yes.

139 Q. Right. Well then, that seems to deal with the total lodgements figure for yourself. There is then a total lodgement figure for Mr. Stafford. Can you assist us as to how that was calculated?

A. I am afraid I can't.

140 Q. Did you calculate that figure yourself or did you receive from it from Mr. Stafford?

A. I can't remember where that figure came from. I am sure.

141 Q. -- what about the figure for Mr. Mulhearn?

A. The same would apply there. I must have good grounds for putting those figures in there.

142 Q. Just to pause on Mr. Mulhearn's figure for a moment. You notice that the total lodgements figure is stated to be $\text{€}380,000$?

A. Yes.

143 Q. We know that Mr. Mulhearn put $\text{€}300,000$ into the capital

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account?

A. Mm-hmm.

144 Q. That leaves 80?

A. Yes.

145 Q. And that brings us back to this ú80,000 figure that we were still waiting for an explanation for?

A. Yes.

146 Q. Do you have no recollection at all of receiving money from Mr. Mulhearn, given that you were the person dispersing the money in this difficult period in 1990?

A. I think didn't money come in to QAM at one stage and I paid it back out, I think, to Mr. Mulhearn, in '89, was it?

147 Q. Well, we are talking about 1990, being the period when the three investors, as it were, were putting their hands in their pockets to pay wages and disbursements?

A. Well, I don't - it is not reflected in my accounts in 1990 but it is in '89, as you know.

148 Q. What?

A. The 300,000, the original investment came into QAM and I paid it back out.

149 Q. We know the original investment of 300,000 came in from Mr. Mulhearn?

A. Right.

150 Q. But the amount that he is given credit for in terms of lodgements is 380,000 so there is another 80 yet to be accounted for?

A. I can't help you with that, Mr. Hanratty, no.

151 Q. Have you no recollection at all of ever receiving this ú80,000 in any shape or form from Mr. Mulhearn?

A. I am sure it went into the company, did it?

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152 Q. Well, it may have done. What I am drawing your attention to is it didn't go into the account?

A. Into the company account?

153 Q. Yes?

A. I --

154 Q. No, the joint account - yesterday - it couldn't go into the company because the company was effectively insolvent at that stage, isn't that right, it had no money to pay its staff?

A. It all depends when it went in, I suppose. Did it go into the company after? I don't know when it went in.

155 Q. All I am seeking to elicit from you at this stage, Mr. Barry, is do you have any recollection at any time in 1990 of receiving €80,000, whether in such a sum or in a breakdown of that sum, or in any other sum, from Mr. Mulhearn?

A. No, I have no recollection of that, no.

156 Q. If he did put up his money, as yourself and Mr. Stafford were doing, in your case by lodging it in this new account that you set up to assist in the difficulties that the company was having in, what manner would he or could he have done so?

A. I am sure Mr. Mulhearn would explain that to you, Mr. Hanratty. I don't know.

157 Q. Yes. And you are not in a position therefore to give us any assistance on this €80,000 from Mr. Mulhearn?

A. No.

158 Q. The next item that you were going to assist us with overnight, Mr. Barry, was this €12,500?

A. Yes. That came out of the QAM current account. It didn't

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go into the joint account so I assume it went in directly to the Century account. I am sure this should be reflected in the Century accounts, hopefully.

159 Q. So you believe that it went directly into Century?

A. It must have, yes.

160 Q. Yes?

A. Or I must have got credit for it somewhere.

161 Q. Very good. Well then, we can work with that. The next question I was going to put to you and I think you were going to try and assist us was, we know that you lodged ú20,000 twice into the current account, into the joint account I am sorry?

A. Yes.

162 Q. And we also know that you put up this ú12,500 whatever was done with it?

A. Yes.

163 Q. That comes to a total of 52 and a half thousand?

A. Yes.

164 Q. The amount of credit that Mr. Stafford was giving you was more than that. He was giving you 85,000, you were claiming 141,000 and you actually took 71,000, as we have just established?

A. That I don't know, I am afraid. I am sorry.

165 Q. In the first document that we looked at this morning, we know that Mr. Stafford was giving you credit for 85,000?

A. 85, yes.

166 Q. You disagreed with that. You thought it should be 141, for the reasons you have just told us?

A. Yes.

167 Q. On the actual closing date we know that the amount of

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credit which you took by agreement with Capital Radio was actually ú71,580?

A. That is if you deduct the 12,000, yes.

168 Q. What I am saying is that we do not have any evidence of any further payments by you over and above the 52,500?

A. As I say, Mr. Hanratty, we are back to what we started at, as I said, the ú85,000 credit that I was allowed on closing day, on Mr. Stafford's document here, is a figure that he came up with. Not just him, I mean Laurence Crowley was involved in this whole thing and it is an accountancy problem. I am sure there is a very, very sound and perfect explanation for it.

169 Q. But you haven't got it?

A. I don't have it. As I said that from the outset, I didn't, Mr. Hanratty. I don't have it.

170 Q. We do know from your papers that everything was accounted for, including very small miscellaneous expenses which you incorporated in a lump sum figure of 5,021 odd?

A. That was my own internal working documents. I don't have the documents of the disclosure letter or the agreement with capital. I don't have that information.

171 Q. These are much more significant figures that we are talking about. We are talking about figures that credit was actually allowed on the closing day?

A. Absolutely, I fully can appreciate what you are saying. I can only say that there will be a proper explanation for all of this.

172 Q. Would you be in a position to discuss this with QAM's accountant to try and identify the basis upon which this credit which was actually taken was arrived at?

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A. What has QAM's accountant got to do with it?

173 Q. On the assumption that the 12,420 came from QAM, or am I incorrect about that?

A. I am not too sure where it came from.

174 Q. Did you have a separate accountant from QAM?

A. You have got all my accountants, Mr. Hanratty.

175 Q. Sorry?

A. You have got all my accounts.

176 Q. I am talking about an account. Mr. Spence was QAM's accountant, isn't that right?

A. Yes.

177 Q. Was he not your accountant as well?

A. Yes.

178 Q. Well, would Mr. Spence and yourself not be able to inform the Tribunal between the two of you how this figure of 12,420 on the 87,000 was arrived at?

A. I think we arrived at how the figure of 12,420 was arrived at, haven't we.

179 Q. No, we have established that it was included in a figure of 52,420?

A. I will certainly talk to Mr. Spence about it, no problem.

180 Q. If you wouldn't mind, Mr. Barry. We really would like to get an explanation of how the figure was arrived at that you paid over to Century - or Capital - on the closing date of the deal?

A. We know that 40,000 of it was attributable to Mr. Wogan and Mr. De Burgh. It is the 12,420 that you are worried about?

181 Q. Yes, which is attributable to you?

A. I will certainly do my best.

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182 Q. That is what it comes down to?

A. Okay.

183 Q. The other thing that you were going to check overnight, Mr.

Barry, was the dates of the ú20,000. Do you remember there was two loans of ú20,000 that you put in?

A. Yes.

184 Q. The dates are different in your own papers than in the actual lodgement. Did you have an opportunity to consider that?

A. I did. I believe the two cheques came out of QAM but the dates don't tally. I think with one of them, one of them came out, I think, in July and didn't go into Century until August.

185 Q. So --

A. As far as I know the two cheques for ú20,000 came out of QAM.

186 Q. And were you taking the date then from the cheque journal, albeit that the cheque wasn't put in until some time later?

A. I didn't go into that detail. Once I got the source of the cheques I was quite happy, Mr. Hanratty.

187 Q. Is that your belief what the discrepancy of the dates would be?

A. Yes, I am happy that those two cheques went into Century. I am happy that I put the two 20's into Century.

188 Q. Yes. 6406. In middle of the page in the credit column we can see the two ú20,000s. One of them appears to be coming in this account on the 31st of July and the second one appears to be on the 2nd of August, as far as can be made out.

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Neither of these dates tallies, I think, with the dates in your own documentation. Would it be possible for you to check from which accounts these two figures came?

A. Absolutely. I think we have checked that.

189 Q. Have you checked that? Do you see that they came out of the QAM account?

A. I am saying that they came out of the QAM account, yes.

190 Q. Would you be able to provide us with the check numbers for those two cheques, because apparently we have some difficulty in tracing them? I am sure it is just a difficulty in documentation. If you wouldn't mind perhaps over lunch if you could get the numbers of the check so we could confirm that they are the ones that we are looking at?

A. Are they prior to --

191 Q. The 31st of July and the 2nd of August?

A. I don't know if I can get them over lunch but I am sure we can get them.

192 Q. If necessary tomorrow we can come back to that?

A. Okay.

193 Q. Well then that appears to be as far as we can take it, subject to those further inquiries so far as the Capital account is concerned, Mr. Barry, isn't that right?

A. Yes.

194 Q. Now, going back to the issue of the Capital account, we know that notwithstanding the absence of any reference to it in the disclosure document, notwithstanding the fact that the Financial Controller Ms. Hynes had no knowledge of it, notwithstanding the fact that Mr. Taylor had not been told about, you claim to have been owed €40,000 by Century

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for services which you had provided to the company prior to the Capital Radio deal?

A. That's correct.

195 Q. And that you intimated this claim to Mr. Taylor after the closing date and pursued it in the closing months of 1990, isn't that right?

A. Before or after, I am sure, before it could - it was before.

196 Q. No, I think the position was that Mr. Taylor was not told about any such alleged indebtedness before the 27th of September which was the closing date of the deal?

A. I don't have any reason to deny that, but --

197 Q. Yes, and I take it you accept that it is not referred to any place in the disclosure document?

A. That seems to be the case, yes.

198 Q. And Mr. Taylor has told us that he had no knowledge of any such alleged debt prior to the closing. In fact, we have already had his letter where he effectively resisted payment on the grounds that, in effect, he hadn't been told about it and that no vouchers had been produced to support it. Do you remember that September letter? We don't, I think, need to go through it again?

A. Yes.

199 Q. And we know that Mr. Stafford drafted a letter in which he claimed that this money was due to you on the basis of \$1,600 per week for 25 weeks work?

A. Yes.

200 Q. Which you now tell us was work that you carried out in your capacity as Acting Chief Executive during this very difficult period earlier in 1990?

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A. I am not saying I was Acting Chief Executive for the entire six months but for a proportion of it. I was in the building for practically six months, yes.

201 Q. I take it that you accept that the first mention of a figure of £1,600 per week or an indebtedness in respect of services provided over 12 weeks was in this letter which Mr. Stafford drafted in December?

A. Yes, that was the first mention of it?

202 Q. Yes?

A. I wouldn't agree there.

203 Q. No, sorry the first mention of it in any documents?

A. In any documents, okay.

204 Q. In fact, the first mention of it is in a draft document that Mr. Stafford himself produced and drafted and sent over to you for forwarding under, under your own name presumably, to Mr. Taylor?

A. Yes.

205 Q. Why was Mr. Stafford assisting you to get in monies that you claimed that you were owed from Century for providing services that you say you provided to Century prior to the closing of the deal with Capital Radio?

A. I think Mr. Stafford felt I was entitled to the money, because I think in his own evidence he said that I was majorly responsible for keeping the company afloat and alive during that period. I think he felt that I was morally and justifiably due that money.

206 Q. Mr. Stafford has told us that the matter was raised, and it appears to be so, at a board meeting in January and as a result of which you were paid in February, notwithstanding Mr. Taylor's reservations?

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A. If there was a board meeting - we had Mr. Crowley as Chairman. The Directors at the time, it must have been approved by the Directors. They all must have been happy with it.

207 Q. Undoubtedly it was, because it was paid?

A. Mr. Taylor's nose was out of joint, but --

208 Q. -- yes. Mr. Taylor has given evidence that some time afterwards Mr. Stafford said to him in a sort of a throw away remark that it was, the money was, the money was paid in connection with getting the legislation?

A. Absolutely nothing got to do with legislation.

209 Q. Yes?

A. I mean --

210 Q. Sorry?

A. How could it, I mean if I am in working for 25 weeks in Century what has that got to do with the legislation?

211 Q. I have no doubt that it has nothing to do with the legislation. The problem from the Tribunal's point of view is that the Mr. Taylor has given his evidence. You have given entirely different evidence what the ú40,000 is about?

A. My evidence is correct.

212 Q. I have also put to you a description of this payment in February 1991 in a document which Mr. Stafford subsequently produced as a statement of instructions to his solicitor in paragraph 11, where he referred to this ú40,000 payment as a payment of which he did not approve. He said that you advanced this payment initially in respect of expenses or payments which you had incurred, but subsequently advanced the claim on the basis that it was due for services

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rendered?

A. That doesn't seem to be too consistent if Mr. Stafford, as you say, drafted the letter for me to receive the money from Mr. Taylor and two or three years later, I think, he said that he didn't approve.

213 Q. There is no doubt that it is not consistent. I am putting to you what Mr. Stafford said in this document in 1992 I think it was?

A. -- could you just repeat it, could you just repeat what he said?

214 Q. Perhaps I might just get the document and put the paragraph to you.

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Sorry, I said paragraph 11. It is paragraph 16, page 591.

Mr. Barry maintained --

A. -- what is the date of this letter now.

215 Q. This is a document which was actually produced in February of 1993. It is a statement of instructions by Mr. Stafford to his solicitor in which he is giving instructions to his solicitor to sue you for the ú28,985 which he claims to be owed by you?

A. Okay.

216 Q. As part of his instructions he dealt specifically with this payment to you of ú40,000 in February of 1991. At paragraph 16, and this is what he says: "Mr. Barry maintained that he was entitled to a sum of ú40,000 in respect of certain payments which he had made." So he is not talking about services rendered, he is talking about payments that you had made, right.

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"He maintained that these payments were in cash. No invoices were issued."

A. That is totally wrong. I would reject that totally.

217 Q. I see.

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MR. GAVIGAN: I remember, Sir, I think there might be some confusion in relation this to matter. I think when Mr. Taylor was giving his evidence Mr. Stafford indicated that in fact this paragraph was incorrect and that he had given wrong instructions to his solicitors in relation to it. Lest there be any confusion in relation to it

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MR. HANRATTY: Mr. Stafford did give evidence in relation to this evidence specifically.

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CHAIRMAN: Please, one at a time.

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MR. HANRATTY: Sorry, I thought My Friend was finished.

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MR. GAVIGAN: Certainly he did give evidence but he now concedes that he was incorrect in his evidence in relation to it. Lest there is any confusion it; arose because he gave wrong instructions to his solicitor in relation to the paragraph. That is where the error first occurred. To be fair to Mr. Barry, Mr. Stafford conceded, albeit after he gave evidence in relation to it, that this is not correct and that he had in fact given wrong instructions in error to his solicitors in relation to it. I don't want there to be any confusion in relation to it, Sir. I am just clarifying the matter for the record.

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MR. HANRATTY: What I am putting to you, the witness

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MR. WALSH: Sorry, just on that. The transcript I mentioned on the first day of Mr. Barry's, where this was dealt with and corrected by Mr. Stafford.

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CHAIRMAN: Would you read it to us?

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MR. WALSH: It is day 177. It is on page 32 onwards.

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CHAIRMAN: Day 177

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MR. WALSH: Day 177 Friday, the 22nd of September, from page 32 onwards Mr. Stafford dealt with this matter. And corrected it.

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CHAIRMAN: Mr. Gavigan, are you saying that that has been corrected since he gave evidence?

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MR. GAVIGAN: I think I put it to Mr., I think it arose when Mr. Taylor was giving evidence. I can take specific instructions in relation to that, Chairman, lest there be any confusion in relation to it, if you wish me to do so. Perhaps this might be an appropriate time to take a break. I will take instructions in relation to it.

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CHAIRMAN: I will take a break. If this is a matter which is scripted somewhere in the transcript, we should resolve it. There is no reason why we should go around a in a

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circle.

GAVIGAN: Absolutely, Chairman.

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CHAIRMAN: Thank you very much, Mr. Gavigan. We will rise until 12 noon.

THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AGAIN AS FOLLOWS:

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CHAIRMAN: Carry on.

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MR. GAVIGAN: Sir, in relation to that point that was raised just before the break, I was incorrect when I stated that it was corrected by Mr. Taylor in evidence. In fact, it was corrected by Mr. Stafford in his original evidence. I don't have the transcript where he corrected it to hand, but I think Mr. Hanratty and I are ad idem when I say that Mr. Stafford did give evidence that paragraph 16 was incorrect.

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MR. HANRATTY: I think there is so, Sir. It doesn't appear to be in the transcript of day 177, although the particular topic is discussed, but I suspect it was discussed elsewhere. But I am quite clear in my recollection that I put the terms of paragraph 16 of his statement of instructions to his solicitor in detail to Mr. Stafford and Mr. Stafford asserted that the contents of that paragraph were incorrect. And unfortunately I am not at this point in time in a position to identify the place

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in the transcript where that is contained but I am quite certain that that is what was said.

MR. GAVIGAN: I am grateful to My Friend. I hope I didn't cause the Tribunal any inconvenience in relation to the matter.

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CHAIRMAN: Very good.

MR. HANRATTY: Mr. Barry, please.

MR. BARRY RETURNS TO THE WITNESS BOX AND CONTINUES TO BE CROSS EXAMINED BY MR. HANRATTY AS FOLLOWS:

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218 Q. MR. HANRATTY: Mr. Barry, what I was doing before the break was putting to you a paragraph in a statement of instructions by Mr. Stafford to his solicitor where he is instructing his solicitor to sue and in which he deals specifically with a sum of ú40,000.

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Now, Mr. Stafford has given evidence about this and has stated that it is incorrect but what I want to put to you is what is actually said in February of 1993 to his own solicitor. He said "Mr. Barry maintained that he was entitled to a sum of ú40,000 in respect of certain payments he had made. He maintains that these payments were in cash. No invoices were issued and no receipts ever obtained. These payments allegedly on behalf of the company were made without my being consulted or informed, and when I was put on notice of their nature I refused to

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accept them or indeed to be associated with them in any manner. However, Mr. Barry pressed his claim against Century in October/November for ú40,000 but on the basis of his own staff costs and following exchange of correspondence with Patrick Taylor of Capital Radio Plc on the 20th and 21st of September, 1990, he was paid the following February."

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Now, if we could just go through that piece by piece. "Mr. Barry maintained that he was entitled to a sum of ú40,000 in respect of certain payments he had made."

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Was it your position at any stage that you were entitled to reimbursement of ú40,000 for payments that you had made?

A. It was. Well, as I said, in July of '89 that was not the case because I had got credit for the 35,000 and the 5,000 to Fianna Fail but then after the settlement with, after the rights issue with Capital that - I didn't get, say, due credit for that amount at the settlement and then I didn't have any recourse to Century for it. I had recourse to my two partners.

219 Q. In what sense?

A. In the sense that they were aware of it and they approved it and they gave me credit for it in the initial investment.

220 Q. But if you were not given credit for it in the deal with Century or if the credit which you had already taken, as it were, was removed in the closure with Century?

A. Yes.

221 Q. -- and?

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A. -- with the closure with Capital.

222 Q. As you will appreciate we have been trying very hard to see what credit you actually did get at the closure. We haven't yet established it. Taking your evidence at the moment that your credit was removed, what then did you do to recover your €40,000?

A. I attributed 13,333 to myself and the same across the line to the other two partners.

223 Q. Well, did you ask the other two for their share?

A. I can't recall asking them for it. I mean after Capital coming in we were overjoyed because everything, there was money in the company again. We all thought the future was bright. It probably wasn't resolved at that particular time.

224 Q. Well, could I suggest to you that, in fact, it was resolved in February when you got your €40,000 out?

A. No, not at all. That 40,000 was totally different.

225 Q. And that is entirely consistent with what Mr. Stafford has written down here?

A. Well, I don't accept that for a moment, Mr. Hanratty.

226 Q. As he says, "Mr. Barry maintained that he was entitled to a sum of 40,000 in respect of certain payments he had made." He is clearly saying at some point in time you were maintaining that were entitled to 40,000 in respect of certain payments, isn't that so?

A. I was, yes.

227 Q. And it is quite obvious that that could only have been after the closure with Capital Radio, because up to then you had your credit?

A. That's correct.

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228 Q. So at some time after the closure with Capital Radio you were maintaining to somebody that you were entitled to ú40,000 for the payments to Mr. Burke and the ú5,000 to RTE?

A. I am not sure when it arose. I think there was a letter between Mr. Stafford and myself that I referred to 'personal reimbursements'. You should have that. I think that was the first time it was actually approached.

229 Q. It was certainly after the 27th of September, 1990?

A. I was credited with it up until that date.

230 Q. Yes. I think we have that letter. We will just come back to it when we get a page number, Mr. Barry. So, sometime after the 27th of September, 1990 you were now claiming that you were entitled to reimbursement of ú40,000 expenses which you had incurred on behalf of all three?

A. Yes.

231 Q. And we also know that some time after the 27th of September, 1991, effectively at the same time you were looking for ú40,000 out of Century?

A. I think I was looking for that before then.

232 Q. Well --

A. -- because I had - you see before the Placement Document I had, Capital put in their own executive team. I wasn't as involved with the company as I was, say, in the earlier part of the year, so I believe that I had an agreement with Jim Stafford that I would get paid for my time spent in the company prior to the investment with Capital.

233 Q. Well, surely that couldn't be correct because you have already, I think, agreed, and correct me if I am wrong, that Mr. Taylor never was told that you were looking for

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ú40,000 on the basis that it was owed to you by Century prior to the 27th of September?

A. It certainly doesn't appear in the disclosure letter, I believe, or in the due diligence but that was - now, I can't be absolutely certain about this, but I am pretty certain that Mr. Stafford was fully aware that I would be paid for my time in Century. I was in pretty bad personal financial difficulties at the time. I don't think anybody would have expected me to devote six months of my time with some of my staff for no charge, to even save the ship that was sinking.

234 Q. Well, that be as it may, the fact, the facts as we know them are, and subject to any further light you can throw on them and we have been through this in some detail, I am not going to go through the same detail again, you had, in fact, taken credit, because of the ú148,000 balancing payment and subsequently in January 1990 the 19,787 payment. You had, in fact, taken credit of these sums in your capital account. That situation pertained right up to the date of the closure with Capital Radio, isn't that right?

A. I had - .

235 Q. -- you had taken credit for the ú40,000. Matters were, as far as you were concerned, in order up to that point in time?

A. Yes.

236 Q. Then what happened was there was a closure with Capital on the 27th of September?

A. Yes.

237 Q. It is your evidence that in the arrangements which were

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made at the closure you were not given credit for the
ú40,000?

A. That's it, yes.

238 Q. You were back to square one. Sorry -- you were back to
square one?

A. Yes.

239 Q. In terms of getting your reimbursement?

A. Yes.

240 Q. We also know that up until the closure with Capital nobody
disclosed to Mr. Taylor, at least according to Mr. Taylor,
that you were claiming to be owed ú40,000, for any reason,
from Century Radio - from Century Communications?

A. There is no written evidence of that, yes, that is the
case, yes.

241 Q. There is no written evidence of it and Mr. Taylor says
nobody ever told him it?

A. Okay, yeah, I accept that.

242 Q. There is no documentary record of it in any of the Century
records and there is no documentary record of it in any of
the QAM records?

A. No.

243 Q. And the Financial Controller of Century --

A. -- in the QAM records I think there is, I think we issued an
invoice to capital.

244 Q. That came after the event. But up until that point of
time, until the Board of Century decided to pay it out in
January of 1991, there is no record of it anywhere at all?

A. There is no written record, no.

245 Q. Yes. And Mr. Taylor, as we have said, did not know about
it. So, the position as of the 27th as it were, was Mr.

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Taylor was closing a deal on the basis that he had been fully informed about all debts of the company to anybody, including yourself?

A. Mm-hmm.

246 Q. -- and he was closing on the basis of a certain balance or credit being given to you against the ú84,000 cash that you were to be, that you were to put in. You did, in fact, take credit for a particular figure?

A. Yes.

247 Q. But you are saying to the Tribunal, even though you are not in a position to explain the basis upon which your credit figure was calculated, you are saying definitively to the Tribunal that that figure did not include credit for the ú40,000?

A. That the --

248 Q. -- whatever credit you got on the closing date did not include the credit for the ú40,000 which you previously had?

A. Not to my knowledge, no.

249 Q. Well, is it possible that it included the credit outside of your knowledge?

A. Is it possible?

250 Q. Are you saying that after the closing you were back to square one, in that you had not then been given credit for the ú40,000 which you had paid out?

A. That is my understanding, yes.

251 Q. And did you pursue that with Mr. Stafford?

A. I am sure I didn't pursue it with him immediately after the closing because, as I say, we were, everybody was happy, the company was back in action again. But it did emerge as

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an issue between Mr. Stafford and myself, as you know.

252 Q. We know that there is no correspondence, for example,
between the closing date and, let's say, March of 1991?

A. Well, there is, isn't there?

253 Q. We haven't seen any letter from you saying ' Look,
Mr. Stafford, I paid out ú35,000 to Mr. Burke and I paid
ú5,000 to RTE, I had credit for them and I took credit for
them to the Capital account but that was removed on the
closing with Century. I now want to be paid'?

A. No, there is no evidence of that, no.

254 Q. That didn't happen?

A. No.

255 Q. But we do know what did happen was that you sought to get a
payment of ú40,000 from the company?

A. I sought to get a payment of ú40,000 for work done for the
company, yes.

CHAIRMAN: So there were two different 40 - sorry - there
were two claims for ú40,000 having totally separate
premises, arising from totally separate premises, one --

A. Well, not really, Chairman. You see, the ú40,000 in cash,
I attributed one-third of that to myself.

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CHAIRMAN: Yes. So there was 26, ú27,000 give or take?

A. Yes.

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CHAIRMAN: You are entitled, on your premises, to a
reimbursement of ú26,000 or thereabouts?

A. Two-thirds of 40.

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CHAIRMAN: Two-thirds of ú40,000?

A. Yes.

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CHAIRMAN: That was for the payment to Mr. Burke, that is their contribution or their --

A. And Fianna Fail.

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CHAIRMAN: And Fianna Fail, yes, yes. Call it the 'political contribution' for the moment?

A. Yes. .

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CHAIRMAN: Now, in addition, that you say you got, you got credit for that at one stage in the Capital account?

A. Yes.

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CHAIRMAN: You say that on the conclusion of the deal with Capital Radio you lost or you were deprived of that credit?

A. Yes, two-thirds of it.

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CHAIRMAN: Now, independently of that, I want to try and understand this, independently of that after the conclusion of the deal with Capital Radio, you say you produced or made a claim for ú40,000 for your personal services?

A. For my company's services.

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CHAIRMAN: Well, your company's services as such. Now, the two transactions or the two events are entirely unrelated?

A. Absolutely.

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CHAIRMAN: At least I have got that much clear. I am sorry

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but I was very confused at this stage. When do you say -
why do you say you lost the, you were paid the -
ultimately paid by Capital Radio the ú40,000 for services
rendered.

A. I didn't say I lost that, Chairman, I received that --.

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CHAIRMAN: You ultimately were?

A. Yes.

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CHAIRMAN: Secondly you say, I want to now know from you
how do you, how do you base the claim that you were, that
you lost out the political 40,000?

A. Because I never received it back, to this day I never
received the ú26,000 --.

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CHAIRMAN: If you got a benefit in the Capital account, if
you got a benefit in calculation of what Capital account -
what input you had to the Capital account, surely you have
got value for it? This is what is puzzling with me?

A. If you bear with me, Chairman, I think I can give you an
explanation. I got full credit for it in July of '89; when
Mr. Stafford put in 250 I put in 215; then Mulhearn, Mr.
Mulhearn put in 300,000. There was a small difference
between us. Then in January of 1990 I put in the extra
25. That was my total investment in Century, 275,000. I
didn't put in 275. I put in 240. I was getting full
credit for my ú35,000.

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CHAIRMAN: Yes. In fact, you were getting more than full
credit because, according to you, you were only entitled to

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two thirds of the 40, the credit for two-thirds of 40,000?

A. I mean, at that stage, you see, it was an expense that I incurred on behalf of Century. I got credit of ú35,000 for it in the Capital account.

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CHAIRMAN: Yes.

A. Now, when September came then and Capital were investing in the company, I think there is evidence there that the Capital - there was a shortage in the Capital account, and I didn't get credit for the ú35,000 on that date in September. It was taken away from me.

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256 Q. MR. HANRATTY: So that as of the 27th of September you are now claiming that you were owed ú40,000 because something in respect of which you previously had a credit --

A. -- no I wasn't owed ú40,000, I was owed two-thirds of it.

257 Q. Yes, well you hadn't got credit for it, for the fact that you had paid it, as it were. You had paid --

A. If you bear with me, Mr. Hanratty, there is a difference between the relationship with the company and the relationship between the three promoters. The - at that stage the only recourse that I had to get my credit that I had been getting was from Jim Stafford and John Mulhearn, and that is why I looked for the 13, I looked for 13,333 from both of them.

258 Q. It is internal documentation that you produced yourself.

It is quite clear from that documentation that you did calculations on getting a full reimbursement of that ú40,000 and then going further and apportioning the ú40,000 between the three?

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A. There was no point in reimbursing myself.

259 Q. It is obvious from the documents that you produced that you did your calculations on the basis in the first instance of getting back your 40 to, as it were, bring things back to normal and then to apportion the 40 between the three of you equally?

A. Yes.

260 Q. That is the way you did it?

A. Yes.

261 Q. As far as we are aware no documents, at least no documents have been discovered by you in which you make a claim to any share of that ú40,000, either from Mr. Stafford or from Mr. Mulhearn, isn't that right?

A. Yes.

262 Q. That would appear to indicate that after the closure with Capital Radio, you did not pursue such a claim against them?

A. I didn't - there is no evidence that I did, no.

263 Q. Yes. But there is evidence that you pursued an endeavour to obtain ú40,000 out of Century?

A. Yes, because that was --

264 Q. -- I appreciate that you are now saying that that is in respect of the services which you rendered?

A. That's correct.

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CHAIRMAN: Let's be quite clear; services rendered for management.

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MR. HANRATTY: For management in the first half of 1990.

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CHAIRMAN: Let's categorise it. It is not for a political donation or anything like that?

A. Absolutely.

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CHAIRMAN: As long as we are clear about that. I just want to be clear --

A. In actual fact I think it was more than 40 because I got, there was a VAT claim on it, which, of course, was --

265 Q. MR. HANRATTY: That came separately afterwards in the sum of ú9,000. That came afterwards?

A. Yes.

266 Q. Just staying with the month of September of 1990 for the moment, Mr. Barry, because I think it is important. We do know that you were, in fact, claiming credit from the company for certain matters, including the monies that you put in in the months of April and May of 1990, isn't that right?

A. Yes.

267 Q. The 20,000 and the 12 and a half thousand?

A. Yes.

268 Q. And other monies which we haven't yet accounted for?

A. Yes.

269 Q. That being the case why didn't you include the ú40,000 that you subsequently said you were owed?

A. Well, I mean up until Capital came in the company couldn't afford to pay me. There was no money in the company to pay me. I mean, the ú40,000 management fee, as the Chairman calls it, was a wing and a prayer. I might get it and I mightn't get it. The company would have gone under. It

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was only when Capital Radio came in that there was any hope of me getting it.

270 Q. At the time that Capital Radio came in there was an awful lot of money floating around. They were bringing in 1.5 million. In the overall scheme of things another ú40,000 on the debtors ledger would not have made a difference one way or another, isn't that right?

A. That's right, yes.

271 Q. You say that you were claiming to be entitled to ú40,000 for services rendered and they were subsequently itemised at ú1,600 per week for 25 weeks?

A. That's right.

272 Q. There is no intimation of that to anybody at the time of the closure to Capital and I suggest to you that there would have been no difficulty in getting it had it been vouched at the time or included in the disclosure letter?

A. Maybe not, Mr. Hanratty, maybe not.

273 Q. Can I put an alternative scenario to you, Mr. Barry, which is, I suggest, entirely consistent with what Mr. Stafford is saying in his document to his solicitor of the month of February of 1993; that you, in fact, did take credit, with the agreement of everybody, in your contributions to the Capital account for the ú40,000 - shall we call them political donations - that your perception or belief after the closure with Capital, Capital Radio, was that those credits had been removed and that therefore you were back to square one?

A. Yes.

274 Q. And that you in conjunction with Mr. Stafford decided that the way to deal with the problem was to try and get the

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money out of Capital - or out of Century - and that it was for that purpose that Mr. Stafford cobbled together a story that you were due €40,000 on the basis of €1,600 per week for 25 weeks?

A. I would reject that out of hand.

275 Q. And that that was done in circumstances where it became clear that Mr. Taylor was not agreeable to pay out this money because there were no vouchers in respect of it and he had never been told about it, particularly in the disclosure letter, and that what actually happened then was that, notwithstanding his misgivings about it, Mr. Stafford went over his head to the Board and got a decision of the Board to pay you out €40,000 which you then got paid in February of 1991. And that that is entirely consistent with what Mr. Stafford said to his own solicitor in February of 1993. Can I just remind you again what he said?

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"Mr. Barry maintained that he was entitled to a sum of €40,000 in respect of certain payments he had made. He maintained that these payments were in cash. No invoices were issued and no receipts ever obtained. These payments, allegedly on behalf of the company, were made without my being consulted or informed and when I was put on notice of their nature I refused to accept them or indeed to be associated with them in any manner. However, Mr. Barry pressed his claim against Century in October/November for €40,000, but on the basis of his own staff costs and following exchange of correspondence with Patrick Taylor of Capital Radio on the 20th and 21st of December, he was paid

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the following February."

A. Well I reject that totally, Mr. Hanratty, in exactly the same way as I rejected just before we had the break.

Mr. Stafford's paragraph, did he --

276 Q. -- sorry?

A. -- I thought you said Mr. Stafford withdrew or --

277 Q. -- no, he says that it is incorrect, that that is not what

he meant to say to his solicitor?

A. He is saying that it is incorrect.

278 Q. And that it does not accurately reflect the information

that he wished to give to his solicitor, or words to that effect?

A. If he is withdrawing the whole thing, what is the problem?

279 Q. Sorry, Mr. Barry, the Sole Member of the Tribunal will have to decide on that issue?

A. Sorry, yes.

280 Q. What I am putting to you is what Mr. Stafford wrote down?

A. I reject it out of hand.

281 Q. Yes. Well, Mr. Stafford also wrote a letter to Mr.

Synnott on the 8th of September of 1992.

A. I mean, there was bad blood between Mr. Stafford and myself at this stage.

282 Q. I am sure there was.

A. Yes.

283 Q. Can I just refer you to this letter at page 3892. Again, this is correspondence with Mr. Stafford and Mr. Synnott in connection with this proposed claim against you. And on the second page, 3893, Mr. Stafford says as follows:

"You will note that Mr. Barry has never denied in

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correspondence or at any meeting when I discussed this with him that there was an overpayment of 28,986.20. He has attempted to confuse the issue on the basis of the following:-

(a) That the value of lodgements to the current account (excluding ú460,000 transferred to the deposit account) amounted to ú366,250.37, whereas the bank statement shows that only ú280,000 as having actually been lodged.

(b) That his cash lodgements to the account were ú141,250.37. On another occasion that there were cash lodgements of ú64,707.66 and ú76,542.71 as expenses for which he was entitled to take a credit. There is no evidence at all to support Mr. Barry's claim that he lodged this ú64,707.66 to the account. Whether or not the expenses of ú76,542.71 were properly the company's can be determined by the Letter of Disclosure that Mr. Barry gave to Capital at the time of closing. Exactly what expenses were subsequently paid by Century can also be easily verified. C"?

A. Would you mind if we just stop there?

284 Q. Yes?

A. I didn't mean - the disclosure letter was drawn up not by me. I was there on the day but I didn't certainly draw up that disclosure letter. That would be --

285 Q. -- you were involved in providing information which was incorporated into the disclosure letter?

A. I don't know really, was I?

286 Q. Are you saying you weren't?

A. Well, the disclosure letter was a legal letter that was, that would have been drawn up over many months between the

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professional people that were involved.

287 Q. Mr. Barry, you were the Acting Chief Executive of this company since December of 1989?

A. I was not --

288 Q. -- you went into this company in a management capacity?

A. No, no, I didn't. I was, I would say, I think I covered this with you this morning, I would have been in the role of Chief Executive, I would say, from about March to June. Then the Capital management came in.

289 Q. In fact somebody from Capital management was there from January, I thought?

A. Maybe, maybe.

290 Q. But at the behest of the bank in December 1990 did you not become, as it were, hands-on as well?

A. Oh, I did.

291 Q. Whatever title you gave yourself?

A. Yes.

292 Q. So you were intimately involved in the management and day to day running of this company, virtually from that time?

A. I was, yes.

293 Q. Yes. You were one of the people among the management team who would have had the information necessary to complete the disclosure document?

A. Well, as I say, Mr. Hanratty, I would certainly be, in an overall capacity. But the financial affairs of the company wouldn't be my area and we had executives on, hired in the company to look after all that business.

294 Q. Mr. Barry, are you seriously suggesting that you did not have a significant input into the disclosure document?

A. I am, seriously, I am, yes. It is not an area that I

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would have been experienced on or familiar with.

295 Q. Can I refer you to page 6167? This is a memorandum from Mr. Aidan Lamb to Mr. Colm Walters. It is dated the 8th of January, 1991. If you look at the second paragraph it says "Noreen" - that is Noreen Hynes- "also stated that during her work on the Letter of Disclosure she made the Directors fully aware of their responsibilities in ensuring that all known liabilities of Century Communications limited were fully disclosed." That is what Noreen Hynes did?

A. Yes.

296 Q. She made the Directors, including you who were effectively the Managing Director, aware of your responsibilities in ensuring that all loan liabilities of Century were fully disclosed?

A. Yes, I don't remember it but if she says so, I have no reason to disbelieve her.

297 Q. Yes. Precisely what you would expect would happen in a situation like this?

A. Yes.

298 Q. And yet the one liability which you say existed that you did not make Capital aware of was a liability to yourself of ú40,000?

A. I don't - I can't give you an explanation for that, Mr. Hanratty.

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CHAIRMAN: Mr. Barry, would you be kind enough to look at the previous three lines in that letter and tell me how you could maintain after the event that there was a sum of ú40,000 due to you for services, I am using the phrase'services rendered'" in a generic sense. This man

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Colm Walters records that Miss Noreen Hynes "She informed me that there was never, that there never had been any mention of a fee being payable in respect of such services and that she had always understood that they were free of charge." That is what she says or he records. He records "Ms. Hynes stated that during the course of her work on the on the Letter of Disclosure she made the Directors fully aware of their responsibilities in ensuring that all known liabilities" - and your 40,000, on your case, is a liability and very clearly a liability, a liability which, in fact, the acquired company may, if I may call them that, or the reformed company, discharged.

A. Well, Chairman --

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CHAIRMAN: Isn't that so?

A. If we just go through - as I mentioned, I didn't see it myself." She informed me that there never been any mention of a fee being payable in respect of such services", if you just take that one.

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CHAIRMAN: If you go back one line before "I spoke to Miss Noreen Hynes concerning services provided to Century Communications by Oliver Barry", that puts it in context?

A. Absolutely. Now, I think I covered this on Monday. As I said, I was in a dire financial situation at that time.

But anybody, would anybody expect me and my staff to go into Century's buildings for approximately six months free of charge?

299 Q. MR. HANRATTY: Whatever people expected, Mr. Barry, the

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fact of the matter is there was no question or no mention of any fee being paid at the time that you were doing it?

A. I can accept that the evidence is that Capital Radio may not have been aware much it, but certainly Jim Stafford, I think Jim Stafford in his own evidence has said that the contribution that I made to the company - if it was Noreen Hynes's opinion that it was done free of charge I think that was a mistake on her side. Indeed, writing cheques or getting cheques out of the company at that stage was on a daily crisis basis. The company didn't have the money to pay me at that particular point but it was never envisaged that I was rich enough and resourced enough to go into Century Radio for a period of six months free of charge.

300 Q. But there was never any, any question, I suggest to you, up to the time that the Capital Radio deal was signed on the 27th of September, there was never any question of a claim by you for 40,000 and that deal came up after the deal was signed by Capital?

A. Very simply, Mr. Hanratty, there was no money in the company to pay me. I couldn't have got the money from the company.

301 Q. Insofar as it was supposed to have been an indebtedness it should have been disclosed?

A. I must say if it was not disclosed in the letter it should have been disclosed.

302 Q. We are all living in the real world, Mr. Barry. The yardstick against what these matters have to be judged is in relation to what happens in normal circumstances. We know that you were acting in a particular managerial capacity in relation to the first half of 1991?

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A. 199 --

303 Q. Sorry, 1990. We know during no time during that period did you rise one single particular invoice for your services, whether they were paid or not, you didn't rise any invoices?

A. No.

304 Q. Other people were raising invoices as well who never got paid?

A. Maybe that is why I didn't raise them, because I knew I wouldn't get paid.

305 Q. Maybe it is. The fact of the matter is not only did you not rise any invoices, you did not make any record in your Quality Artistes Management accounts to the effect that such monies were owed?

A. That is absolutely true because it is a wing and a prayer whether I would get it or not.

306 Q. Did you not inform the Financial Controller of Century Communications itself that you were claiming to be owed monies for these services?

A. I would have felt - no, I didn't do it personally and if it wasn't put in the disclosure letter it should have been.

307 Q. Her understanding as it is recorded in this memorandum was that there was never any question that you were to be paid for, a fee for these services?

A. That was her understanding, yes.

308 Q. And we know that it wasn't, in fact, disclosed in the disclosure document although there was a detailed and exhaustive exposition of all of the creditors of the company who were claiming to be owed money?

A. Yes.

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309 Q. But yet no mention whatsoever of any monies being due to you?

A. Yes.

310 Q. Isn't it reasonable for any objective observer to conclude that as of that point there was never any claim by you for any such payment, there was never any view by anybody in the company that any such indebtedness existed, either in Century Communications Limited or indeed in QAM?

A. That's - yes.

311 Q. And that the first time that any question was raised by anybody to anybody about any such alleged indebtedness occurred some time after the deal with Capital Radio was concluded?

A. Yes, because there was money back in the company.

312 Q. I am just going back to where we were. We know that when you started advancing this claim Mr. Stafford assisted you?

A. Yes.

313 Q. And he drafted a letter for you in which he claimed that you were entitled to €40,000 but on the basis of being paid €1,600 per week for 25 weeks, isn't that right?

A. That's right, yes.

314 Q. And he did this in circumstances where there wasn't a shred of documentary evidence to back up this claim?

A. If there wasn't documentary evidence, Mr. Hanratty, there was evidence - the dogs in the street were barking that Century Radio was in dire straits and that Oliver Barry went in and tried to save it.

315 Q. Was it necessary for Mr. Stafford to draft a letter for you as to the basis upon which you should have been paid this money?

A. I certainly didn't request him to draft this letter.

Mr. Stafford he is a very experienced man with the pen, much more a paper man than I am, maybe to his credit, I have to say, and he probably felt that 'Oliver is morally due this money for what he did for the company to keep it alive and I am going to assist him to recover it'. That's my supposition.

316 Q. Mr. Barry, are you not capable of writing a letter saying you are owed money?

A. I am not saying that but, I mean, Mr. Stafford's letter is - I mean, I don't know - in actual fact I am not even certain that the letter even went on to Patrick Taylor.

317 Q. Sorry?

A. I am even certain that the letter went to Patrick Taylor.

318 Q. It must have done because he appears to have dealt with it in a replying letter?

A. Does he refer to the letter that he got?

319 Q. He refers to a letter from Mr. Stafford. Are you suggesting that the draft letter from Mr. Stafford never went to Patrick Taylor?

A. I am just saying I have no recollection of actually sending the letter. I am not saying the letter didn't go.

320 Q. Whether it did or not?

A. -- yes.

321 Q. -- we have a situation here where you are the person claiming to be owed ú40,000 on whatever basis and Mr. Stafford drafts a letter that you should send to Mr. Patrick Taylor to assist you in recovering this sum. Why was Mr. Stafford drafting what would appear on the face of it to be a fairly simple letter on your behalf?

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A. I don't know. I mean, Mr. Stafford would be helpful in that area. I am not too sure why he would have done it. I don't know if I requested him to do it. I doubt if I requested him to do it.

322 Q. Going back to the letter of the 8th of December of 1992 from Mr. Stafford to Mr. Synnott, page 3893?

A. Now there is, now there is a totally different tone between Mr. Stafford and myself.

323 Q. Let's just deal with this letter?

A. Yes.

324 Q. He says at paragraph C of that page, he is referring to you, he says "He has attempted to confuse the issue on the basis of the following; at paragraph C he says that he" - that is you - "was entitled to take from the joint account the sum of ú40,000 in respect of certain payments he had made."

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Here again Mr. Stafford is talking about your claim for ú40,000 in the context of payments which you had made. "He maintained that these payments were in cash, no invoices were issued and no receipts. "

A. Just a moment, "He was entitled to take from the joint account" - what joint account? How could I take money out of the joint account. There was no money in the joint account. The only money that was in the joint account was enough money to pay the wages as we go on.

325 Q. I am asking you, Mr. Barry. It says "That he was entitled to take from the joint account the sum of ú40,000 in respect of certain payments he had made. He maintained these payments were in cash, no receipts were issued, and

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no receipts ever obtained. The payments were not authorised by me and when I was put on notice of their nature I refused to accept them or indeed to be associated with them in any manner."

A. That is totally untrue.

326 Q. I was going to say that was the first time. It is, in fact, the second time that he said it and he said it again in his instructions in September of 1992. Mr. Stafford is saying that you were claiming 40,000 in respect of payments you had made and which he had received no invoices or no receipts and for payments which were made in cash?

A. That is the payment to Ray Burke and the 5,000 bank draft to --

327 Q. -- clearly those payments were in cash, there was no invoices and no receipts?

A. Yes, that's right.

328 Q. So there can be no doubt that these are the payments to which Mr. Stafford is referring in this paragraph?

A. I can see - you see, what I don't understand --

329 Q. -- sorry, Mr. Barry, can we just be clear about that, are we in any doubts that the payments that he is referring to in that paragraph are the 35 and the 5?

A. It certainly looks like that.

330 Q. Are you aware of any other payments that you made in cash for which there was no receipts no invoices?

A. No.

331 Q. But which you were claiming payment?

A. No, that didn't happen.

332 Q. Well, can we take it then that he is clearly talking about the 35 and the 5?

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A. I think he is totally incorrect. I am trying to be helpful, Mr. Hanratty.

333 Q. Yes?

A. He refers to 'the joint account' here, that I was entitled to take from the joint account the sum of ú40,000.

334 Q. Well, he could have been talking about the Capital account perhaps?

A. No, well I mean - are we going, are we going to go by what it is here or what are we talking about? This is what the man --

335 Q. -- what point do you make about the fact that he refers to the joint account?

A. If you allow me to continue; "That he was entitled to take from the joint account the sum of ú40,000." The joint account was running prior, prior to Capital coming in. When I had got my credit there was no complaint about it because I was already credited it.

336 Q. Let's assume for the moment that you are correct and he is incorrect in referring to the joint account?

A. Let me make one further point about the joint account. The joint account was purely a temporary account, a hand to mouth account to keep the wages paid.

337 Q. Yes?

A. How could I go in and ask for ú40,000 out of an account like that, if you look at it in the bank --

338 Q. -- there is two possible explanations. Perhaps he is mistaken to the one to which he refers, perhaps he means to refer to the Capital account. Assuming you are correct that he is incorrect about the account, what about the rest of the paragraph?

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A. Let's go through it. "He maintained that these payments were made in cash. No invoices were issued and no receipts were ever obtained" - that is certainly - "the payments were not authorised by me." - I don't accept that - "When I was put on notice of their nature I refused to accept them or refused to be associated with them in any manner" - I accept that. As I said, I got credit for this payment in July of '89 from both John Mulhearn and Jim Stafford in the Capital account.

339 Q. Yes. Now, we know that within a month after, about a month after you received your payment of ú40,000 out of Century you had a meeting with Mr. Stafford on the 20th of March of 1991. We have had some evidence about this. But Mr. Stafford took a memorandum of this meeting. Do you remember the meeting?

A. I don't remember the meeting, but --

340 Q. -- do you remember having occasion to meet him about something shortly after you got your ú40,000?

A. I don't really but I remember that there was bad blood between us afterwards. He was claiming that he was due money and I was, I was under pressure financially at the time and I think relations between Mr. Stafford and myself deteriorated around that time.

341 Q. Well, could I refer to you page 6,000 - sorry 3897? This is in the handwriting of Mr. Stafford and it is notes which he took, we are told, at a meeting between himself and yourself on the 20th of March, 1990. Sorry - 1991. There is a date on, we have a typed transcript at page 6300 and the date of the 20th of March 1990 at the top of it is in fact an error. That should be 1991.

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Are you in a position to agree that you did have a meeting with Mr. Stafford on this occasion?

A. I don't recollect it. I am not denying it. I have no recollection of the meeting. We had many meetings, too many meetings.

342 Q. It says "No cheque promised." Do you have any idea what he might have meant by that?

A. No, no idea.

343 Q. It says "Burke - 35,000 - plus ú5,000"?

A. Yes.

344 Q. So that would seem to indicate that there was a discussion between you about 35,000 and ú5,000?

A. I have no recollection of it, Mr. Hanratty.

345 Q. Well, what Mr. Stafford says about this meeting is that this was the very first occasion that he was ever told anything about the fact that there was a donation to Mr. Burke?

A. I reject that totally.

346 Q. Or indeed about the fact that you were seeking, looking for him to pay his proportionate one-third of that payment?

A. I have no recollection of the meeting.

347 Q. Well, whether you can recall the meeting or not Mr. Stafford's evidence to the Tribunal has been that the first time he was told by you or by anybody --

A. -- I reject it, I think it is totally --

348 Q. -- of the payment to Mr. Burke was on the 20th of March 1991?

A. I reject that entirely, Mr. Hanratty.

349 Q. How do you reject it if you can't remember the meeting?

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A. Because I know that he knew about it in advance of that.

It has nothing got to do with the meeting. Mr. Stafford was aware of this before I gave the donation and after I gave the donation. It has nothing to do with the meeting.

Mr. Stafford was aware of this from May of '89.

350 Q. Well, we know that the payment was made on the - well at least it was made sometime in May of 1989?

A. Yes.

351 Q. You have already given evidence that, I think your evidence was that you believe that he was aware of it before the payment was made?

A. Yes, if you will, yes, that is my belief.

352 Q. Can I just remind you of what you on a previous occasion told the Tribunal, because it is not entirely consistent with what you have previously told us.

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As you are aware, when you originally declined to provide a voluntary statement you were called to give evidence, for the taking of your statement?

A. Yes.

353 Q. Pursuant to that then you agreed to attend at a series of meetings in private in the Tribunal?

A. Yes, two meetings, yes.

354 Q. And in the course of one of those meetings which took place on the 27th of June of 2000, this particular issue was raised, isn't that right?

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MR. WALSH: Is this going to be used in evidence Sir? I would like to see a copy of it, of the transcript.

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MR. HANRATTY: Yes, I have the relevant extract and that can be distributed. (Document handed to counsel.) This, Sir, you will recall is the extract from the transcript of this meeting that you have decided may be distributed on the basis that it seems to disclose a possible inconsistency with the testimony that is given.

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It may not be, Mr. Barry. Perhaps you may be able to explain it. Can I just refer you to the passage in question where it says:

" Question" - this one starts, I just want to start at the correct place, if I may?

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If we start say at the bottom of page 20:

" Question: While you do not have any specific recollection of telling them, are you satisfied in your own mind that would you have told them? " - that is Mr. Stafford and Mr. Mulhearn I believe -

" Answer: I am absolutely satisfied, absolutely without doubt I would not have done something like that without talking to them about it.

Question: Before you did it?

Answer: Before I did it.

Question: Yes, did you have any, do you remember having any discussions with them about the amount or about the fact that he had asked for" - that is Mr. Burke -

"had asked for ú30,000 and that you suggested that we pay him ú35,000 or anything of that nature?

Answer: I do not really. I do not, no.

Question: Yes.

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Answer: They would have known the amount. They would have known that I paid him €35,000. They knew what I gave to him.

Question: They knew after the event or did they know before the event?

Answer: I would have got the other two to do it. I do not think I would have run off and done it myself and then come back and saying 'Lads, you owe me the money'. I would not do that. That is not the way I would operate.

Question. Yes

Answer: We had a very close working relationship at the time, the three of us, and there was no hidden agenda between any of us over this thing. Relationships were extremely good at that time, even between Stafford and myself. "

Then it goes on to deal with something else.

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That is what you said at the interview. Now, your evidence was that you believed that you had told Mr. Mulhearn and Mr. Stafford about this proposed payment to Mr. Burke in advance of the payment?

A. Yes.

355 Q. Is it your belief that you had their prior agreement to making the payment?

A. Yes.

356 Q. And is it your belief that you had their prior agreement to the amount which should be paid?

A. Well, okay, whether it is 30 or 35, I may have said 30 to them, I am not one hundred percent sure on that, Mr. Hanratty.

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357 Q. Well, to go back to the point which gave rise to this. Mr. Stafford's evidence was that the first time he heard about any payment ever having been made to Mr. Burke was on the 20th of March of 1991 when he was informed of it by you?

A. Well I reject that totally, Mr. Hanratty. I don't know how many more times you are going to ask me the question. That is untrue.

358 Q. Mr. Moore, Mr. Stafford's accountant, has told us that he was told by Mr. Stafford in advance of the payment that you were going to make a payment, albeit that he was not told about any amount?

A. I don't know, Mr. Hanratty, what Mr. Moore said to Mr. Stafford.

359 Q. Is there anything that you can assist the Tribunal with, in resolving this riddle or anything that you might point to that might indicate that you are correct and that Mr. Stafford is incorrect, as you contend?

A. It was word of mouth at the time. As I said, there was a close relationship between us. There is no piece of paper on it. Unfortunately I didn't ask Mr. Burke for a receipt. He didn't offer a receipt and I didn't ask him for a receipt and even though I got receipts for all my other political donations, that is one I did not get a receipt for. That wouldn't, I suppose, help as to whether they knew in advance or not. I am afraid I can't go beyond what I am saying.

360 Q. You mentioned other political donations, Mr. Barry. I think it is true to say that you did, in fact, make other political donations around this time?

A. For that election, I did, yes. I think I informed the

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Tribunal of those, those donations.

361 Q. These were political donations not on behalf of anybody else but purely on your own behalf?

A. That's correct, yes.

362 Q. Is it also true to say that you provided assistance, I think you have already told us about this, to Mr. Burke in his own constituency in the course of this 1989 General Election?

A. I would have been - maybe, yeah, of some help to him during the election campaign, yes.

363 Q. Now, I am going to ask you a number of questions about the other political donations but for the purpose of the exercise it isn't necessary to name the recipients of the donations?

A. Okay.

364 Q. But there are some aspects of the donations that I would like to explore with you, I don't know if you want to break at this point or --

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CHAIRMAN: We will break at this point.

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MR. HANRATTY: Yes.

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CHAIRMAN: What time will we reconvene? Ten past two?

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MR. HANRATTY: Yes, Sir.

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CHAIRMAN: Very good, ten past two.

THE HEARING THEN ADJOURNED FOR LUNCH

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THE HEARING RESUMED AFTER LUNCH AS FOLLOWS:
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MR. HANRATTY: Mr. Barry, please.
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MR. OLIVER BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES
TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:
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365 Q. MR. HANRATTY: Mr. Barry. Sir, as you are aware, a particular extract from a private meeting with members of the Tribunal legal team was put to the witness this morning to enable him to explain possible a possible inconsistency between what he then said and what he is now saying.
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As you are aware, Sir, over lunch it came to your attention that in respect of another matter there was an inconsistency arising from the interview of the 26th of June of 2000 which you directed ought to be put to the witness. And therefore we have prepared or extrapolated the relevant pages for circulation, and with your permission I will now put it to the witness.
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Mr. Barry, you were giving evidence in relation to the ú40,000 and in relation to getting out the ú40,000 from Century Communications Limited and the reason why you were claiming that sum, isn't that right? You were saying that this was monies due to you in respect of services which you provided prior to the deal with Capital?

A. Yes.

366 Q. Now, you will recall that this is a matter which was the

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subject of a discussion between yourself and members of the legal team, including myself, at an interview in the presence of your legal advisors on the 26th of June of 2000, isn't that right?

A. Yes.

367 Q. And can I just draw your attention to a passage starting at page - well, starting at the bottom of page 53.

A. Yes.

368 Q. Where you were being asked questions about this particular €40,000. And just before we go through the detail of it, essentially it was put to you certain things that Mr. Stafford wrote in connection with it. And you expressed yourself very satisfied because you identified this as the first documentary evidence that you had seen which would prove that Mr. Stafford and Mulhearn knew about the €40,000 in circumstances where you were afraid that they would otherwise deny it. Do you remember that?

A. Yes, I remember that. Yes.

369 Q. The point being that we were talking about the €40,000 that you received in February and that at that point in time, that is during the interview at least, you were identifying that €40,000 as being in respect of the payment to Mr. Burke and the Fianna Fail donation?

A. I don't think that is quite true, Mr. Hanratty.

370 Q. Let's just look at the text of the interview. At question, commencing at line 27, page 53 it says: "Question: After all of that and after the deal closed, Stafford was pursuing Mr. Taylor then for €40,000 which he said was due to him. What was that about?"

A. Excuse me, where are we, Mr. Hanratty?

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371 Q. The bottom of page 53?

A. Yes.

372 Q. " Answer: To be honest with you I wouldn't have a clue. It just went really sour between us.

Question: So I believe.

Answer: Yes.

Question: But he did raise an issue with them and became quite belligerent about." Then there was an interjection.

"Stafford raised so many issues you couldn't keep up with him. He had a go at me as well because he said I owed him money. Did you get that file?

Question: This was the money in relation to Mr. Moore, is that right?

Answer: Yes.

Question: What I am trying to find out at this stage is, do you know what the £40,000 was that he was claiming from Taylor after closing the deal?

Answer: I don't know. Was it after closing the deal?

Question: Yes.

Answer: Before the row?

Question: Yes. He said that the figure arose prior to it but he said that it was fully explained to them in the course of due diligence, and that this money was going to be due to him. He was now saying that it should have been paid. But what was it?

Answer: Maybe it is £40,000 we are referring to here. I hope it is. It is good for me if it is because it means that Stafford cannot say he didn't know. It wouldn't surprise me if it was. I don't know. If it is £40,000 that sounds good.

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Question: In fact, I came across a document this morning, this is a fax from him to Mr. Taylor.

Answer: Am I "cc" on it?

Question: I am sorry, it is to you in fact. Sorry, no that couldn't be right. The cover sheet says it is to you. It is dated 20th of December, 1990. The cover sheet says 20th of December, 11:10 to Oliver Barry from James Stafford.

Answer: 1990?

Question: It says ' Please review attached draft. ' So he has drawn up a fax that he is going to send to Mr. Taylor."

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Then it sets out a entire draft of the letter that was going to be sent to Mr. Taylor on the 20th of December, isn't that right?

A. Yes.

373 Q. Perhaps I might just read it again?

A. No, it is okay.

374 Q. Well, I think just to put the following text in context it says "Patrick, it is now over 12 weeks since completion on the 27th of September and the issue of the ú40,000 has not yet been dealt with and I cannot finalise my own accounts until it is paid.

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Despite my many requests it seems to be get deferred again and again to the point where I can only conclude that we are being played with. A typical example was the fact that you and I agreed it would dealt with this morning and of course it hasn't been.

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I am satisfied that the €40,000 is properly due and payable by the company. But to avoid any doubt whatsoever I will want it as the first item at the next board meeting when I expect it to be ratified and paid without any further nonsense.

Furthermore, as it has cost me interest, I will expect interest from 27th of September. I am satisfied that it was fully and properly disclosed between your own due diligence and the disclosure letter and I have no intention of either writing it off and deferring settlement any longer. Any confusion there may have been can be directly traced back to the loss" or something inaudible "for which your own investigating accountants are solely responsible. For my part, both Oliver and I picked up the shortfall of €118,000 not taken up by existing shareholders in addition to our full rights of €825,000 and I disappointed in the way that has been dealt with."

Then the question goes on;

"Question: Is that the same €40,000 do you think that he is talking about?

Answer: Mr. Hanratty, I hope to God it is but I cannot recall that fax.

Question: Do you recall him sending it to you? He was obviously talking to you about writing to Taylor about the €40,000. Was there any other €40,000 that you were aware of?

Answer: No."

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So in this answer you are saying in response to the question put to you in relation to the €40,000 being sought in this fax, that you were not aware of any other €40,000, in other words there was only one, isn't that right?

A. I just want to think about it because obviously I know it came as a surprise to me that day when I saw the cheque for the first time.

375 Q. What you saw was the letter, the draft letter that he had faxed to you?

A. I saw the cheque as well, if I remember correctly, you put the actual cheque --

376 Q. That is quite possible?

A. I remember I was taken aback by it.

377 Q. Why were you taken aback by the cheque?

A. Because I totally had forgotten about it.

378 Q. You knew that you had been paid €40,000 in February?

A. I didn't, I had forgotten about it.

379 Q. What I have just put to you is the draft letter that Mr. Stafford subsequently sent to Mr. Taylor?

A. Yes.

380 Q. And you were then specifically asked --

A. Is that, yes, that - sorry I got mixed up there. I thought this was the draft of the fax that he sent to me. Did that actually go to Mr. Taylor?

381 Q. It did, as far as we know it did?

A. Are we sure? This the one he sent to me to send to Mr. Taylor.

382 Q. I think we are. I think Mr. Taylor, if I am not mistaken responded to it, and we can check it?

A. I thought we went through this this morning? This is the

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fax that Mr. Stafford drafted to me and sent to my office.

383 Q. This is a different one. This is a letter that he himself sent to Mr. Taylor but he sent you a copy of the draft?

A. He sent me a copy of the letter of the draft.

384 Q. He faxed you a copy of his own letter to Mr. Taylor?

A. Have we evidence that this letter went to Mr. Taylor?

385 Q. You don't know, I take it?

A. I don't know.

386 Q. Right. Well, does it make any difference to your answer?

A. Maybe it doesn't. No, no. Let's continue.

387 Q. Since you asked the question, we might as well check it.

Yes, if we could have page 747. This is a fax. It is dated the 20th of December, 1990. It is addressed to Mr. Taylor. The text is in identical terms to the text which was faxed by him to you so it was sent to Mr. Taylor and Mr. Taylor, he may not have responded to it, in fact he responded to a separate letter which you had sent to him, which may be the draft letter which Mr. Stafford had drafted.

In any event, this particular fax was sent to Mr. Taylor?

A. Then, Mr. Hanratty, if I beg your pardon for a moment, I didn't read through this letter because I felt it was the fax that you were referring to earlier this morning. Would you mind if I just take the time to read it?

388 Q. Not at all, not at all?

A. Okay. It is very similar to the fax that came to my office from Mr. Stafford, the one that he drafted.

389 Q. No, it is different in a number of material respects. Most particularly, it makes no mention whatsoever of any claim

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or indebtedness for €1,600 a week for 25 weeks?

A. No, I will accept that the first time that piece of paper was, was, when Mr. Taylor, I think, requested an invoice or statement.

390 Q. Yes. And lest we get confused about it, this conversation started off talking about the €40,000, being the €35,000 to Mr. Burke and the €5,000 to Fianna Fail. If I can just refer you to page 53 of the transcript there?

A. The only thing, in this letter he doesn't seem to say that the €40,000 is payable to me.

391 Q. Well, it is the only €40,000 he was looking at. I know there is an incorrect reference to it in the transcript of it being owed to him. It is quite clear what he is seeking from Mr. Taylor is the money due to you (delete good)?

A. Why is that?

392 Q. Can I just refer you, let's be absolutely unambiguous about this. We will look at this correspondence again, although we have already looked at it, but just to avoid any confusion about it?

A. Mm-hmm.

393 Q. You will just have to bear with me while I find it. If you look at page 748. This is Mr. Taylor's letter to you. It says "I refer to the sum of €40,000 which we" --

A. Yes, I am familiar with that letter.

394 Q. Yes, so all of this correspondence is about the same 40,000? There was never any question of 40,000 being owed to Mr. Stafford, isn't that right?

A. Not to my knowledge, no, but it looks certainly from this letter that it was owed to him, does it?

395 Q. No, he is looking for the €40,000 that is due to you?

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A. It doesn't say that in this letter, does it?

396 Q. Are you suggesting that he is looking for €40,000 for himself?

A. I don't know, I am not too sure.

397 Q. Mr. Barry, the overwhelming weight of the evidence appears to suggest, and correct me if I am wrong, that there was an attempt by yourself and Mr. Stafford to get €40,000 out of Century Communications Limited, which you ultimately succeeded in doing in February?

A. Well, I don't accept that.

398 Q. Sorry?

A. I don't accept that.

399 Q. You got €40,000 in February?

A. Yes.

400 Q. The €40,000 in February was paid to you in circumstances where both yourself and Mr. Stafford were in correspondence with Mr. Taylor trying to get payment to you from Century of €40,000?

A. Yes.

401 Q. In circumstances where Mr. Taylor was resisting this payment?

A. Yes.

402 Q. And in circumstances where he was resisting it because he said he had no evidence of it, he had no vouchers and no invoices?

A. Yes, yes, we have been over all that ground, yes.

403 Q. That was the €40,000 that both yourself and Mr. Stafford were trying to get Mr. Taylor - or Century at least - to pay?

A. I accept that, yes.

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404 Q. That was the €40,000 that is referred to in this letter?

A. Okay.

405 Q. Now, and the €40,000 that we were discussing in this conversation, if you look at page 53, at line 15?

A. Yes.

406 Q. "Question: In each of these calculations you have divided up the €35,000 and the €5,000 into three?" - this is in reference to one of your documents where you did this?

A. Yes.

407 Q. Then we go on to deal with the €21,250. What I am simply putting to you is the context of the conversation is that the €40,000 we are discussing is the 35 and the 5?

A. Yes.

408 Q. Now, in the context of this letter which Mr. Stafford sent to Mr. Taylor and which he faxed a copy over to you, he is seeking to get Mr. Taylor to pay €40,000 and he is becoming impatient about it?

A. That is a different €40,000.

409 Q. But it isn't. Why do you say that is a different 40,000?

A. We are referring to the 35 and the 5 on page --

410 Q. Mr. Barry, let's be absolutely clear about this, the conversation from which this is an extract?

A. - yes.

411 Q. - is about the €35,000 and the €5,000?

A. Yes.

412 Q. That is what we are talking about?

A. Yes.

413 Q. We are not talking about anything to do with 25 weeks at €1,600 per week?

A. Not on page 53, yes.

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414 Q. Or anywhere else. You never mentioned it, you never raised it, you never suggested this during the course of this entire conversation. The only €40,000 that was being discussed was the 35 and the 5?

A. Okay.

415 Q. And in the context of that conversation I put to you the text of this letter, which Mr. Stafford had sent to Mr. Taylor?

A. Yes.

416 Q. In which he made reference to €40,000?

A. Right.

417 Q. In which he impatiently tried to get Mr. Taylor to pay the €40,000?

A. Yes.

418 Q. And at the end of the text I said to you "Is that the same €40,000, do you think, that he is talking about?"

Answer: Mr. Hanratty, I hope to God it is, but I cannot recall that fax."

A. Yes.

419 Q. "Question: Do you not recall him sending it to you? He was obviously talking to you about writing to Taylor about the €40,000. Was there any other €40,000 that you were aware of?"

Answer: No"?

A. Yes.

420 Q. So I specifically asked you was there another €40,000, and you said there wasn't.

A. Yes, obviously I had forgotten about the €40,000 that, from my Management Services at that point.

421 Q. You had forgotten about it?

A. Yes, I must have got are forgotten about it, yes.

MR. O'CONNOR: Yes, in fairness to the witness I think the context of that particular transcript should be put in context. It relates to an interview that took place on the 26th of June, 2000, ten years after the events that were being discussed and the most telling response from Mr. Barry is at the very top of page 54 where he replies "To be honest with you I wouldn't have a clue." It is his first interview with the members of the legal team. It is perfectly obvious that the matters which were being canvassed by Mr. Hanratty in the particular interview were matters which he was not up to speed on, to put it at its mildest. I think it is only fair that it should be put in that context.

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CHAIRMAN: I note your submissions on the matter but nonetheless the text is here and at one moment in time, not now, I am going to have to look at the text and I am going to have to look at your submission and look at the evidence that has been tendered here today and do so on a fair and reasonable basis.

MR. O'CONNOR: I am perfectly happy with that.

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CHAIRMAN: I can't very well interfere with counsel making a proposition to a witness which there is a text or a basis. Whether it is a good basis or a bad business basis is something that will have to be --

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MR. O'CONNOR: I am perfectly happy that you would view it that way.

CHAIRMAN: This exchange is in, in fact, on the transcript. I will note my own exchange when I come to read the transcript. You can rest assured on that, that I am not going to decide it here an now or anything like that.

MR. HANRATTY:

422 Q. Mr. Barry, you will recall that the matter that was of interest in this particular interview was the payment to Mr. Burke?

A. Yes.

423 Q. That was what the discussion was all about?

A. Well, I think we covered many - yes, of course, yes.

424 Q. It all resolved around this payment to Mr. Burke?

A. Yes.

425 Q. And having?

A. - which was 35,000.

426 Q. - 35, plus a 5 to Fianna Fail which I have just referred you to on page 54?

A. Yes.

427 Q. Now, in the context of that letter by Mr. Stafford trying to get a payment out to you of ú40,000, I put it to you "Is that the same ú40,000, do you think, that he is talking about?" You said "Mr. Hanratty, I hope to God it is but I cannot recall the fax." Then I asked you "Do you not recall him sending it to you? He was obviously talking to you about writing to Taylor about the ú40,000. Was

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there any other €40,000 that you are aware of?" You said "No". It goes further than that, Mr. Barry, if I can just refer you to the remainder of that page, it says:

"Question: It could only have been this €40,000. This is the only €40,000 that you can think of?" Your answer was "That is the best bit of news that I have heard for a long time.

Question: Why that is?

Answer: Because from my documentation you could never prove that Stafford or Mulhearn knew about €40,000.

Question: Are you afraid that they may deny that they knew about it?

Answer: In yesterday's paper Stafford denied it.

Question: Did he? I didn't see that. What was that?

Answer: In the Business Post yesterday. Stafford will be vicious in this, I can tell you"

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So it is quite obvious that you are quite unambiguously referring there to the €40,000, being the €35,000 to Mr. Burke and the €5,000 to Fianna Fail?

A. Yes, in that, yes.

428 Q. And when I put this document to you you were pleased because you realise that had there was, in fact, documentary evidence, or at least you so thought it was, documentary evidence that Mr. Stafford and Mr. Mulhearn knew about the €40,000?

A. Yes, Mr. Hanratty, if I can just interrupt for a minute?

What you are saying is perfectly, it is a perfectly accurate assessment of what went on at the meeting.

However, I think I may have said at some stage during -

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why did I - if I got the ú40,000 - why did I then claim credit for 13,333 of off both of them. At the end I must have mentioned that to you, of being inconsistent, if I had received back the actual ú40,000 that, that, for the Ray Burke and the Fianna Fail payment. Then when I returned to my office I spoke to one of the girls, I can't recall getting ú40,000 from, back from Century in February or in March of '91, what was it for? I had totally forgotten. Then we turned up another cheque for 9,250. I said that is VAT. There was no VAT in the money I gave to Ray Burke. What was the VAT for? And then we discovered the VAT was for the services that I rendered to, for Century.

429 Q. Are you saying that you realised after this meeting that the information you gave was incorrect?

A. Yes.

430 Q. Why didn't you tell us?

A. I can't recall --

431 Q. You had made some very, very specific statements?

A. Yes.

432 Q. Quite unambiguous and specific statements about the ú40,000 which included the 35 to Ray Burke?

A. Yes.

433 Q. You are now saying that you realised after that meeting that what you had said was incorrect?

A. I realised - well I didn't think I was absolutely as definite as I seem to be here about it because, as Mr. O'Connor has said, I said I can't recall fully. I didn't realise that I had made an absolute and definitive statement by it.

434 Q. You even identified it by reference to a report in a Sunday

newspaper?

A. I was preoccupied, I suppose, because of the documentary evidence that I had submitted to you with the 13,333, that that was an internal document, I had no proof that Jim Stafford or John Mulhearn heard about that so it was probably on the top of my mind 'How can I convince the Tribunal that this was a three-way donation?'.

435 Q. You were anticipating that Mr. Stafford and certainly, possibly Mr. Mulhearn, might deny that they knew anything about the payment to Mr. Burke?

A. I was.

436 Q. That was a concern which you had?

A. Yes.

437 Q. Aggravated by this report in the newspaper?

A. Yes.

438 Q. Which was a report, in fact, of Mr. Stafford's evidence?

A. Yes.

439 Q. When Mr. Stafford was reported as having said that the first he knew of the 35 was when he read it in the newspaper?

A. Yes, that was bothering me at the time, yes, because I knew that they knew about it. I was just, I was quite relieved when I saw the 40, I said this could be the answer to my problem. As it turned out when I went back to my own office I discovered there was VAT paid on it so it couldn't have been the €35,000 that I gave to Ray Burke, because that was not Vatable.

440 Q. If that was so, Mr. Barry, why did you not inform your solicitor ' Look, I have made a very serious error, I was specifically questioned about the €40,000 referred to in

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Mr. Stafford's letter, I was asked was it the only 40, I said that it was. I even identified it by reference to the 40, 35 to Mr. Burke and the 5 but I was wrong, you'd better write back and correct the mistake"?

A. I don't want to cast any aspersions on my solicitor --

441 Q. It isn't a question of casting aspersions. You could have done it directly yourself or through your solicitor. You could have come back to the Tribunal, either directly or indirectly, and said 'Sorry, I gave incorrect evidence there, what I said about the 40 is not true, there were, in fact, two 40's, including one for services rendered'?

A. It is my recollection that I did tell my legal team about it because when I discovered the VAT. That is to the best of my recollection. I am sure my legal team will answer for themselves.

442 Q. In fact, if I am not mistaken the position is, is it not that in all of your dealings with the Tribunal you never told the Tribunal anything about being owed €40,000 for services rendered or about claiming €1,600 per week for 25 weeks?

A. I had totally forgotten.

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MR. O'CONNOR: In fairness to the witness, if I could quote from a transcript that took place in an interview between the legal team and the witness - the witness says at page 18, line 25 "I mean, all I am trying to say here is I believe that the 40 grand was in the 35 and 5." I am simply clarifying the issue. There is no question of the witness misleading the Tribunal on this particular issue.

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MR. HANRATTY: Sorry, I stand corrected on that. You said it at a subsequent interview. Let's just finish what was said at this interview. Your evidence, as I understand it, at this interview, after this interview you realised you were wrong?

A. After this interview, I didn't realise, Mr. Hanratty, probably, I mean it was my first time - that I wasn't as definitive as I seem to have come across in this transcript and maybe I just - there was a chance about it, when I went back to my office I asked my, Patricia Cooney about it, I said 'I can't remember ever getting that money back'. I was actually shown the cheque. When you put the cheque in front of me I was totally taken by surprise. The cheque was for €40,000. Then I think there was a subsequent check for 9,000. I said 'What came in here?' Of course Patricia, because she is an efficient accounts person, she said 'That is VAT on the 40'. That is a different 40,000. I said 'Okay'.

443 Q. You never came back to the Tribunal about that?

A. I apologise for that.

Mr. O'Connor: With respect, the matter was canvassed at the subsequent interview and Mr. Barry did right any misunderstanding which may have taken place in the June interview. I don't think it is fair to say that the witness misled anybody, particularly if that --.

CHAIRMAN: -- let's not have the comment - may I just take - can you give me the reference to the transcript that I didn't take down when you were last addressing me.

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MR. HANRATTY: I think it is the 12th of July.

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CHAIRMAN: 12th of July.

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Mr. O'Connor: Page 18, line 25.

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CHAIRMAN: This is a similar interview to the one we are discussing at the moment with members of the legal team, is that correct, Mr. O'Connor?

MR. O'CONNOR: It is indeed. There were other issues discussed.

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CHAIRMAN: I appreciate that. It is the same context, is it not, Mr. O'Connor?

MR. O'CONNOR: It is the very topic.

CHAIRMAN: It is not a transcript of a hearing of any kind in public.

.
MR. HANRATTY:

444 Q. The point is your evidence to the Tribunal today is that you realised after this interview that you had given incorrect information?

A. I didn't realise that I had given absolute information, Mr. Hanratty, and I apologise and I was wrong.

445 Q. Sorry, as I understood your evidence you said you went and discussed it with Miss Cooney and she told you about the

00092

VAT element on it?

A. Yes.

446 Q. You must have realised at that stage what you said about this 40 was incorrect?

A. Yes, incorrect --

447 Q. Your solicitor is suggesting --

A. -- the only thing I am saying to you is that maybe I wasn't, I wasn't absolutely definite that I had, that I was as definite as this, if you know what I mean?

448 Q. Mr. Barry, it is as plain as a pikestaff what you said on the transcript. Your solicitor is?

A. -- I have no difficulty with that.

449 Q. -- your solicitor is now suggesting that you did, in fact, put it right. I suggest to you that you didn't. What happened was in the course of questioning you came up with the alternative version?

A. Yes.

450 Q. But what did not happen that at the commencement of the interview on the 12th of July you did not say, nor did your solicitor say "Look, before we start I want to correct something you said at the last interview", isn't that right?

A. If that is the case apologise for the negligence. I can assure you there was nothing sinister meant in doing so.

451 Q. Can we just continue on with the text of this particular interview. This is going back to the 26th of June. We are still on page 56.

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At line 25 the question is "Mr. Stafford will, as you are aware, be giving evidence. In the next few days you will

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be receiving a statement from him - I am sorry, his statement to the Tribunal. You will receive a copy of it in which he does deny", I am not sure what that is supposed to mean, it may mean he does not, "does deny any knowledge of the ú40,000.

Answer: That is what I expect."

I think it probably means he does deny.

"Question: If you are not aware of any other ú40,000 that was in issue, can I take it that is the 40, would that be your understanding of it?

Answer: How you have just given it to me, I am quite chuffed about it obviously. I don't want to be jumping to conclusions here because this is, because this whole thing is a nightmare for me. This is good news for me.

Question: This comes out of your own documents. This is the three boxes that we most recently received from you.

Answer: I did not go through them in that detail.

Question: Have a look at it there and see if you can make any sense out of it?

Answer: Why did we not turn up this one when he was suing us for money that time". Here again you are saying in reference to the document that 'It is a pity that we didn't have it when he was suing us because we could have shown what it was for'?

A. Which document?

452 Q. I am on page 57. The document is the document that we have just referred to, Mr. Stafford's letter?

A. Oh, yes.

453 Q. And at line 17 it says: "The key to it may be in the two

00094

other figures he refers to, €82,000 and €118,000." Then I think that leads on to a conversation about other figures in a different document which is identified there. But can I just refer you then to page 63 at line 16. Well, perhaps we will stay at line 11 "In view of what you have shown us about the 118,000 does that throw any light on the €40,000?"

Answer: Sure I mean, does it not look very, it look very - I mean it looks - "

Then there was an interjection.

"Question: In the absence of any other €40,000?"

Answer: Absolutely.

Question: Is it your view that that is what the €40,000 refers to?" This is the same 40 we are talking about now.

"Answer: It is now, thank God."

A. Mr. Hanratty, can I just say something I am not pleading - I have to say when I saw the 40,000, I was relieved because of what was said the previous day in the paper. And there is no doubt that, you know, you are a pretty trusting character, you certainly lead me down this road and without - I am not inferring in any way improperly at all - I was happy to get a solution to the problem. That looked a solution to the problem for me on that particular day. Unfortunately when I went back to my office it transpired that it was a different story. I apologise for it. I over-reacted maybe at the time but I can assure you there was nothing improper at all in what I was doing.

454 Q. You had even forgotten that you had been paid €40,000, on your evidence?

A. I did.

455 Q. You had forgotten everything about it?

00095

A. I did.

456 Q. How do you now remember that it was for €1,600 a week for 25 weeks?

A. Because didn't an invoice turn up to show that, or a statement?

457 Q. But that didn't turn up until later?

A. That is when I knew about it. I mean, I didn't, I didn't know what arrangement - I knew that the, that when I saw the €40,000 plus VAT, I said 'That is a different 40' because it is, it wouldn't add up in my books.

458 Q. Clearly the account which is set out in the text which I have just read to you is radically different to what you are now saying in your testimony, and indeed what you said on the 12th of July.

MR. O'CONNOR: With the greatest respect, I don't think it is open to counsel to selectively take an extract from one interview and put it in isolation to the witness, particularly in view of the fact when that particular extract which is being canvassed at the moment takes place prior to a subsequent meeting in which this matter was put perfectly full square in accordance with the witness' evidence today.

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MR. HANRATTY: Sir, I am trying to examine and elicit this witness' evidence. Mr. O'Connor will have an opportunity to lead whatever evidence he sees fit, including the entire text, if he wishes, of the transcript of the interview of the 12th of July. But I am putting very specific propositions to this witness about specific events and I

00096

would ask your permission to do so?

A. Well then, Mr. Hanratty - Chairman --.

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CHAIRMAN: Just a moment. Mr. O'Connor, I see the force of your argument. Nonetheless, here we have a text which appears to have a foundation,. I am only talking about the actual text, actual foundation.

MR. O'CONNOR: I fully accept that, Sir.

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CHAIRMAN: I am faced with a situation with, here is a statement on paper taken down, it is accepted that he said it. Now, I accept also, equally fairly, that you have pointed out that in a subsequent interview, approximately ten days later or thereabouts, he realises for the reason he has given the VAT receipt that he was confused or he was - I don't mean mislead - that he was confused in his reaction. That is how it comes across.

MR. O'CONNOR: I accept that, Sir. That is a fair summary of his position.

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CHAIRMAN: The situation, I think counsel is entitled to proceed to complete his premise. You are entitled, equally entitled in re-examination to explain the completion of the premise that Counsel for the Tribunal is putting forward.

MR. O'CONNOR: My only question is this, Sir; is it fair to the witness to proceed on the premise that his evidence to this Tribunal is solely contained to the first

interview?

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MR. HANRATTY: That is not my premise.

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CHAIRMAN: That is not the premise. The premise is being put that in an interview the 40,000 which was - sorry, the 40,000 in the course of this morning became two particular transactions, two separate 40 thousands. 40,000 related to what I call the "political donation" and the 40,000 which I called "for services rendered". Before lunch that emerged. Because I was confused and, I will say frankly, confused at the outset until I clarified it. The witness accepted that there were two 40 thousands. Now, the premise is now being put to the witness that there were not two 40 thousands, in fact, that it was only one 40,000 but for the purposes of recovery it got a new coat, a new overcoat and came to be sought in his new overcoat, if I may put it that way. I don't want to be pejorative of the witness. I don't want to suggest that I have made a decision for one or the other. That is how it is emerging to me.

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MR. O'CONNOR: That is fine, Sir. I have no difficulty with the matter proceeding in that context, provided it is accepted that the witness did rectify - - .

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CHAIRMAN: The witness gives, has certainly given a premise for rectification, namely the existence of - sorry not the existence, the discovery by his secretary of the VAT. Well, sorry, I don't want to go any further than that

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because otherwise I am going to get into a judgemental frame. I don't know what to do at this moment.

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MR. HANRATTY: I don't have it in front of me. Perhaps I might shorten this if I undertake that I will get the transcript and the passage out of the 12th of July and put it to the witness in the morning.

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CHAIRMAN: That is a fair thing to do.

A. Chairman, can I just

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CHAIRMAN: - what can I do for you?

A. One further thing.

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CHAIRMAN: Yes, certainly.

A. It didn't square with me, you see, as well; if I got the ú40,000 back from Century, how I could then have subsequently felt that my two co-partners were still owing me ú26,000 or 26,666, and that, that is - apart from the VAT receipt, when I, when - I am not sure, I suppose with the fortune of reflection then, I said I got that wrong, and I apologise for -

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CHAIRMAN: - all I can say at this stage and all I am going to say is I hear both statements from you. I will make my mind up in the due course of time whether I accept it or I don't. Because I am not going to do that at a point in time where I have not heard all the evidence?

A. I am not expecting you to do so.

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CHAIRMAN: I wouldn't that to you and I won't do it to anybody?

A. I am not expecting that for one moment.

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CHAIRMAN: I think I have clarified the situation fairly well, that as I see it at the moment there is a third or a possible alternative which I don't want to canvass at the moment because I will undoubtedly be indicating a potential view. I don't want to canvas that at the moment. There is manifestly another alternative. I am not going to go into that because again, I know not enough to take that into account. I think what Mr. Hanratty says is fair. Put the transcript of the 12th of July to the witness so that we see the whole thing in context.

MR. O'CONNOR: I am absolutely happy. I don't for one moment wish to be obstructive in any sense.

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CHAIRMAN: I am equally happy that you should intervene to try and clarify and present your client's version of the events fully to the Tribunal.

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MR. O'CONNOR: I was particularly concerned at the suggestion that somehow the witness had, to a certain extent, furnished information which he subsequently knew to be incorrect and did not thereafter rectify that situation. I think now that we are all agreed that that is not the true position.

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CHAIRMAN: What has happened, the context of both

00100

statements is now before the Tribunal, it is a matter for me in due course of time to make my mind up.

MR. O'CONNOR: Thank you Sir.

MR. HANRATTY:

459 Q. Mr. Barry, I mentioned to you this morning in the same context, the meeting which appears to have taken place between yourself and Mr. Stafford on the 20th of March of 1991?

A. Yes.

460 Q. That is at page 6300 and Mr. Stafford after that meeting wrote you a letter the following day. Before we come to that letter I just want to draw your attention to one feature of the notes that he took of his meeting with you. If we could look at the bottom right-hand side of the document he says "4,500" - I presume pounds "Gone astray". Do you know what he meant by "4,500 gone astray"?

A. No.

461 Q. He then does a calculation of two sums, one is 15,652.57 and the other is 13,333.33?

A. Yes.

462 Q. Which he adds up to ú28,986.20 pence (SIC)?

A. Yes.

463 Q. And that is the figure that he sued you for?

A. If you say so, yes.

464 Q. Well, amn't I correct in that?

A. I wouldn't know the figure just off the top of my head.

465 Q. It was 28,000 something?

A. Yes.

00101

466 Q. It appears to be the same figure that appears in the very first document we started on this morning in Mr. Stafford's calculations?

A. I am surprised to see the 13,333 in that. When he sued me for that I deducted the 13,333, if my memory serves me right.

467 Q. I was going to ask you, can you offer us any assistance as to why Mr. Stafford would be suing you for, among other thing, €13,333.33?

A. I can't. I can't help you in that regard at all, no.

468 Q. Well, when you were sued for it, were you aware that that figure was included in the amount he was claiming?

A. I was not, no.

469 Q. Do you see the calculations on the left-hand side?

A. Yes.

470 Q. There is 'T. Wogan, €15,000, C De Burgh, €25,000, miscellaneous expenses 5,020, Dublin' - presumably Dublin 1 - '26,250'.

A. Yes, there is a figure beside it - 21 March.

471 Q. Is it possible that that is the basis of the calculation for which you had previously received credit? Do you remember this morning we did a rough calculation it came out at €71,000 odd?

A. Yes, that looks like, yes.

472 Q. But in this case the figures to Mr. Wogan and Mr. De Burgh are included in that 71,000?

A. Bank statement, this is a bank statement from Touche Ross, is that what you are saying to me? I thought you said this was a, following up Mr. Stafford's meeting or Mr. Stafford's memo.

00102

473 Q. It is Mr. Stafford's memo of a meeting with you?

A. It is headed "Bank statement from Touche Ross - interest".

474 Q. 3600.

A. I must have been looking at the wrong one.

475 Q. Do you see the bottom left?

A. Yes, I mean the document, it says at the top it is a bank statement from Touche Ross, interest, is that right?

476 Q. That is just something that Mr. Stafford wrote into the document?

A. Well then, I'd better see the document from the top.

(Document handed to witness).

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CHAIRMAN: Could we have the document from the title down, please?

A. Yes.

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CHAIRMAN: 'Transcript of notes taken by James Stafford on the 20th of March and reflected in the subsequent letter dated 21st March of 1990'. That is what the heading is. What is displayed thereafter is, as I understand it, the text of the sheet of paper?

A. Yes.

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CHAIRMAN: It is split on these screens but it is a complete statement. If necessary we will print it out for you?

A. I have it now, Chairman.

MR. HANRATTY:

477 Q. You see on the bottom left then, "T. Wogan ú15,000"?

00103

A. Bank statements from Touche Ross.

478 Q. Mr. Barry, do you see "T. Wogan ú15,000, C de Burgh
ú25,000"?

A. Yes.

479 Q. " Miscellaneous expenses", which we know you did claim for,
"5,020"?

A. Yes.

480 Q. And Dublin 1, which we know about, 26,250?

A. Yes.

481 Q. That comes to within ú10 of the calculation we did this
morning of the figure for which you took credit in your
dealings with Capital Radio, isn't that right?

A. Yes.

482 Q. And is it possible that what Mr. Stafford is recording here
is the calculation of the figure for which you actually
took credit?

A. It is certainly possible, yes.

483 Q. But the problem with that is, of course, that the Wogan and
de Burgh figures are included in that?

A. I thought I put in a cheque for 52,000?

484 Q. If you add?

A. Yes, I know, I understand that, but I thought I had, I
thought I put in a cheque at the closing or a bank draft at
the closing for 52,000 odd which included Terry Wogan and
Chris de Burgh.

485 Q. You did. To look at it another way, if you add to that the
balance attributable to yourself of 12,420, whatever it is?

A. Earth.

486 Q. You come to within, you come to within ú10 of 84,000?

A. I am not - I don't really know what you are trying to get

at here, Mr. Hanratty.

487 Q. I am trying to understand what this figure is. You were at this meeting?

A. I have no recollection of this meeting. This is Mr. Stafford's meeting. I don't have any recollection.

.
CHAIRMAN: Mr. - that isn't correct, as I understand it. The transaction this morning - a sum of ú40,000, isn't that right, 12,260 and there was a balance unexplained, it was - you had no information and we had no information as to what it was. What - the suggestion is being put to you now is that that ú71,270 and the features that make that up is the missing figures which we didn't have this morning. Now, that is as I understand it. Have I got that correct?

MR. HANRATTY: Well, what I am really trying to explore, Sir is what is it. Because this is a witness who was at this meeting. In the context of which these figures were recorded it may be a complete coincidence. I don't know whether it is or not. I am simply drawing the witness' attention to the fact that the figures for Mr. Wogan and Mr. De Burgh in the 71,000, whereas in the figure this morning they weren't.

A. I mean, what is the reference to Touche Ross and the bank statement from Touche Ross, interest of, ú10,000 interest. Maybe if you give me some time to think about this I might be able to come up with an explanation for you. I am seeing it now, I can't recollect it. I can't recollect the meeting. Maybe Mr. Stafford can throw some light on it.

488 Q. Undoubtedly so. You are going - you indicated this morning - to have a chat with your accountant. You will be in a position to explain to him that we are endeavoring to ascertain the basis of the credit that you took, the basis of the calculation of the credit that you took?

A. Of 85,000.

489 Q. On the closing date. The day after this meeting with Mr. Stafford he wrote you a letter on the 21st of March, 1991, page 1018, entitled "strictly private and confidential. He says as follows:

"Dear Mr. Barry, I have now had an opportunity to review with Tom Moore the various points you made about his involvement in the issue of the $\text{ú}28,986.20$. The facts as stated by me are confirmed by you in your own documentation which is that $\text{ú}613,318.90$ of funds were subscribed on my behalf and shares to a value of $\text{ú}589,332.50$ were issued, thus the difference is $\text{ú}28,986.20$ principal as being due to me from the Joint Accounts. Mr. Moore had specific instructions from me to subscribe on my behalf only $\text{ú}201,013.60$ to the "Guarantee Account" on closing. He subscribed $\text{ú}230,000$ because that is what you prevailed on him on him through your misrepresentation to do at that time"?

A. I don't have a recollection of prevailing on Mr. Moore to do anything.

490 Q. "And he is in no doubt whatsoever that that is what happened. I have known and trusted Mr. Moore for 20 years and I accept his version of events. Furthermore, Mr. Moore is quite clear that Maeve McManus undertook to send him 'by courier the cheque for $\text{ú}28,986.20$ on Wednesday morning' on

00106

the 13th of March. And finally, I do not accept that Mr. Moore was in any way discourteous to you or your staff. If anything you and your staff placed him in an impossible position.

.
At the very inception of this project I made it clear to you that expenses had to be properly incurred and properly invoiced before the company could be expected to pay for them. You are now unilaterally attempting to impose upon me certain personal disbursements which you have incurred."

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I will just pause there for a minute. "Certain personal disbursements"?

A. Yes.

491 Q. Isn't he obviously talking about your expenses of 35,000 and 5,000?

A. Yes.

492 Q. He is not talking about 1,600 per week for 25 weeks, he is talking about disbursements?

A. That is what he is talking about in that letter, yes.

493 Q. "I would point out that I have not sought to recover every single expense that I have actually incurred in relation to this particular venture. In relation to every authorised expense which I sought to recover and to which I was entitled to proper recovery of I have produced proper invoices.

.
Regarding the "Joint Current Account" I distinctly recall that this account was to be managed by you. Certainly the

00107

bank liaised with you or your office concerning its operation. Accordingly, I feel quite entitled to request of you, or indeed Mr. Moore to request of you the bank statements. I cannot understand how an amount of ú10,000 was paid out of it and not recovered from the company on closing.

.
Regarding the "Guarantee Account", I cannot understand how you can disclaim any responsibility for this account when it is quite clear that you approached the bank to open the account and explained to them why such guarantees were needed. I am disturbed that you may have failed to ensure that a proper commercial rate of interest was obtained on those deposits.

.
Despite your categorical denials last night, the fact is that in your capacity as my Trustee in dealing with certain aspects of the transaction ú28,986.20 of my money plus the interest on my deposit, has been disbursed out of the Joint Account and Deposit Accounts by you. You have actually recovered one way or another all your expenses and disbursements in full."

.
Can we pause again there? Mr. Stafford is making a clear and unambiguous statement that you have recovered all of your disbursements and obviously the disbursements?

A. - I think there is a reply to this letter, isn't there, on file?

494 Q. Not that we are aware of. Have you got a reply to it?

A. I think so.

00108

495 Q. Sorry, there is, there is a reference in some document to a reply which you are supposed to have written on the 30th of April but the Tribunal has never been able to obtain a copy of that document, either from you or any other source?

A. Really?

496 Q. Yes?

A. I am sure we have that, that we have that.

497 Q. Could we have a copy of that please?

A. I am sure we have that copy.

498 Q. Is it possible that you may have it here now?

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MR. O'CONNOR: I believe it may be here, Sir?

A. I am very surprised that the Tribunal hasn't.

MR. HANRATTY: It is a document that hasn't been discovered yet to the Tribunal. We know of its existence. Just while we are waiting on it, we don't have a page number, do we? This is in Mr. Synnot's documents. We will get a page number in a moment. But in the instructions to Mr. Synnot, Mr. Barry says "I eventually received a reply from Mr. Barry to Mr." - Mr. Stafford says - "I eventually received a reply from Mr. Barry dated the 30th of April." That is the only reference that we have to that letter. We don't have a copy of at that letter.

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MR. O'CONNOR: That is the letter to which we are referring, for the avoidance of any doubt. The letter is the 30th of April

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MR. HANRATTY: Than would be very helpful if we could be

given a copy.

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CHAIRMAN: It seems to be a lacuna in the discovery. At the moment that is what it looks like. Perhaps we could sort it out - ?

A. The only thing I am saying, Mr. Hanratty, I think it is most unfair to read this letter out without my reply.

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MR. HANRATTY: It is very difficult to do so, Mr. Barry. You haven't given it to us already.

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CHAIRMAN: I am apologising for that. Would you like five minutes to sort this out because it is very unfair to a solicitor to be, have to conduct the affairs of his client and at the same time try and find documents? I think you deserve five minutes to try and sort it out.

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MR. O'CONNOR: Thank you Sir. I am obliged to you, Sir.

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THE HEARING THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AGAIN AS FOLLOWS:

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MR. HANRATTY: Mr. Barry, please.

MR. BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

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MR. O'CONNOR: Just by way of clarification, we have discovered the letter. It is, in fact, on page 91 of Mr. Barry's Affidavit of Discovery. It is at item number 17 on

00110

page 91. Just for the record.

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MR. HANRATTY: It is in the affidavit, Sir, but it is not in the box. This is the first time, as far as we are aware, we have seen it. We know, we know about the document, we know that there was a reference to it in another document. The reference I just mentioned at page 98 says "I eventually received a reply from Mr. Barry dated the 3rd of April. I believe Mr. Barry collected the original from my office as I have neither the original or a copy of it". That is what Mr. Stafford had said about the document. So we were aware of the existence of that document. Subject to doing a further search, it doesn't appear in any of the boxes that we have. It is not in the brief. It is a document that I have heard about before. I am about to read it now for the first time.

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Perhaps we will finish the document to which it is a reply first?

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CHAIRMAN: Yes.

MR. HANRATTY:

499 Q. Yes, we were in the middle - ?

A. Mr. Hanratty, just before we continue here, can I have an assurance from you that you are going to read out my reply? Because obviously this is going into the record.

500 Q. I just said I am going to read out your reply?

A. Thank you.

501 Q. The last sentence that we had read was "You have actually

00111

recovered one way or another all your expenses and disbursements in full." This is Mr. Stafford saying to you in March of 1991 that you had recovered all of your expenses and disbursements in full. And he was obviously referring to the \$35,000 and the \$5,000.

A. Well, I mean I - presumably that was what he was referring to, yes. I think I have dealt with that in my reply. Could I have a copy of my reply?

502 Q. You may have done. Can I just ask you, at the moment, do you agree with that statement?

A. Just give it to me. Can I have my own reply for a moment, please?

503 Q. No, just deal with it from memory in a moment. We will be dealing with your reply in detail. Every single word of it will be read, you can be assured of that, Mr. Barry. At this stage Mr. Stafford is taking the position, whether he is right or wrong about it, that you have actually recovered, one way or another, all your expenses and disbursements in full.

A. That is incorrect.

504 Q. And why do you say that is incorrect?

A. Because I - subsequent to this letter I never got repaid the 13,333 from either Mr. Stafford or Mr. Mulhearn.

505 Q. Yes?

A. So I didn't recover all my disbursements in full.

506 Q. It is fairly clear, if Mr. Stafford is correct, I am not saying whether it is or not, it could only have been out of the \$40,000 that you got in February, isn't that right?

A. If he is correct?

507 Q. If he is correct?

00112

A. He is claiming that the \$40,000 that I got in February cleaned the slate, as it were.

508 Q. Yes?

A. That wasn't the case.

509 Q. No, but if he believed when he wrote this letter that you had been paid in full it could only have referred to the \$40,000 because there is nowhere else that you could have got it, isn't that right?

A. I got paid back - any expenses that I incurred-- there is loads of expenses that I --

510 Q. I am talking about the 35 and the 5, there is no other way that you could have been given it back than in the 40; if you didn't get the 40 you couldn't have been paid it?

A. That's right.

511 Q. It goes "In addition, you have retained my funds in a complete and absolute breach of trust. This is not the only breach of trust which has occurred. An important part of the representation made to the IRTC, the institutional investors, and particularly Capital Radio Plc was your commitment to invest further funds and continue to fulfill the 51 percent obligation to the IRTC. You did not fund the Guarantee which was a breach of an important covenant. The issue is further compounded by your taking an executive role in the company and your commitment to dispose of part of your shares of the company. At the perception of the project you represented your ability to fund the financial requirement of the project and specifically the maintenance of the controlling interest. You will appreciate that any variation, particularly loss of control of the company, materially alters of the value of our investment. I cannot

and will not tolerate such conduct that could lead to such potentially significant loss of value. Your proposal to make tax related deductions from my monies is unacceptable, as is your suggestion to repay those funds some time in July, depending on the outcome of your shares.

I am prepared to accept the cheque for the principal sum of €28,986.20 post-dated to the 30th of April, provided it is received here by close of business this afternoon, otherwise I shall take such action as I consider appropriate to seek recovery of all sums without further reference to you. Yours sincerely, James Stafford."

And now we have your reply. Unfortunately we don't have a page number. But we have scanned it in and it is on your headed note paper of Artists Management. It is dated the 30th of April it says "Dear James --

A. Mr. Hanratty, do you mind if I interrupt at one moment? It is only correct that I tell you exactly how this letter, as you know the tone of the letter came, that came from Jim Stafford was a total change of the friendship that existed. 'Dear Mr. Barry', it was a pretty rough letter. I probably answered that, went and discussed the letter with Mr. John Mulhearn, who introduced both of us. In order to reply to it, I remember getting the assistance of Enda Marren to draft the letter from me. I think we had a discussion. I said 'Should it come from me you or me?'. He said 'Let's not be too drastic'. The letter you are about to read, I am not denying any piece of the letter but I was helped in this letter by Enda Marren.

00114

512 Q. Yes. Do you remember discussing it with Mr. Marren?

A. I can't remember the day, I can't remember exactly when I discussed it.

513 Q. But you appear to remember the fact that you had such a discussion?

A. I know that the way the letter is done, that it wouldn't be a letter that I would probably be capable of writing in the language that addressed the salient points, I think.

514 Q. Was this letter drafted by Mr. Marren?

A. It would have been, yes. Mr. Marren would have a big input into it, let's say.

515 Q. Yes. Because we haven't received any such letter from Mr. Marren. We haven't received any draft of any letter of this nature on Mr. Marren's files, as far as we are aware?

A. Maybe he did it with me on the telephone, maybe, but he had an input in it.

516 Q. I stand subject to possible correction on that because there is one file of Mr. Marren's over which you are maintaining a claim of privilege and in respect of which the Sole Member has yet to rule, if you recall?

A. Yes.

517 Q. It may possibly --

A. -- I am very happy for you to read out the letter. I thought it was only fair that I should let you know.

518 Q. The letter says:

"Dear James, I was frankly annoyed when I got your letter of the 21st of March last and hence the delay in replying. In the interest to preserving the good relationship that has existed between us I suggest that Mr. Tom Moore and my accountant, Paul Spence, get together to work out what

00115

exact money is due.

.

There are a number of points in your letter which do require a response. On the date of closing I did not prevail on Mr. Tom Moore to subscribe €230,000, and how you can suggest that I did this through misrepresentation, is beyond belief. I deny categorically that I made any misrepresentation to Mr. Moore and to suggest that I did so causes me great hurt and offence. In actual fact I subscribed €52,420, including €40,000 for Chris de Burgh and Terry Wogan, in order to complete the deal under pressure from Patrick Taylor.

.

I have never, as you suggest unilaterally attempted to impose upon you certain personal disbursements that I incurred. All and any expense incurred by me were for Century and I am entitled to recoup them.

.

Any dealings I had with Bank of Ireland in relation to every single account was done with you or your full approval. Any cheques written out of the joint account were signed by us both.

.

As you know, I told you last August and you were also made fully aware that the last rights issue would impose upon me a serious financial burden. You agreed that the 10 percent issue was not attractive to us, related to our initial investment you said 'It represented bad value'. We decided to seek a new investor to take up this 10 percent and you yourself endeavoured to do so.

00116

.
My Executive Role which you proposed to Nigel Walmsly did not take place until March 1991, long after our discussion-". Is that correct?

A. If it is in this letter it is correct.

519 Q. "March 1991"?

A. Yes.

520 Q. Right. "My executive role which you proposed to Nigel Walmsly did not take place until 1991"?

A. This is my executive role subsequent to Capital's investment. I had an executive role prior to Capital.

521 Q. "Long our discussions about a possible disposal of the 10 percent. In fact, at that time I had no notion of taking up any Executive Role.

.
I assure that you if I was going to dispose of my shares or any of them I would only do so after a full discussion with all shareholders and the agreement of the IRTC.

.
In relation to your comments that I did not fund the Guarantee, please note that the requirement was to either fund the Guarantee or get a Bank Guarantee. I got a Bank Guarantee for my obligations.

.
I have spoken to Maeve McManus, she denies ever having promised Mr. Moore that a cheque would be sent to him by courier or otherwise.

.
I told you I would pay the exact money due to you at the end of June, not July as stated in your letter.

00117

.

I hope this clarifies matters. Your sincerely, Oliver
Barry."

.

Mr. - this letter was written in response to a claim for
£28,000, isn't that right, by Mr. Stafford?

A. That letter was written as a response to all of the
allegations that Mr. Stafford made me, made against me in
the letter that you have just read out.

522 Q. Yes, but it doesn't deal with all of the allegations, and
in particular the statement which I put to you, where he
apart from claiming his £25, £28,000 from you, asserts "You
have actually recovered one way other for all of your
expenses and disbursements in full"?

A. That is not correct.

523 Q. If it isn't correct, you didn't deny it in this letter and
you have already told us that this letter was drafted by a
solicitor?

A. Well, you can see that the tone of the letter is totally
different to Mr. Stafford's.

524 Q. It is undoubtedly different and it undoubtedly addresses
itself to the claim which Mr. Stafford is making against
you and other points made in Mr. Stafford's letter?

A. Yes.

525 Q. But what I am drawing your attention to is that
Mr. Stafford made a very specific assertion. We are
talking about 1991, which is fairly contemporaneous with
the events under scrutiny by this Tribunal. At that time
he said " You have actually recovered one way or another
all your expenses and disbursements in full"?

00118

A. Yes.

526 Q. And he referred to that earlier in the letter as well. We know that the expenses and disbursements were the ú35,000 and the ú5,000?

A. Yes.

527 Q. And nowhere in your response to that letter, do you deny that. You or your solicitor do take a serious issue with a number of points raised in his letter but that is not one of them?

A. Okay, that was - I can't explain that.

528 Q. Wouldn't that imply then that you were not disagreeing at that time with the assertion that he made?

A. If you want to take that implication, I don't think that was the intention, Mr. Hanratty, maybe it was an oversight on our part. I can't fully recall it. I thought the letter dealt with Mr. Stafford, the reply to the letter that he sent to me, pretty comprehensively.

529 Q. Isn't it fairly clear that if you had instructed Mr. Marren that that statement was untrue, he would have taken issue with it, as he did with some other points that were made in Mr. Stafford's letter?

A. Yes, I am surprised that it wasn't taken issue with, yes.

530 Q. What I want to suggest to you, Mr. Barry, is that the reason that it wasn't taken issue with was because you weren't at that time disputing it?

A. Well, I must have been disputing it because I have always claimed it in all of my own documentation.

531 Q. It is highly unlikely, I think you would agree, that if your solicitor was instructed to dispute it that he would have omitted to do so?

00119

A. It is, yes.

532 Q. In any event, we know that you saw this letter before it went out because it had to be taken away by you and done up on your own headed note paper, isn't that right?

A. Oh, yes I am not denying the letter for a moment.

533 Q. So that you were familiar with the contents of this letter, this was your?

A. -- yes.

534 Q. -- this was your considered response, not only considered response, but a response in which you took legal advice?

A. -- yes.

535 Q. -- to a letter from Mr. Stafford?

A. -- yes.

536 Q. -- in which he made a very specific allegations that you had been paid for all your expenses and disbursements?

A. Yes.

537 Q. Nowhere in your letter do you deny the assertion that you had already been paid?

A. I can't deny that, yes.

538 Q. The only way you could have been paid it was by the \$40,000 in February of 1991 because there is no other payment that could have --

A. -- yes, that \$40,000, I have given you my own explanation for that 40,000.

539 Q. I know you have. What I am suggesting to you is that that is in, it is in the context of events disclosed in these documents?

A. I can't change your conclusion at this stage, Mr. Hanratty.

540 Q. I am not making a judgement one way or another. It is important to you, Mr. Barry, if there is an explanation

00120

that you give it to us now?

A. Yes.

541 Q. MR. HANRATTY: Perhaps I could leave that subject then, Sir, until I have the other transcript, which I will revisit first thing tomorrow morning. Can I just move on to one other matter which we may have time to complete this afternoon. I mentioned to you this morning that there were a number of, apart from this ú35,000 to Mr. Burke, there were a number of other political contributions which you made during the course of this election?

A. Yes.

542 Q. And indeed the previous election. I think it is your, it seemed to be your habit at the time to make political contributions?

A. Yes, any friends in politics, yes.

543 Q. In some documents which you have submitted to us you have indicated the contributions which you made both in the 1987 election and in the 1989 election?

A. Yes.

544 Q. And as I indicated to you this morning, for the purpose of the information which I wish to elicit from you this afternoon, it is unnecessary to refer to the names of the recipients?

A. I understand that.

545 Q. If you wouldn't mind respecting that. I will give you a bundle of the documents (Documents handed to witness.) What appears to be the pattern, just to go through it in a general way before we look at the details, is that you would decide on a particular amount to give to a particular

00121

candidate or a politician,, isn't that so?

A. Yes.

546 Q. You would write out a cheque for that amount and send it to the person, to the recipient?

A. Yes.

547 Q. With an enclosing letter?

A. Yes, wishing them well, yes.

548 Q. Wishing them well. So on, in virtually all cases you received either a receipt or an acknowledgment?

A. Yes.

549 Q. And that was so both in the case of 1987 election and in the 1989 election?

A. Yes, yes.

550 Q. You are being handed an unbound bundle of documents which won't be put on screen. (Documents handed to witness.)
You also made a list, I think, of the persons to whom you had made a donation as a record, it would appear, of the amount which you give to each one of them and to whom you made such a donation,, isn't that so?

A. Yes.

551 Q. For example on page 1038, which you have there in front of you, you made a donation of ú500 to a person who was a Fianna Fail member of government, isn't that right?

A. Well, he was a Fianna Fail - I can't remember if he was a member of the government at the time, yes.

552 Q. The seconds item on your list is a donation of ú250 to a person who was a front bench Fine Gael person?

A. No, Sir, no.

553 Q. No, he wasn't a Fine Gael?

A. No, he was another Fianna Fail man.

00122

554 Q. Oh I am sorry, I am mixing him up with a different?

A. -- thank you.

555 Q. -- the third person is, I think, a Fianna Fail backbencher
to whom you made a donation of €1,000?

A. Yes.

556 Q. And the fourth person is a Fianna Fail member of government
to whom you made a donation of €2,500?

A. Yes.

557 Q. And the fifth person is a Fianna Fail member of government
to whom you made a donation of €5,000?

A. Yes.

558 Q. And then there is another Fianna Fail backbencher to whom
you made a donation of €250?

A. Yes.

559 Q. And there is a person who I believe to be a Fine Gael
backbencher, would that be right?

A. Yes.

560 Q. To whom you made a donation of €100?

A. Yes.

561 Q. Then there is another person who I believe to be a Fianna
Fail back bencher, is that correct?

A. Yes. No, no, no, Fine Gael.

562 Q. The third last name, is that a Fine Gael back bencher?

A. -- yes.

563 Q. -- of €100 and the second last donation is €500 to a Fianna
Fail member of the government?

A. Yes.

564 Q. And the last donation is, I think, also a Fianna Fail
politician in the sum of €250?

A. Yes.

00123

565 Q. Now, as I have indicated, if you look at the next document, 1031, that is a letter of acknowledgment from one of the recipients of one of these donations thanking you for your contribution?

A. Yes.

566 Q. And expressing his appreciation?

A. Yes.

567 Q. The next document, 1033, a similar letter, in similar terms?

A. Yes.

568 Q. And 1034, 1035, 1036, all of those letters of either receipt or acknowledgment written to you in response to these political donations?

A. Yes.

569 Q. 1039 then is a letter which you were in receipt of on Fianna Fail Party note paper soliciting a donation for the forthcoming election?

A. Yes.

570 Q. And in response to that I think you made a donation, I believe in the sum of €1,000, for which you received an acknowledgment for a receipt, isn't that right?

A. That's right, yes.

571 Q. And again there are a series of documents there in which, first of all indicating your sending of cheques containing these various donations to these various individuals, and then a series of letters in response, either by way of receipt or acknowledgement?

A. Yes.

572 Q. In fact, most of your letters setting out the cheques are broadly similar, are in broadly similar terms?

00124

A. Yes.

573 Q. And they are quite short letters?

A. Yes.

574 Q. Well, what I want to draw your attention to, Mr. Barry, is that, first of all, in all of these cases you wrote a letter?

A. Yes.

575 Q. And you wrote a cheque?

A. Yes.

576 Q. And you sent the cheque with the letter?

A. Yes.

577 Q. And in all of these cases you received either a receipt or an acknowledgment?

A. Well yes, yes.

578 Q. And in the case of the list that you prepared, you had your record of the identity of the persons to whom donations were made?

A. Yes.

579 Q. And the amount of the donation to each of those persons?

A. Yes.

580 Q. In the case of the payment to Mr. Burke you didn't write a letter?

A. No.

581 Q. You made the payment in cash?

A. Yes.

582 Q. You didn't obtain either a receipt or an acknowledgment?

A. That's correct.

583 Q. In fact, if I can refer you to page 1056.

A. Yes.

584 Q. You did, on the 24th of July, and we can put this one on

00125

screen, you did receive a letter of thanks from Mr. Burke, isn't that right?

A. Yes.

585 Q. In the following terms; it is addressed from his home address Briargate, Malahide Road, Swords, County Dublin. It says - it is dated the 24th of July, 1989. It says: "Dear Oliver, now that the 1989 General Election is finally over with the election of the Government, I want to thank you for all your work during the Campaign. Unfortunately, the result was not what we wanted but now is the time to prepare for the next one, we must get our two seats again.

.

You will be aware that, on the formation of the new Government I am now based in the Department of Justice, St. Stephen's Green, Dublin 2, and at this very early stage I am in the process of establishing a new Office there.

.

I thought it might be helpful to let you have my new telephone numbers in the Department of Justice." He gives you his three telephone numbers in the Department, isn't that right?

A. Yes.

586 Q. "Of course, my Constituency Office in Swords is also open at the usual times. The number there is 401734.

.

Needless to say, it is going to take a little time to get the new Office properly organised but we are well on the way there.

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00126

If there is any matter at all in which you feel I can be of advice or help to you, please feel free to contact me at any of the above numbers. Best regards. Yours sincerely,
Ray Burke."

A. Yes.

587 Q. So Mr. Burke did actually go to the trouble of writing a letter to thank you for your assistance in the campaign?

A. Yes.

588 Q. But he omitted to make any mention at all of the detail that you had given him €35,000 in cash?

A. Yes.

589 Q. Were you surprised that he made no reference to the €35,000 in cash that you had given him?

A. I don't think it occurred to me at the time, to be honest with you, Mr. Hanratty. I got the letter from him. As I said, my recollection is that he asked me for the donation in cash and I gave it to him in cash. I didn't seek a receipt from him, no more than I didn't seek a receipt from the other people. I didn't get one. I wasn't offered one.

590 Q. But in all the other donations you paid them by cheque?

A. I did.

591 Q. You got an acknowledgment or a receipt?

A. I did.

592 Q. You sent them by letter?

A. Yes.

593 Q. And in each case you were thanked?

A. Yes.

594 Q. Was there something different about the payment to Mr. Burke that he didn't either issue a receipt for it or thank

00127

you for it or acknowledge it?

A. Obviously there was.

595 Q. What do you think the difference was?

A. Well, the difference was because I had paid him the money in cash. I didn't write him a letter and I paid him the money in cash.

596 Q. But is that a reason not to thank you for it?

A. Well - .

597 Q. -- or even to issue you a receipt for it?

A. As I say, I didn't seek a receipt, I didn't seek a receipt from the other people and Mr. Burke didn't offer me a receipt and I took it at that. Maybe if I think it through properly. I think I admitted at the outset it was the wrong thing for me to do in hindsight. It has given rise to an awful lot of hardship, I suppose.

598 Q. Well, did it occur to you that it might be different in character in some way from the other political donations that you were making, apart from its obvious size?

A. Obviously, absolutely, it was a very substantial sum of money, totally out of context, as you see, with all of my other donations.

599 Q. But leaving aside even the size, did it occur to you that it had some differences in character from the other donations?

A. To be frank with you I probably didn't think it through at the time. He was a friend of mine. I knew him for many years. The constituency was my own one. I was familiar with it. I knew it was a marginal one. He asked me for the money and I gave it to him.

600 Q. Did it occur to you, for example, that it might be open, if

00128

it ever came out, to the potential for creating difficulties for Mr. Burke, for example the suggestion that he might have been compromised in the discharge of his public duties?

A. It never occurred to me, no.

601 Q. Do you not think it might have been wise to seek a receipt to eliminate that possibility?

A. Of course, absolutely. It was negligent of me not to seek a receipt and I regret that.

602 Q. You were a person who was not unfamiliar with making political donations?

A. That is true.

603 Q. And it appears certainly from your own political donations that there was a certain procedure or routine established?

A. There was no doubt that this was a totally different, totally different to all of the other donations that I made and it was far larger.

604 Q. Yes. I think you would agree that the general practice in Ireland when people do make such donations is that they are sent a letter of 'thank you'; as one or two of the letters said, 'let's have a cup of coffee sometime' or whatever sort of small talk. That is the norm.

A. I don't know about the cup of coffee but you certainly get a 'thank you'.

605 Q. One of the ministers or the recipients suggested to you that you should have a cup of coffee some time. They all wish you well and thank you. That seems normal?

A. It does.

606 Q. I suggest to you it must have been pretty obvious to you Mr. Barry, that this particular payment to Mr. Burke in

these particular circumstances, the fact that he asked for it in cash, the fact that he did not issue any receipt and the fact that notwithstanding the fact that he was, in fact, writing to thank you for your assistance in the election, he made no reference at all to the fact that you had not long before this letter given him ú35,000 in cash?

A. Yes, I accept that, yes.

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MR. HANRATTY: I was going to move on to a new subject Sir. The transmission charges, which I think we won't reach this afternoon.

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CHAIRMAN: I think we will transfer that to tomorrow. Half past ten tomorrow.

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MR. HANRATTY: The first thing in the morning we will do is put the relevant extract of the 12th of July transcript to the witness and one other matter, which I hope will finish that particular aspect of the evidence.

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CHAIRMAN: Very good.

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THE HEARING THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY THE 7TH OF DECEMBER, 2000, AT 10:30 A.M.

