

1 THE TRIBUNAL RESUMES AS FOLLOWS ON THE 9TH OF OCTOBER,
2 2001, AT 10:30 A.M.:

3 .

4 CHAIRMAN: Good morning everyone.

5 .

6 MR. HANRATTY: Good morning, Sir. On Friday you
7 indicated that you wished to be informed of what steps
8 had been taken by Mr. Finnegan with his Jersey or
9 Guernsey lawyers with a view to forcing the Trustees of
10 his family trust of providing the - to provide the
11 documents and information which he was seeking from
12 them.

13 .

14 You will recall, Sir, that at one stage, in the course
15 of Mr. Finnegan's evidence on Friday, you rose for a
16 period of time to enable Mr. Finnegan to obtain
17 instructions from, and perhaps give instructions to his
18 solicitors in Jersey/Guernsey, with regard to - or with
19 a view to getting these documents, and at the
20 conclusion of which you were informed that he had given
21 instructions to his solicitors to take certain steps.

22 And you indicated at that point that you wished to be
23 informed this morning as to what steps are being taken,
24 including to be provided with any documentation or
25 proceedings which may have been issued in connection
26 with those steps.

27 .

28 So perhaps before I call Mr. Finnegan, his counsel
29 might indicate, or perhaps Mr. Finnegan would prefer to
30 indicate himself what the position is.

1 .

2 MR. HUSSEY: No, I think I can explain the position,

3 Sir.

4 .

5 The position is that we had consulted with a firm of

6 solicitors named Olsen Fernbrache and Morgan in

7 Guernsey, and my client had spoken with Mr. Paul Buckle

8 and I indeed spoke myself with Ms. Allison Olsen,

9 partner in the firm. She explained to me the nature of

10 the type of procedures that could be taken in the

11 Channel Islands and explained to me some of the

12 background of the legal position in Guernsey in respect

13 of the matter.

14 .

15 She did, at the time, explain that the - that firm had

16 also been instructed to act on behalf of one of the

17 inspectors, she didn't identify which one, but one of

18 the inspectors appointed either by the High Court or by

19 the Minister for Enterprise in respect of inquiring

20 into accounts in Guernsey, and she did explain to me

21 that there may have been - there may be a conflict of

22 interest and they would have to explore that before

23 they could proceed further with our instructions.

24 .

25 At some time between five and half past five on Friday

26 that firm came back and said they couldn't take our -

27 my client's instructions in respect of the matter. We

28 explored three other firms in Guernsey, who again said

29 that they had a conflict of interest. I think they had

30 other clients that they were acting for.

1 .

2 However, yesterday we found a firm, Randell &
3 Loveridge, solicitors, who can and will take
4 instruction. A lengthy letter of instruction has been
5 sent to them and they have explained informally that
6 there is a summary procedure available to Mr. Finnegan,
7 and we've instructed them to take those instructions.
8 We have asked them to write formally to us so that we
9 can outline the procedures to be adopted and basically
10 giving some sort of guidelines as to when this summary
11 application can be made. But they have indicated that
12 there is a procedure for a summary application, and
13 we've instructed them to take that procedure.

14 .

15 So that's essentially the position. I think I can - I
16 think my solicitor has handed in the letter that our
17 solicitor has written to this firm, Randell & Loveridge
18 solicitors. I think the name - Nicholas Barnes is the
19 partner, and he has informally advised us that there is
20 a summary procedure available and we have instructed
21 him to take that procedure.

22 .

23 It hasn't advanced to the point of drafting a clean
24 summons. As you can imagine we've only instructed him
25 yesterday, but as I say, he has indicated that there is
26 a summary procedure, and that's the procedure we wish
27 to have taken.

28 .

29 I think you should have seen Kennedy McGonagle
30 Ballagh's letter to Mr. Barnes. I think that's been

1 handed in just now.

2 .

3 MR. HANRATTY: Yes, I've been handed a copy of the
4 letter. The instructions in the letter are on the
5 second page, where it says: "Our concerns expressed in
6 our letter to Credit Suisse dated the 10th of
7 September, 2001 are not overstated and our client is
8 genuinely in fear for his liberty. Given the refusal
9 by Credit Suisse to provide information our client has
10 no alternative but to consider legal action, which he
11 is prepared to take, if advised by you.

12 .

13 "In any event, we require advice as soon as possible as
14 to how best to proceed and in the speediest manner
15 possible."

16 .

17 I infer from what Mr. Hussey says that subsequent to
18 receipt by Randell & Loveridge of that letter, they
19 have informally, I presume, verbally given advice that
20 there is a summary procedure and they can take it.

21 .

22 MR. HUSSEY: That's correct.

23 .

24 MR. HANRATTY: I should say, Sir, that the Tribunal has
25 conducted its own inquiries in relation to the position
26 under Jersey law and under Guernsey law, and it has
27 ascertained that the position vis-a-vis the rights of a
28 beneficiary to obtain information from Trustees is
29 essentially the same as it is in English and in Irish
30 law in Jersey and in Guernsey.

1 .
2 We've also discovered, as Mr. Hussey has indicated,
3 that there is in fact a summary procedure which can be
4 invoked to obtain such information in circumstances
5 where the Trustees are unlawfully withholding it.

6 .
7 However, I wonder if Mr. Hussey is in a position to
8 assist us as to the timescale envisaged in taking these
9 proceedings? As you are aware, the problem is that we
10 have been seeking this documentation and information
11 since April of this year. Mr. Finnegan is now in the
12 witness-box. You have some further short testimony to
13 take in this particular section of the Tribunal's work,
14 after which the time will have come for you to - as
15 you've previously indicated, prepare interim reports
16 for the Oireachtas.

17 .
18 Now, the position that the legal team are in is that we
19 are having to examine Mr. Finnegan without these
20 documents, which are at the very centre of the specific
21 matters under inquiry, so far as they relate to Mr.
22 Finnegan. And the Tribunal, sooner or later, is going
23 to have to decide is it going to conclude the
24 examination of Mr. Finnegan without these documents and
25 continue to pursue them with a view to resuming the
26 matter at some point in the future, or is it going to
27 stand down Mr. Finnegan until and if we get these
28 documents?

29 .
30 So perhaps Mr. Hussey can assist us on what, if any,

1 information has been given to him or his solicitor as
2 to what sort of timescale we are talking about in
3 connection with these proceedings that are envisaged.

4 .

5 MR. HUSSEY: I had anticipated that, and we have asked
6 for guidance in respect of that.

7 .

8 I assume a summary application means just that, that it
9 can be made in a very short space of time.

10 .

11 I don't know the procedures that are available in the
12 Guernsey courts, but I assume summary means it can be
13 done in a very short space of time.

14 .

15 But I am expecting to have more solid information on
16 that during the course of this morning or today
17 certainly.

18 .

19 MR. HANRATTY: Well, with your permission, if I
20 continue with my examination of Mr. Finnegan, I
21 anticipate I will be - I will have completed my
22 examination of Mr. Finnegan within a matter of a couple
23 of days. And it doesn't sound to me as if I am going
24 to have any of these documents within that timescale.
25 So that one way or another it does appear that in some
26 shape or form the Tribunal is going to be delayed in
27 its work while we are waiting for these documents.

28 .

29 So, with your permission, Sir, I am going to take the
30 matter as far as I can take it, in the absence of these

1 documents, with Mr. Finnegan, and ultimately you will
2 have to decide when these documents have ultimately
3 been obtained, what, if any, further steps you are
4 going to take in relation to them.

5 .

6 CHAIRMAN: I think that is the appropriate course of
7 action to take.

8 .

9 Mr. Hussey, could I invite you and I can do no more
10 than invite you personally, to use your influence to
11 ensure that absolute priority is given by your
12 solicitors in Guernsey to get this matter underway and
13 to convey to them the desire of the Tribunal to get the
14 matter dealt with with expedition because of the fact
15 that it is seriously delaying our operations. If you
16 would be courteous to do that for me.

17 .

18 MR. HUSSEY: Of course.

19 .

20 MR. HANRATTY: Sorry, Sir, there is another issue that
21 has arisen. We've just been handed some other letter
22 now dated today's date, which has been sent to the
23 solicitor to the Tribunal and before we just close off
24 on this, I wonder could you rise for a couple of
25 minutes until we have an opportunity to consider it?

26 .

27 CHAIRMAN: Would you be kind enough to make copies of
28 both letters, please.

29 .

30 When you are ready, perhaps you will indicate to my

1 crier.

2 .

3 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND

4 RESUMES AS FOLLOWS:

5 .

6 MR. HANRATTY: The letter which was received this
7 morning, Sir, relates to a separate matter which arose
8 on Friday, namely, whether or not the bank statements,
9 which were lately produced from Foxtown Investments
10 Limited, should be circulated to Brennan and McGowan.

11 And you will recall that we left over that matter until
12 the Tribunal legal team had an opportunity of going
13 through these accounts in detail with a view to seeing
14 if any transactions could be readily identified as not
15 relevant to the Tribunal's inquiries.

16 .

17 That exercise is still being done, and with your
18 permission, Sir, I would like to leave that over and
19 leave the issues raised in this letter over until we
20 come to deal with the bank statements themselves, which
21 is probably not going to be today in any event, and we
22 can deal with it then, as and when it arises.

23 .

24 So the position is, so far as Mr. Finnegan's trust
25 documents in Jersey is concerned, that, as I understand
26 the position, instructions have been given to initiate
27 proceedings by way of a summary procedure to obtain the
28 documents, and with your permission, I will continue
29 with my examination of Mr. Finnegan.

30 .

1 Mr. Finnegan, please.

2

3 JOHN FINNEGAN RETURNS TO THE WITNESS-BOX AND CONTINUES

4 TO BE EXAMINED BY MR. HANRATTY:

5 .

6 1 Q. MR. HANRATTY: Good morning, Mr. Finnegan.

7 A. Good morning.

8 2 Q. On Friday afternoon, Mr. Finnegan, we were dealing with

9 documents and categories of documents which do not

10 appear in your discovery, but which I suggested to you

11 one would expect in the normal course of events to

12 exist. And we were trying, in particular, to first of

13 all identify whether any such documents ever did exist,

14 and secondly, if they did exist in your possession,

15 what has become of them.

16 .

17 Now, you will recall I also put to you a number of

18 specific documents which we knew you had, and in

19 respect of which I asked you certain questions.

20 .

21 In the course of your dealings with Messrs. Brennan and

22 McGowan, you appear to have had occasion to consult on

23 a number of occasions with a Mr. John Burke. Do you

24 remember that?

25 A. Yes, I do.

26 3 Q. Who is John Burke?

27 A. John Burke is an old friend of mine who is - John, he

28 is a barrister and by profession he is a barrister and

29 an accountant - do you at any time want to know --

30 4 Q. Well, I just really gather from your answer that he was

1 advising you in some professional capacity?

2 A. Well, as a friend.

3 5 Q. Yes. No, sir, in a, strictly speaking, professional
4 capacity but it was obviously in connection with your
5 dealings with Messrs. Brennan and McGowan?

6 A. On a friendly basis.

7 6 Q. Yes, on a friendly basis. And in the course of that
8 exercise he appears to have had a number of meetings
9 with you and others who were acting for you?

10 A. Yes.

11 7 Q. Was there a particular issue that had arisen between
12 yourself and Messrs. Brennan and McGowan that he was
13 advising on?

14 A. Well, most of the time, Sir, was spent on the recovery
15 of the outstanding ú100,000 and he attended lots of
16 meetings - well, many meetings with me with Brennan and
17 McGowan when it was discussed when this money might be
18 paid.

19 8 Q. Yes. At the time that this was happening, that was
20 approximately when? Was it 1990 or later?

21 A. Later, Sir.

22 9 Q. Yes.

23 A. Later.

24 10 Q. When approximately would it have been?

25 A. Five or six years, the last five or six years.

26 11 Q. Yes. And at the time that he was giving you this
27 advice, where did he reside?

28 A. He resided in Dublin.

29 12 Q. In Dublin?

30 A. He had been working in - he originally resided in

1 Dublin and had been residing in the UK.

2 13 Q. When he was giving you the advice?

3 A. I think he was residing here.

4 14 Q. Well, did he ever write you a letter about these
5 matters?

6 A. Yes, he did write me some notes, I think they were.

7 15 Q. And where did you keep them?

8 A. I really don't know, Sir, where I would have kept them.

9 If they were in the office, they would have just - I
10 would have got them. I don't think there were very
11 many, Sir.

12 16 Q. They wouldn't have been Finnegan Menton documents, of
13 course?

14 A. No.

15 17 Q. They would have been to deal with your private affairs?

16 A. Yes.

17 18 Q. And when he wrote you these notes, would you have put
18 them in the file or would you have kept them in your
19 wallet?

20 A. Well, I would have read them, and I don't know what I
21 did with them, Sir, to be honest with you because they
22 were from a personal friend. I don't think I would
23 have filed them anywhere.

24 19 Q. In the notes which he wrote to you, he would have set
25 out in varying degrees of detail his various thoughts
26 of matters of concern to you. Isn't that right?

27 A. Yes, Sir.

28 20 Q. And presumably addressed the issues that you had
29 requested him to address?

30 A. Mm-hmm. Yes, Sir.

1 21 Q. Well, do you not remember whether you kept a file of
2 this - these communications?

3 A. Well, I don't know, really, what we are talking about
4 at the moment. Over a period of time I did consult
5 with him as a friend, and just about my predicament.
6 And some of the notes, as far as I recollect - I don't
7 have any of them, Sir, as far as I understand at the
8 moment, but I think that Kennedy McGonagle Ballagh
9 would have had - we had a few conversations with him
10 and Kennedy McGonagle Ballagh as well.

11 22 Q. Yes.

12 A. And they would have had a note on their file of
13 whatever we --

14 23 Q. Well I am talking about the notes that you got at the
15 moment?

16 A. Well, I don't know where they are, Sir. I think that
17 they probably would have been scrubbed because I
18 wouldn't have any further use for them.

19 24 Q. You mean thrown out?

20 A. Yes, Sir.

21 25 Q. And would they have been thrown out once you received
22 them?

23 A. The detail, Sir, I can't really say, but --

24 26 Q. Could we cut to the chase, Mr. Finnegan?

25 A. Yes, please.

26 27 Q. Do you remember what you did with the notes that you
27 received from Mr. Burke?

28 A. No, I don't, Sir. I can't even remember the years
29 actually.

30 28 Q. Do you remember having files into which you might have

1 put these notes or directed that they be put?

2 A. Well, one thing I would like to say to you, Sir, is
3 this, that I myself have never done any filing. I am a
4 person who - I surround myself with people well paid to
5 look after me and I always had others doing it. I have
6 never - I wouldn't know where to go to look at a file.
7 So I am not the sort of person who would go and in a
8 meticulous way and put things away.

9 29 Q. All that means is you would have got your personal
10 assistant or your secretary to do it for you. But I
11 take it you would have been displeased if you asked for
12 a particular document and found that it wasn't
13 available, particularly a document containing advice
14 from one or other of your professional advisers.

15 A. Well, if it was to do with - if it was something that I
16 got from him, it needed the attention of - and I think
17 the only person whose attention may be needed would be
18 the lawyers, and either they would have got a copy of
19 it or whatever - I really don't know --

20 30 Q. They may well have had a copy of it but I am talking
21 about the copy that you had. If, for example,
22 Mr. Burke wrote you an important note about a matter
23 that you had specifically sought his advice on,
24 presumably you would give it to your secretary to file
25 it wherever it should be filed?

26 A. Well, I'd say that perhaps - perhaps I would. Yes.

27 31 Q. And if you needed it a week later or a month later, you
28 would ask your secretary to go and get it?

29 A. Yes.

30 32 Q. And I suggest to you, if she returned to you and

1 informed you that she had thrown it out, you would have
2 been rather displeased?

3 A. Well, I think, yes, Sir, in that space of time.

4 33 Q. So it seems likely that files were kept containing
5 these categories of documents?

6 A. Well, I know you've kept pressure on this, Sir, but the
7 files - I don't know, really, if there were any files
8 kept. There might have been some - she may have kept
9 them somewhere, but as far as I am aware - I really
10 can't say to you. I don't know where they might have
11 been kept. And I don't know if there would have been
12 very many of them anyway.

13 34 Q. Well, on Friday you told us you had a lot of files
14 because you were involved in a lot of things
15 personally, as opposed to Finnegan Menton.

16 A. No, I think I said that Finnegan Menton and personal
17 things --

18 35 Q. Leaving out Finnegan Menton, but you personally were
19 involved in a lot of things and you would have had a
20 lot of files. I think you said it in the context of
21 from time to time there would have been a clearout?

22 A. No, I think it was referring to Finnegan Menton.

23 36 Q. I see. Well then, did you have a lot of personal files
24 about your own personal affairs?

25 A. Well, it would have been personal files around - like,
26 on the day-to-day business, day-to-day sort of things.

27 37 Q. Let's be absolutely clear about this, Mr. Finnegan. We
28 are going to stay with it as long as we have to.

29 A. All right.

30 38 Q. We know that you worked in the offices of Finnegan

1 Menton, your auctioneering firm?

2 A. Yes.

3 39 Q. We know this firm carried on the business of
4 auctioneering and therefore would, in the normal course
5 of events, have files relating to the matters that they
6 were dealing with as a firm?

7 A. Yes.

8 40 Q. Quite separately from that, I understood from your
9 evidence on Friday, was that in one, at least, of the
10 filing cabinets in the office, there were files which
11 related to your personal business affairs?

12 A. Yes, Sir.

13 41 Q. Which were unrelated to the business of Finnegan Menton
14 as such?

15 A. Yes, sir, my private affairs, yes.

16 42 Q. Yes. I asked you about Brennan and McGowan files. I
17 asked you about files of correspondence between
18 yourself and Kennedy McGonagle Ballagh and other
19 professional advisers.

20 A. Mm-hmm.

21 43 Q. In relation to Brennan and McGowan files, your
22 testimony, as I understand it, was that you do not
23 remember whether or not you had any files of any kind
24 at any time in relation to your dealings with Messrs.
25 Brennan and McGowan. And I asked you specifically, was
26 I overstating the position in putting it like that, and
27 you said that I was not. So the bottom line is that
28 you do not remember?

29 A. No, I don't remember.

30 44 Q. Now we are talking about Mr. John Burke, who is a

1 person who we know was consulted by you specifically
2 about a particular matter relating to your dealings
3 with Brennan and McGowan and whom we know wrote notes
4 of various kinds to you in connection with that matter?

5 A. Yes, Sir.

6 45 Q. I am now seeking to establish what you did with the
7 documents that you received from Mr. Burke. You've
8 told us that you did not keep the filing system
9 yourself and that somebody else did it for you.

10 A. I can't remember what I did with them. They would have
11 been small notes. Now, whether I - I really don't
12 remember.

13 46 Q. Well, let's just look at one of them. It's on page
14 1548. And this is a memorandum or note, as you might
15 describe it, from Mr. Burke to you dated the 15th of
16 April of 1996. And it says at the top of it, it's to
17 John Finnegan from John Burke.

18 .
19 And he says: "I met as arranged with Joe on last Friday
20 afternoon, and Tom was with him.

21 .
22 "Apparently they have now agreed a sale of everything
23 to Cannon and Kirk builders for the sum of ú6.75
24 million, with the purchaser assuming responsibility for
25 the bank debt of ú2.5 million.

26 .
27 "Tom and Joe would get ú1.25 million each with the rest
28 divided, I assume, among others, all given in loan
29 notes from an institution which apparently has tax
30 advantages. They have being advised by Mel

1 O'Cuinneagain of 56 Mulgrave Stree, Dun Laoghaire,
2 phone number, and ex-inspector in whom they have great
3 faith.

4 .

5 The second tranche of "ú100,000" - and this, I take it,
6 refers to the last payment of "ú100,000 in respect of
7 the Foxtown shareholding - "the second tranche of
8 "ú100,000 would be paid on completion. The other
9 parties had however objected to having any part of the
10 interest liability about which they say they did not
11 know. Mike Brennan, Tom's brother, was particularly
12 adamant. This meant that Tom and Joe would have to
13 pick it up, and how this was to be arranged. They
14 added that John Caldwell solicitor had done the sums
15 and thought it came to about "ú50,000 rather than twice
16 that, as I had suggested. I said that perhaps the
17 lawyers on both sides should sort that one out, but
18 that having read the document in a cursory manner, I
19 too thought that the higher figure applied." Then he
20 gives his own view on the matter and his own response
21 on the matter. He refers to the fact that Joe McGowan
22 would be in touch with you in the week.

23 .

24 He refers to the fact that he had been informed by Mr.
25 McGowan that they wanted to complete quickly and he
26 refers to a danger which he perceives in the last
27 paragraph, the danger that the deal "changes without
28 the purchaser having knowledge of the obligation."

29 .

30 And he gives you certain advice there.

1 .
2 But that, quite clearly, in the context in which you
3 sought his advice, is an important document. And I
4 want to know where it is, where we got that, obviously,
5 from Kennedy McGonagle Ballagh's file, but you were the
6 recipient of that document. And I want to know on what
7 file did you keep that document?

8 A. I honestly don't know, but as far as I would be
9 concerned, if there was anything that had to be dealt
10 with on that, there would be an absolute record of it
11 in Kennedy McGonagle Ballagh's. And I would have - but
12 apart from where I would have had it, I don't know.

13 47 Q. Well, would you have instructed your secretary or your
14 personal assistant to take - to send it over to Kennedy
15 McGonagle Ballagh and not to take a photocopy of it?

16 A. I wouldn't remember the detail. By the way -

17 48 Q. It's addressed to you personally?

18 A. Yes.

19 49 Q. It says: "To John Finnegan from John Burke."

20 A. All right.

21 50 Q. So what would you have done in relation to that
22 document once you had received it?

23 A. Well, I don't recollect the document, you just showing
24 it up to me now, Sir. I really don't know, but - oh, I
25 would say that Kennedy McGonagle Ballagh - I would say
26 that Kennedy McGonagle got a copy of it.

27 51 Q. They did. But what about the original?

28 A. I don't really know where - I don't know where it would
29 be.

30 52 Q. Well, in the normal course of events, would you keep a

1 copy of a document of that nature?

2 A. Well, for the time being, that's in 1996, it could have
3 been around for a while after that. I really don't
4 know. It's --

5 53 Q. It could have been about? What does that mean? Would
6 there be an in tray and out tray on your desk or would
7 you put it in your pocket? Would you ask your
8 solicitor or your secretary to keep it in a drawer, or
9 would she, in the normal course of events, file your
10 correspondence?

11 A. Well, I don't know if that document, whether it would
12 have been filed on a private file or not. I really
13 don't know, but - I don't know. I remember now that -
14 I barely recollect the letter. But I think I said this
15 to you before, Sir, but I wasn't one to do it. If
16 anybody would have filed it, it would have been my
17 secretary/assistant.

18 54 Q. Yes. And who was your secretary/assistant in 1996?

19 A. Sandra O'Neill.

20 55 Q. Yes. I am not asking you, Mr. Finnegan, what you did
21 with this particular document, but I am asking you to
22 tell the Tribunal what your practice was at that time,
23 namely, in 1996 with this kind of document?

24 A. Well, I don't suppose I would have had any real
25 practice. But if there was something - I would imagine
26 that if I got - getting that I did get it, it would
27 have been known to Sandra O'Neill and either at that
28 stage, either it would have been put away - I don't
29 know.

30 56 Q. Were you in the habit of having your correspondence

1 filed or were you not?

2 A. Yes. Yes, Sir.

3 57 Q. Well, if you were, may I take it that one would expect

4 that in the normal course of events, this being

5 correspondence between yourself and Mr. Burke, would

6 have been filed?

7 A. Mm-hmm. Yes, Sir.

8 58 Q. So what has become of the file which contained this

9 document?

10 A. I don't know.

11 59 Q. Your discovery makes no reference to any correspondence

12 of any kind between yourself and Mr. Burke which you

13 may have had in the past but which you no longer have.

14 A. Well, really, I didn't - I must say, until you put this

15 up now, I know that I did have chats with John Burke

16 who was, by the way, a very old friend, and that

17 wouldn't come in under the same category as just having

18 a consultant. I have known him for 30 years.

19 .

20 MR. HUSSEY: I'm sorry, might I interrupt there. Just,

21 in the - the question has been answered. The question

22 was that Mr. Finnegan hadn't included this in his

23 Discovery. The fact of the matter is that this is

24 included in Mr. Finnegan's Discovery, as the Discovery

25 of the file held by his solicitor. So it's not that

26 this hasn't been discovered by Mr. Finnegan. This has

27 been discovered by Mr. Finnegan, and I think the sort

28 of pointed questioning is just a little bit offside,

29 and I just point that out.

30 .

1 This document was discovered by Mr. Finnegan, although
2 it was of a file held by Mr. O'Shea. I accept that.
3 But it was in Mr. Finnegan's Discovery.

4 .

5 MR. HANRATTY: With respect to My Friend, Sir, what I
6 am exploring at the moment is files held by this
7 witness himself in his own office. We know that he
8 sent a copy to Mr. O'Shea. He has told us that he sent
9 a copy to Mr. O'Shea and we know that Mr. O'Shea has
10 produced it as part of one of his files. We know that.

11 What I am exploring with this witness, and I am sorry
12 that this might not have been obvious to Mr. Hussey, is
13 the files that this witness had - of his own
14 correspondence in his own office, some of which,
15 presumably, he would have sent to Mr. O'Shea and some
16 of which, presumably, he would not.

17 .

18 The witness now appears to be agreeing that he did, in
19 fact, or he would, in fact, expect that he would have
20 had a file containing this, but that he no longer has
21 it.

22 .

23 So I then went on to ask him why that file or category
24 of file was not included in his Affidavit of Discovery?

25 And in my respectful submission, it's a perfectly
26 legitimate line of questioning.

27 .

28 CHAIRMAN: I agree.

29 .

30 60 Q. MR. HANRATTY: There is another similar document from

1 Mr. Burke, if I could just look at page 1512. It's at
2 an earlier point in time and it's dated the 20th of
3 September, 1993. And in this instance it's addressed
4 to Michael O'Shea/John Finnegan and it's in
5 handwriting, as you can see.

6 .
7 And again it deals with issues as between yourself and
8 Mr. Brennan and Mr. McGowan, isn't that right?

9 A. Yes, Sir.

10 61 Q. And I take it that that document would have been
11 treated in a similar fashion, so far as your filing
12 system, whatever it may have been, was concerned as the
13 document we've just been speaking about?

14 A. I would have thought that - I would have thought any
15 note from the like of John Burke might have been, just
16 have been just a note. What does one do with a letter?
17 I don't know that I would have kept that, really.

18 62 Q. You don't know whether you would have kept it?

19 A. No, I -- no, I don't, really. It's 1993.

20 63 Q. You've already indicated to me that you did keep files
21 of your correspondence.

22 A. I kept - I'll get this straight, Sir. I have a staff
23 who look after me. Of course I do keep files. I keep
24 files of my personal, yes, of my personal accounts and
25 whatever, bills that would come in and whatever, that
26 sort of thing, and I would have files in the normal
27 course of events in my office.

28 64 Q. Yes.

29 A. Anything to do with that would be done by an assistant
30 or a secretary, not me. And I have never done it

1 myself, Sir --

2 65 Q. Mr. Finnegan, it's neither here nor there who actually
3 puts the document physically into the file. You've
4 already told us on several occasions that your
5 assistant or secretary was the one that did the filing?

6 A. Mm-hmm.

7 66 Q. You've already told us that you did keep correspondence
8 files of your personal correspondence?

9 A. Mm-hmm.

10 67 Q. This is personal correspondence. It's correspondence
11 between you and another party about your own personal
12 --

13 A. Yeah.

14 68 Q. -- affairs, in this case your dealings with Messrs.
15 Brennan and McGowan?

16 A. Mm-hmm.

17 69 Q. So one presumes that this was filed in the normal
18 course of events as part of your personal
19 correspondence.

20 .

21 MR. HUSSEY: Sorry, this is not personal
22 correspondence. This is a file note, this is an
23 attendance docket. It's not correspondence. It's
24 addressed to Michael O'Shea, the solicitor, and Mr.
25 Finnegan. It's not correspondence.

26 .

27 MR. HANRATTY: I don't know what Mr. Hussey's point is,
28 Sir. It's a document which came from Mr. Burke to
29 Mr. Finnegan in connection with Mr. Finnegan's affairs
30 with Messrs. Brennan and McGowan. It was sent to Mr.

1 Finnegan and Mr. O'Shea, and I really don't see the
2 point of these incessant interjections. It's quite
3 clear that I am questioning this witness closely in
4 relation to his own personal files. It's taking an
5 awful long time, and with respect, these interjections
6 from Mr. Hussey are unnecessary and unhelpful. And
7 unless they are in the nature of some form of an
8 objection on some legal basis to the question, I would
9 ask that you would direct him to desist from such
10 interjections.

11 .

12 CHAIRMAN: Well, I think that's reasonable, Mr. Hussey.
13 This is clearly a memorandum which was forwarded from
14 Mr. Burke to two people, Michael O'Shea and John
15 Finnegan. And it's on the file as - it may not be a
16 letter in letter form, but it's very definitely a
17 written document furnished to both parties and it
18 should be investigated.

19 .

20 MR. HUSSEY: Sorry, Sir, it's a written document
21 addressed to two persons. Whether there was two such
22 documents, we don't know --

23 .

24 CHAIRMAN: Well, we don't require to know. We require
25 to know what was - what the - the matter that was dealt
26 with in the document and what happened as a result.

27 .

28 70 Q. MR. HANRATTY: This is a document which was sent to two
29 people, one of whom has discovered it to the Tribunal,
30 the other of whom has not discovered it to the

1 Tribunal. We know that there were at least two copies
2 of this document in existence, because one was sent to
3 Mr. O'Shea and one was sent to John Finnegan --

4 .

5 MR. HUSSEY: I'm sorry. I am objecting now and I am
6 making a solid objection. If Mr. Hanratty knows there
7 was two documents, produce the two documents, please.
8 He is assuming that there was two documents because of
9 his address to two people. If I get a letter addressed
10 to my house addressed to Mr. and Mrs. Hussey, I don't
11 assume there is two documents. So, please, it's not
12 open to Mr. Hanratty to make a concrete statement to
13 ask this witness a concrete question that there was two
14 such documents. It's addressed -- it's one document
15 addressed to two people.

16 .

17 Now, please, I am making a very serious objection here,
18 because Mr. Hanratty has taken the format of making his
19 assumptions into concrete statements of fact, and I am
20 making a solid objection to that.

21 .

22 In the first instance, he said that Mr. Finnegan didn't
23 make discovery of something, when in fact he had. In
24 the second instance, he says that he calls the document
25 correspondence, when in fact it's a file not. And in
26 the third instance, he says there must have been two of
27 these, when in fact it's one document addressed to two
28 persons.

29 .

30 MR. HANRATTY: Mr. Hussey has now answered the question

1 that I had put to the witness. If it is the witness's
2 position that this is a document addressed to - a
3 single document addressed to two persons, rather than a
4 single document sent to two separate persons, that is
5 for the witness to say, and it is quite improper for
6 Mr. Hussey to intervene in that way.

7 .

8 MR. HUSSEY: I am sorry. I only intervened because the
9 question was put in a way that Mr. Hanratty said there
10 was two documents. He had to establish that before he
11 could make that statement.

12 .

13 MR. HANRATTY: It was put in a way --

14 .

15 CHAIRMAN: Gentlemen, this is a pointless document.
16 There is a document on screen which is relevant to our
17 inquiries. The witness, Mr. John Finnegan, should be
18 aware of the document because it was apparently
19 addressed to him. Whether it was one document or two
20 documents would certainly have come to his attention.
21 And if it didn't, it's for him to say it didn't come to
22 his attention. I do know, and it's a matter for Mr.
23 Finnegan, if he has difficulty, as to whether or not he
24 has ever seen the document, to say so.

25 .

26 MR. HUSSEY: This is a document discovered by Mr.
27 Finnegan --

28 .

29 MR. HANRATTY: It's discovered by Mr. Finnegan's
30 solicitor

1 .

2 CHAIRMAN: It's not discovered by Mr. Finnegan.

3 .

4 MR. HUSSEY: It's in Mr. Finnegan's Discovery. The

5 Discovery is signed by Mr. Finnegan.

6 .

7 MR. HANRATTY: Mr. Hussey doesn't appear to follow my

8 drift. This was contained in a file of Kennedy

9 McGonagle Ballagh which Mr. Finnegan discovered to the

10 Tribunal as his solicitors file. I am talking about

11 Mr. Finnegan's files.

12 .

13 MR. HUSSEY: I completely follow that. However,

14 Mr. Hanratty has said Mr. Finnegan had not discovered

15 this. In fact, had he discovered it, even Your

16 Lordship had understood that Mr. Finnegan had not

17 discovered this. He is now, Mr. Finnegan -

18 Mr. Hanratty acknowledges that this document is in Mr.

19 Finnegan's Discovery. And I just want that point --

20 .

21 CHAIRMAN: Well, I note that fact. The inquiry, at the

22 moment, is conducted as to what files Mr. Finnegan had

23 in his office, as to whether or not, among other

24 documents, this was on that file, not merely on Kennedy

25 McGonagle Ballagh's files. That's the object of the

26 inquiry at the moment. We are inquiring what Mr.

27 Finnegan had in his office and what his assistant, who

28 was named to me a few moments ago, Ms. O'Neill, Sandra

29 O'Neill, whether or what she put on files. And

30 presumably we are going to be told by Ms. Sandra

1 O'Neill, in due course, what she did.

2 .

3 71 Q. MR. HANRATTY: Mr. Finnegan, this document is
4 addressed, it says at the top of it "to Michael
5 O'Shea/John Finnegan."

6 A. Yes, Sir.

7 72 Q. Did you receive this document?

8 A. Yes, Sir.

9 73 Q. What did you do with it?

10 A. I don't know, Sir.

11 74 Q. Would you think it reasonable to suppose that you would
12 have had it filed in the normal way that you had your
13 personal correspondence filed in your office?

14 A. I would. I would imagine - or I could have kept it in
15 my pocket, but I - I - to answer your first question,
16 it could have been filed.

17 75 Q. And where is the file on which it would have been put?

18 A. I wouldn't know, Sir.

19 76 Q. Well, did you have a file on which it was kept which
20 was subsequently destroyed?

21 A. I don't know. I don't know, Sir.

22 77 Q. If you received a number of communications, whether in
23 the form of letters or memoranda, handwritten or typed,
24 from Mr. Burke, which you believe would have been filed
25 in the normal course with your personal correspondence,
26 what sort of a file would it have been kept on?

27 A. I don't know, but I would have to - I would have to
28 check that. I wouldn't know which sort of file it
29 would have been put on. I am only now presuming what
30 might have happened. If I got it, I am saying I got

1 it, Sir.

2 78 Q. Yes.

3 A. I just don't know what came of it.

4 79 Q. Right. You told us you got it, you told us that it was

5 your habit to have your correspondence, your personal

6 correspondence filed?

7 A. Mm-hmm.

8 80 Q. It seems reasonable to infer from that, that this would

9 have been filed among your personal correspondence,

10 since that is what it was?

11 A. Yes, it does, Sir. But I just don't know whether -

12 where it might be.

13 81 Q. And if it was, and if you do not now have it, it seems

14 reasonable to suppose, or infer, that at some point

15 between the time that you received this document and

16 the present time, the file which contained it, was

17 destroyed.

18 A. I really don't know if can I help you any further on

19 that, Sir.

20 82 Q. Well, were any of your personal correspondence files at

21 any time ever destroyed by anybody?

22 A. I think that the - like the policy in the office, and

23 Ms. O'Neill would know that whatever - at a particular

24 time, after so many years, there could have been a

25 clearing of files.

26 83 Q. Well, let's just take this one in stages. We know

27 that, as far as we know, you didn't have any fire in

28 which files were destroyed or any flood in which files

29 were destroyed?

30 A. No.

1 84 Q. You've told us on Friday that Finnegan Menton had a
2 policy of clearing out files every so many years for
3 the purpose, presumably, of not getting crowded out of
4 their office with files?

5 A. Mm-hmm.

6 85 Q. I then asked you what was your policy with regard to
7 your personal correspondence and you indicated that
8 certainly nobody in Finnegan Menton would go into your
9 own personal files and destroy them without your
10 permission?

11 A. No.

12 86 Q. And if any of your personal files were to be destroyed
13 by your secretary or your personal assistant,
14 presumably they would come and ask you about that, to
15 ensure that you approved of such a course?

16 A. Well, I am assuming that would be the position, Sir.
17 But there wasn't all this ceremony about files in our
18 place, about my files. You know, one would imagine
19 that I was dictating the files -- I wouldn't have been,
20 Sir.

21 87 Q. I am not suggesting that there was any great ceremony
22 or complication with it. What I am suggesting is that
23 in fact it was a perfectly ordinary, normal, everyday
24 situation, as you would expect, that a person on
25 receipt of correspondence affecting his own personal
26 affairs files them --

27 A. Yes.

28 88 Q. And that is what, in fact, happened with these
29 documents?

30 A. I would say, yes, Sir, but --

1 89 Q. And since - sorry - since you are now no longer in
2 possession of these files, the next question that
3 arises is what happened to them?

4 A. I don't know, Sir.

5 90 Q. You don't know what happened to your correspondence
6 files?

7 A. I would still have some personal correspondence files,
8 but this has - this letter - I don't know under what
9 heading the like of that would have been filed under,
10 Sir.

11 91 Q. Well, since it relates to Brennan and McGowan,
12 presumably it was in some kind of a file relating to
13 Brennan and McGowan?

14 A. Well --

15 92 Q. Or maybe it's in a correspondence file with Mr. Burke,
16 since it's correspondence from Mr. Burke?

17 A. I don't honestly know what came of it. I don't know
18 where or what - I really don't know. And it's not - I
19 can't remember and I don't know. I had forgotten the
20 letter you mentioned, you put it up there now, but --

21 93 Q. What we do know is that it doesn't appear on any
22 personal file of yours that you have discovered to this
23 Tribunal, that none of this correspondence, in fact,
24 from Mr. Burke, including this document and the
25 previous document, appears on any personal files that
26 you have discovered to this Tribunal.

27 A. Mm-hmm.

28 94 Q. So the question arises where are the files on which
29 this documentation would have been contained?

30 A. I don't know, but all I have to say is this, Sir, that

1 I would imagine that the likes of that - what happened
2 to that letter, I don't know whether I would have held
3 on to it myself for a period, I don't know, but - and I
4 just cannot tell you where --

5 95 Q. There is another example of this correspondence on page
6 584.

7 A. All right.

8 96 Q. It's slightly earlier in 1993, the 20th of August,
9 1993, and it's on TSB notepaper in which Mr. Burke
10 again wrote to you personally in longhand. Do you see
11 that?

12 A. Yes, I do.

13 97 Q. 548.

14 A. Yes.

15 98 Q. It says: "Dear John," and he goes on to discuss a
16 matter.

17 .

18 It's in relation to Messrs. Brennan and McGowan, in
19 fact. It says: "Sufficient time has now passed for us
20 to seriously press Joe to fulfil his obligations."

21 Clearly he is talking about the outstanding balance due
22 for the Foxtown shares?

23 A. Yes, Sir.

24 99 Q. And clearly this is a matter in respect of which he
25 corresponded with you, presumably, at your request for
26 his advice?

27 A. Yes, Sir.

28 100 Q. All of these documents are personal correspondence, or
29 in the nature of personal correspondence, whether it be
30 a letter or memos or handwritten documents or

1 typewritten documents or otherwise, which he sent to
2 you, and which you say would have been filed in the
3 normal course of events?

4 A. Well, I think so. I can't be adamant, now, about that.

5 101 Q. Of course not. I don't expect you to remember any
6 particular document. We are only dealing with
7 probabilities, we are not dealing with certainties, but
8 which - none of which have appeared in any personal
9 file which you have discovered to this Tribunal, isn't
10 that so?

11 A. Well, if you say I haven't, I haven't, Sir, but Kennedy
12 McGonagle had them - anything like that, that I would
13 have, and the like of this, it wouldn't worry me that I
14 wouldn't have a copy of it, if Kennedy McGonagle had
15 it.

16 102 Q. Obviously, if the matter involves something in respect
17 of which Kennedy McGonagle is advising you, you would
18 send a copy to Kennedy McGonagle Ballagh, and we know
19 in the first case you did?

20 A. Yeah.

21 103 Q. But that doesn't mean that you don't keep a copy for
22 your own files?

23 A. I did explain to you earlier, I am not man who is
24 involved in this day-to-day of what happens about any
25 filing or filing systems or otherwise. And I can't,
26 unfortunately, help you any more than that, Sir. And I
27 don't know what became of that letter, but I'd say that
28 the fact that Michael O'Shea or Kennedy McGonagle had
29 it - well, I would have either sent that immediately to
30 Michael O'Shea and talked to him about it, and after

1 that, whatever.

2 104 Q. Without doubt. Are you suggesting you wouldn't have
3 kept a copy for yourself?

4 A. Maybe I did and maybe I didn't. I don't know, Sir -

5 105 Q. I am not asking you, Mr. Finnegan, to remember this
6 particular document, but I am asking you to inform the
7 Tribunal of what you would have done in the normal
8 course of events. And I would suggest to you that what
9 you would have done in the normal course of events,
10 like I suggest most people would have done, would be to
11 have the letter filed, read it, have it filed wherever
12 it is supposed to be filed and send a copy to whoever
13 your professional adviser is?

14 A. Yes.

15 106 Q. That would be what one would expect in the normal
16 course of events?

17 A. And I would agree with you, yes, Sir.

18 107 Q. And would you agree with me that that is, as a matter
19 of probability, but obviously not a matter of
20 certainty, what probably happened?

21 A. What probably happened, yes, Sir.

22 108 Q. There is another document at page 2375. It's on
23 Finnegan Menton notepaper, but it does clearly relate
24 to your own personal affairs. It's a fax to Michael
25 O'Shea. It's from yourself, dated the 5th of June,
26 1990. It's in relation to Sandyford, and it says pages
27 including cover sheet as well.

28 .

29 And the message is: "I am meeting Joe and Tom with
30 John Burke on Friday the 8th at 3:30 in here. Would

1 you be available to join us?"

2 A. Mm-hmm.

3 109 Q. So you had, obviously, made an arrangement to meet
4 Messrs. Brennan and McGowan and Mr. Burke in your
5 office and you are inviting Mr. O'Shea to join you at
6 this meeting, isn't that right?

7 A. Yes, Sir.

8 110 Q. If you look at the handwriting on the top of it there,
9 it says, "File Canio." It appears to be Michael
10 O'Shea's writing?

11 A. Yes.

12 111 Q. To direct his secretary, presumably to put it in his
13 Canio file. Would you have had a diary of this
14 appointment or a diary record of this appointment?

15 A. It's quite possible that I would have.

16 112 Q. Well, did you have an appointment's diary?

17 A. Yes, I would have - there would be a general
18 appointment --

19 113 Q. I am talking about your own appointments' diary; would
20 you yourself have had your own appointments' diary?

21 A. There would have been an appointments diary kept by my
22 secretary.

23 114 Q. Yes. So that you could keep track of your
24 appointments?

25 A. Yes, Sir.

26 115 Q. And where were those diaries?

27 A. I don't know. I don't know what the policy is, how
28 long they keep the diaries. How long ago is that, Sir?

29 116 Q. This particular appointment was in 1990.

30 A. Well, I don't know if we keep diaries for that length

1 of time.

2 117 Q. Well, what length of time do you keep diaries for?

3 A. I don't know. Now, just to say to you, I don't know.

4 I will make an inquiry in my office and find out for
5 you, Sir. I really don't know how long they kept them
6 for, but I can check it. I don't know. Ms. O'Neill
7 would know.

8 118 Q. Yes. In addition to having had communications,
9 correspondence with Mr. Burke in relation to your
10 affairs, you also had communications with Mr. John
11 Caldwell, isn't that right?

12 A. I don't think - Michael O'Shea might have. But if you
13 say so, but I think anything that was done with
14 Mr. Caldwell, it was done with Michael O'Shea.

15 119 Q. Well, did you not have meetings with Mr. Caldwell?

16 A. We had a few meetings with Mr. Caldwell.

17 120 Q. Yes. In connection with what matter?

18 A. I did, all in connection with the balance of the money
19 that was due.

20 121 Q. And you were meeting him in what capacity? In what
21 capacity was he acting or on whose behalf was he acting
22 when you met him?

23 A. As far as I am aware, that he was acting on behalf of
24 Brennan and McGowan.

25 122 Q. Yes. He does appear to have had an involvement for the
26 Brennan and McGowan company which purchased the Foxtown
27 one-third interest in Ardcarn, a company called Rush
28 Cliff Investments Limited.

29 A. Mm-hmm.

30 123 Q. And he does appear to have been intimately involved in

1 the arrangements for the transmission of the two
2 payments which were made in the sum of ú500,000 and
3 subsequently ú100,000?

4 A. Yes, Sir.

5 124 Q. These payments were made through the International
6 Credit Corporation in the form of the purchase of some
7 kind of government bonds, isn't that right?

8 A. Yes, Sir.

9 125 Q. And it appears from the documentation that these
10 arrangements may have been made by Mr. Caldwell.

11 A. As far as I am aware, yes, the negotiations for the
12 sale of the shares in the company were carried out with
13 Mr. Caldwell and with Michael O'Shea, a lot of them,
14 and they did the transaction.

15 126 Q. Yes. In fact the arrangements were fairly complex from
16 a legal point of view, in that they involved, among
17 other things, the holding of a number of documents in
18 escrow by Mr. Caldwell until certain conditions had
19 been fulfilled, isn't that right?

20 A. As far as I - can you just tell me --

21 127 Q. The documents which were executed but not delivered, in
22 effect, in other words, held by Mr. Caldwell until
23 certain preconditions which had been agreed by all of
24 the parties had, in fact, been met with, including, for
25 example, the payment of the indebtedness on these
26 lands?

27 A. Well, I vaguely remember something about that, Sir.

28 128 Q. Yes. Well, do you also remember that Mr. Caldwell was
29 the person who arranged to have the purchase monies, in
30 this instance at closing the ú500,000, lodged to the

1 ICC in consideration for the purchase of ú500,000 worth
2 of government stock in the name of Foxtown Investments
3 Limited?

4 A. Yes, Sir.

5 129 Q. And arrangements were made that that money would be
6 sent over to England and - sorry, that the stocks would
7 be sold immediately and that the proceeds would be
8 converted to Sterling and sent over to England and then
9 lodged in an account. Isn't that right?

10 A. And that was conducted through Michael O'Shea.

11 130 Q. That was Mr. O'Shea, was it?

12 A. Yes.

13 131 Q. But apart altogether from that, did you not have
14 meetings with Mr. Caldwell in relation to other
15 matters?

16 A. No, Sir. Not that I am aware.

17 132 Q. Well, if we could have document 319.

18 .

19 That doesn't appear to be the document I am looking
20 for. I'll have to revert to that document, Sir. We
21 have got a wrong reference for the document and we'll
22 have to see if we could get the correct reference for
23 it.

24 .

25 CHAIRMAN: Would you like a break?

26 .

27 MR. HANRATTY: Perhaps it might be an appropriate time
28 to do that.

29 .

30 CHAIRMAN: Break for twenty minutes.

1 .
2 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND
3 RESUMES AS FOLLOWS:

4 .
5 133 Q. MR. HANRATTY: Mr. Finnegan, it appears from the
6 correspondence, and I don't really want to belabour
7 this much longer, but that you also had occasion to
8 seek advice in connection with your dealings with
9 Brennan and McGowan or the transactions in which you
10 were involved with them from Stokes Kennedy Crowley, as
11 they then were, Mr. Reid?

12 A. Yes, a time ago, Sir.

13 134 Q. If they gave you any advice, may I take it that you
14 would agree that the probability is that that would
15 have been filed in an appropriate file with your
16 personal correspondence?

17 A. I really don't know, because - if I did get advice, or
18 whenever I did with them, that's a long long time ago.

19 135 Q. Yes. But if you did take the trouble to seek such
20 advice, and if they took the trouble to provide such
21 advice, would you agree with me that it is likely, and
22 I am putting it no higher than that, that it would have
23 been filed with your personal correspondence in an
24 appropriate place in the normal way?

25 A. Well, I think that the - whatever I got would - if I
26 had it in the office, then they would be either, as you
27 say, filed, or if there was any - you see, I don't know
28 under what thing it might have been filed under. The
29 lands in Sandyford, I don't know what file they would
30 have been put on, Sir.

1 136 Q. That wasn't my question, Mr. Finnegan. My question
2 was: would you agree with me that if you sought such
3 advice from them, and if they provided such advice to
4 you, that you would have filed that, or had it filed in
5 the normal way with your personal correspondence.

6 A. I would have thought so, yes, Sir.

7 137 Q. It also appears, and I am not going to get into the
8 detail of it, but there was one matter, at least, in
9 respect of which you sought the advice of Deloitte &
10 Touche, in which they provided advice to you in
11 connection with the matter. Would you agree with me -
12 and again it was related to the Brennan and McGowan -
13 one of the Brennan and McGowan transactions. Would you
14 also agree with me that it is likely that if they gave
15 you advice, it would have been also filed with your
16 personal correspondence in the normal way?

17 A. Well, I think that asking me 'isn't it likely that it
18 would?' I don't know. So it's no point - as far as I
19 am concerned, if I got these letters, whenever I got
20 them, it was not my policy at the time - I wouldn't
21 have just held on to them. It may be if they were to
22 be filed, they would have been filed but I wouldn't
23 have done it, Sir.

24 138 Q. You told us that you didn't file personally yourself,
25 but it was done by an assistant?

26 A. Yes.

27 139 Q. All I am putting to you is that if you received advice
28 of a professional nature from a professional firm,
29 having sought such advice, you would have filed it in
30 the normal way.

- 1 A. Well, the one thing I would have done it with it
2 anyway, in connection with the lands in Sandyford, I
3 would have sent them to Michael O'Shea, I would have
4 sent them to him.
- 5 140 Q. You would have sent him a copy? Are you suggesting
6 that you wouldn't have kept a copy for yourself?
- 7 A. I am not suggesting, Sir. I don't know.
- 8 141 Q. I know you don't know, Mr. Finnegan, in the sense that
9 you don't remember a specific document, but again all I
10 am asking you is that in the normal way, does this form
11 fall within the categories of documents that you would
12 have, in the normal everyday course of events,
13 instructed your secretary to put in your files, or
14 which she would assume she would need instructions to
15 put in your personal files --
- 16 A. She would have assumed whatever, to do whatever.
- 17 142 Q. Yes. And may I take it that the last thing she would
18 assume is that she was entitled to destroy it?
- 19 A. Well, I really don't know. She might have asked me, I
20 don't know. I don't know. And what timescale are we
21 talking about now, Sir?
- 22 143 Q. We are talking about 1990, or since 1990. I didn't get
23 into the particular documents --
- 24 A. That's okay. I don't know. If I had it, I would have
25 given it to you, Sir.
- 26 144 Q. It's actually 1996, in fact.
- 27 A. Right.
- 28 145 Q. But when you seek professional advice from a
29 professional firm such as Deloitte & Touche, such as
30 Mr. Reid in SKC, and you receive their advice, you

1 generally receive an invoice for their substantial fees

2 for that advice as well and you pay for their advice?

3 A. Mm-hmm.

4 146 Q. But I suggest to you the last thing you do, or

5 certainly the last thing your secretary does, is to

6 tear it up once you've read it?

7 A. Mm-hmm.

8 147 Q. What you would expect her to do, and that's all I am

9 saying, is that she would file it. Pretty obvious

10 stuff, really, isn't it?

11 A. I would imagine it would be.

12 148 Q. Yes. Now, can we turn to a different category of

13 documents.

14 A. Yeah.

15 149 Q. And that is the documents which one would expect, I

16 suggest, would have been generated in the normal course

17 of events as between yourself and the Trustees of the

18 Amber Trust, which you set up, or which Mr. Traynor set

19 up on your behalf in Jersey in 1973.

20 .

21 Now, you've told us already that first of all, that

22 Mr. Traynor was instrumental in setting this up at the

23 initial stages, at least. Isn't that right?

24 A. Yes, Sir.

25 150 Q. And in the early years of that Trust, Mr. Traynor was

26 the one who did the business, as it were, from your

27 point of view. He was the person that you went to if

28 you wanted something done, either to take money in or

29 take money out or put money in or whatever you wanted

30 to do about it. Isn't that so?

1 A. Mm-hmm. Yes, Sir.

2 151 Q. And in none of the personal files which you have
3 provided to this Tribunal is there a scrap of
4 correspondence between yourself and Mr. Traynor
5 relating to the establishment of this Trust.

6 A. Well, I don't know where, what - what would have -- I
7 would have thought, it was a trust that he was setting
8 up for me. Actually, he was a person who was a
9 manager. He did everything. And I don't know what
10 paperwork I would have had, Sir, following this set-up
11 of that. But it's a long time ago.

12 152 Q. Well, first of all, did you have paperwork?

13 A. I can't remember.

14 153 Q. The Trust document itself runs to something around 50
15 pages of fairly complex and detailed legal provisions
16 covering a whole range of possibilities, eventualities,
17 and so on, including the powers of Trustees, how they
18 deal with infant beneficiaries and all of the kind of
19 things that one tends to find in a family settlement.
20 And these are matters in respect of which, I suggest,
21 instructions would have to be taken in the first
22 instance from the person on whose behalf this Trust is
23 being set up, namely, yourself, the settlor. Did you
24 have lawyers acting for you in connection with the
25 establishment of this family settlement?

26 A. The only person who would have been around at that time
27 would have been Liam McGonagle.

28 154 Q. As far as I am aware, we don't have any solicitor's
29 files in connection with the establishment or setting
30 up of this Trust from which I infer that no such file

1 exists or existed?

2 A. Well, I think that when anything - Des Traynor, was, as
3 I said, a manager do all persons, and he would have
4 directed what was to be done. I don't know - I haven't
5 got any correspondence back to '72, Sir. I don't know
6 what we would have - I think, in the normal course of
7 events, whatever happened with Traynor, when I was
8 talking to him he would call or I would come and see
9 him and he would - he might set out something to me or
10 explain to me, but I don't know what correspondence was
11 generated over it.

12 155 Q. First of all, can we establish did McGonagle act for
13 you in the connection of the establishment of your
14 Trust?

15 A. Well, I can't say definitely. First of all, Liam
16 McGonagle was a very good friend of mine, also a
17 partner of mine in some business transactions, Sir. We
18 were very close, and whether - in what capacity - he
19 certainly would have been a friendly adviser.

20 156 Q. Well, we know that, for example, when people wish to
21 make a will, they usually go to a solicitor, but not
22 always, and there are some people who do a
23 do-it-yourself will and appraise themselves of the
24 legal requirements for a will and just make a will
25 themselves, but they would be in the minority?

26 A. Yes.

27 157 Q. But certainly in the case of a trust, it is generally
28 the practice that a person setting up a complex family
29 trust will, in the first instance, take legal advice.
30 Now, did you take legal advice --

1 A. I think --

2 158 Q. -- a legal representative acting for you --

3 A. If there was anyone who gave me any advice, the only
4 person I would have spoken to was Liam McGonagle.

5 159 Q. Did you, in fact, engage Mr. McGonagle in his capacity
6 in connection with the establishment of your Trust?

7 A. Well, it wasn't that formal, Sir, when I could have met
8 with Liam McGonagle and saying I am doing this. I
9 would have discussed it. Well, whether I would have -
10 I take it that I would have instructed him.

11 160 Q. And given that Mr. Traynor had an involvement in the
12 establishment of this Trust, we presume that there
13 would have been communication between Mr. Traynor and
14 Mr. McGonagle?

15 A. I would presume so, yes, Sir.

16 161 Q. Have you had any discussions with Messrs. Kennedy
17 McGonagle Ballagh as to whether they have this file?

18 A. The original file?

19 162 Q. Yes, in connection with the establishment of the Amber
20 Trust.

21 A. Well, I asked him to look at any - whatever
22 documentation they might have, and I think they
23 unfortunately hadn't - whatever they had, they have
24 given us. I don't know what - because there was a
25 question, actually, we were looking for the Trust
26 document, and --

27 163 Q. Is it your understanding that there was such a file,
28 but that they no longer have it?

29 A. I couldn't say, Sir.

30 164 Q. Well, what did they tell you?

1 A. I can't remember what they told me about - actually, I
2 can't just say - whatever they have - I don't know,
3 really - what was the question? Whatever --

4 165 Q. The legal file in connection with the establishment of
5 the Trust.

6 A. They certainly didn't say that they had any, Sir.

7 166 Q. Well, if Mr. McGonagle acted for you, they must have
8 had.

9 A. Well, I don't know --

10 167 Q. Whether they have it now or not is another matter?

11 A. I don't know whether they had it. It's a long time
12 ago, and I really don't know. I must presume, perhaps,
13 that they did have - they must have had something, but
14 it is a long time.

15 168 Q. Yes.

16 A. Mr. McGonagle and Mr. Traynor were very friendly and,
17 you know, I think they could have chatted quite a bit.

18 169 Q. Undoubtedly so, but you would expect, in the normal
19 course of the establishment of this kind of a trust,
20 that there would be correspondence between them
21 regardless of how friendly they would have been?

22 A. Well, yes, Sir, but I don't know - I can't speak for
23 them.

24 170 Q. After the establishment of the Trust, did you receive
25 any correspondence from Mr. Traynor?

26 A. I don't know.

27 171 Q. We know that the original Trustee in the Trust document
28 was Guinness & Mahon (Jersey) Trust Limited, a Jersey
29 based company, which was a subsidiary of Guinness &
30 Mahon.

1 A. Mm-hmm.

2 172 Q. Did you have any correspondence from Mr. Traynor in
3 connection with the administration of your affairs in
4 this Trust?

5 A. I would have thought that the - we all, around that
6 time, would have been meeting one another quite
7 frequently. Now, if there was anything, it would have
8 been in Kennedy McGonagle, if there was. But I don't
9 recollect, because I wouldn't have been involved on a
10 one-to-one on that, Sir. You know, it would be a
11 question of leaving things to the professionals to do
12 it.

13 173 Q. Yes. My question was: did you receive any
14 correspondence from Mr. Traynor in connection with the
15 Trust?

16 A. Oh, I really can't say. It's just beyond me to try and
17 think that I would have or could remember anything I
18 would have received from them.

19 174 Q. Yes. Well, did you receive any correspondence from
20 Guinness & Mahon (Jersey) Trust Limited, who were the
21 Trustees of the Trust?

22 A. Maybe I did and maybe I didn't. I didn't remember,
23 Sir. Now, again I would like to say to you that I was
24 - we met with Des Traynor quite a lot at that stage,
25 and he was the sort of man who dictated rather than -
26 dictated, you know, to him, and he would say - he would
27 - when he took on something, he looked after it,
28 absolutely.

29 175 Q. Yes. We do know that Guinness & Mahon was a company
30 which was established to provide off-shore trust and

1 administration services to clients of Guinness & Mahon

2 who required such services, isn't that so?

3 A. Guinness & Mahon Trust?

4 176 Q. Yes.

5 A. Yes.

6 177 Q. And that this particular company, which was the Trustee

7 of this Trust, was a company established precisely for

8 the purpose of being a trustee of various trusts in

9 which clients of Guinness & Mahon and indeed others had

10 an interest?

11 A. Well --

12 178 Q. In other words, it was a professional trust company in

13 the business of providing trust services on a

14 professional basis for reward. Do you follow what I am

15 saying?

16 A. Yes, Sir.

17 179 Q. It's not like a favourite uncle who agreed to act as

18 Trustee of the Trust and in his benign wisdom to make

19 decisions in relation to the disposition of the Trust

20 property among various beneficial or various members of

21 the family who would be beneficially entitled. This is

22 a professional operation done for reward and not on any

23 other basis?

24 A. Well, let me explain to you, Sir. I knew John Guinness

25 as a gentleman very well, and when - it goes back that

26 we had a friendship, and when we talked about things,

27 it was a question of - it was like the friendly advice,

28 Sir. It wasn't on the long arm of this is whatever,

29 whatever. We were very close.

30 180 Q. We've Mr. McGonagle beyond the advice stage in the

1 sense that the Trust is now established in September of
2 1973. It's up and running. It's there. The next
3 thing to happen after the initial establishment of the
4 Trust is for you to start putting money into it for the
5 purpose of the settlement. What I am canvassing with
6 you at the moment, Mr. Finnegan, simply is that this
7 was a professional trust company providing these
8 services, not only to you in respect of your trust, but
9 to many, many other people in respect of their
10 respective trusts as well, both Irish and non-Irish,
11 isn't that so?

12 A. Well, if you say so --

13 181 Q. And companies which provide trust services of this
14 nature, like any company providing any kind of
15 financial services, have systems and have means of
16 communicating information to their clients and of
17 receiving instructions from their clients. Isn't that
18 right?

19 A. Yes.

20 182 Q. They have staff who man the office where these services
21 are being provided. They have books and records and
22 computers and all of the paraphernalia of any
23 professional financial services company, isn't that so?

24 A. I would imagine so, yes, Sir.

25 183 Q. Did you receive communications from Guinness & Mahon
26 (Jersey) Trust Limited after the establishment of this
27 Trust?

28 A. No, Sir. The position is this: that Mr. Traynor -
29 anything that would have come in, would have come into
30 Traynor.

1 184 Q. I see.

2 A. He was the manager. He looked after my affairs. He
3 was that sort of person - and if he set it up, all of
4 that - and this again is a long, long time ago, but he
5 was and - he did look after everything, Sir.

6 185 Q. Yes. So is it the position, then, that any time that
7 Guinness & Mahon (Jersey) Trust Limited, being the
8 Trustees of your Trust, wished to write to you, they
9 wrote, in fact, to Mr. Traynor?

10 A. Well, when Guinness & Mahon - how long were they there
11 for, Sir?

12 186 Q. Well, we presume that they were there at least until
13 the establishment of College Trustees Limited, because
14 College Trustees Limited wasn't registered until March
15 of 1975?

16 A. I think to say to you, I don't know, I don't recollect.
17 It may be that there was something that came through.
18 I can't remember the details. But all I would say to
19 you is this, that anything that would have or otherwise
20 would always have been discussed with Traynor and -
21 Mr. Traynor. So it was more of a close, Sir,
22 relationship and it wasn't like the big business firm
23 like you were describing, Sir, as the management. It
24 was like Traynor was the boss and these were his
25 employees.

26 187 Q. You mean Guinness & Mahon employees?

27 A. Yeah, like he was the boss.

28 188 Q. But he didn't own Guinness & Mahon. He was a
29 functionary, as it were. And in one case obviously to
30 the level of Chairman, but as I understand it, a

1 functionary. He didn't own Guinness & Mahon?

2 A. No.

3 189 Q. Or did he?

4 A. Not that I know of.

5 190 Q. As far as you were aware, was he involved in equity in
6 the company?

7 A. I don't know, Sir.

8 191 Q. Yes. For present purposes, we do know that he was
9 working within the Guinness & Mahon infrastructure, as
10 it were, and he was based in Dublin. This trust
11 company was based in, at that time, Jersey.

12 .

13 Now, as I understand your evidence, any communication
14 which Guinness & Mahon (Jersey) Trust Limited, being
15 the Trustees of your Amber Trust, wished to make with
16 you, was made through Mr. Traynor, is that right?

17 A. That would be - that, as far as I recollect, was the
18 case, Sir. He was a fatherly figure.

19 192 Q. Sorry?

20 A. He was a fatherly figure, if you like. He was the
21 person who did everything.

22 193 Q. Yes. We know that Foxtown Investments Limited, which
23 is the - as I understood your evidence on Friday, the
24 investment vehicle through which this Trust did its
25 investment work, was established in September of 1972,
26 so that it pre-dated the establishment of the Trust
27 which was in September of 1973. Did you have a company
28 formed in Jersey prior to the establishment of your
29 Trust?

30 A. I don't know, Sir. I don't know, Sir, really. That,

1 again, was all - all of that was looked after by Des

2 Traynor.

3 194 Q. Yes. Well, did Mr. Traynor inform you at the time that

4 the Trust would use the vehicle of a company for the

5 purpose of the Trust investments?

6 A. I would say - all of these things just happened, you

7 know, there wouldn't - if that was the way that it was

8 to be done, that was the way it was to be done and it

9 would be. I, first of all, wouldn't have - I wouldn't

10 have done anything about the setting up or running of

11 or mechanics of it, so I would accept what I was told.

12 195 Q. So you didn't really know about the fact that the Trust

13 was going to operate, essentially, through a company,

14 at least for its investments activities?

15 A. Well, looking at it, I know the way you are questioning

16 me now, Sir, it was, whatever was done - I know, was

17 set up - did I know that a company was set up --

18 196 Q. Did Mr. Traynor explain to you that once this Trust was

19 established, which you, presumably, required to be

20 established, that it would do its investment business

21 through a company which we now know to have been

22 Foxtown Investments Limited?

23 A. Well, I put it like this, Sir: whatever had to be done

24 was done by him and then it came into operation. It

25 wasn't the sort of thing, by the way, that one would

26 have any - and anyone who dealt with him would tell you

27 the same thing, you wouldn't - it's not the sort of

28 thing that you would be quizzing him on. He would tell

29 you, "This is what I've done."

30 197 Q. When did you first find out about Foxtown Investments

1 Limited?

2 A. When did I first?

3 198 Q. Yes. When did you first find out about Foxtown

4 Investments Limited?

5 A. I can't say. I don't know, Sir, when I --

6 199 Q. When you did find out about it, what did you think it

7 was?

8 A. It was an investment that would handle the investments

9 - it was an investment company.

10 200 Q. Yes. Of the Trust?

11 A. Yes. Yes, Sir.

12 201 Q. And was it your understanding that any money you put

13 into this company was money that was, in fact, being

14 put into the Trust?

15 A. Yes, sir.

16 202 Q. Who told you about Foxtown Investments Limited?

17 A. I don't know. I would imagine it was Traynor, Des

18 Traynor.

19 203 Q. And have you any idea when he would have told you about

20 this company?

21 A. I don't know, Sir, but it was - I think, wasn't it set

22 up in 1972?

23 204 Q. The company was set up in 1972, and the Trust was

24 established in 1973.

25 A. I don't know.

26 205 Q. Well, when was the first time you put money into

27 Foxtown Investments Limited?

28 A. I can't recollect, Sir.

29 206 Q. Well, in the initial stages of the Trust, by what means

30 did you put money into the Trust?

1 A. Anything that was put in in the initial stages was done
2 through Mr. Traynor.

3 207 Q. Yes. And in physical terms, how was that achieved?

4 A. I don't know.

5 208 Q. Well, would you hand him a briefcase full of money?

6 Would you give him a cheque on a current account?

7 Would you give him a bank draft? What way would you do
8 it?

9 A. Sir, how would I do it? I don't know how it was done,
10 but one thing - I was, at that time, involved and, in
11 fact, in business with Des Traynor and there were
12 consortiums involved at that particular time and we
13 were in companies together with my lawyer Mr. McGonagle
14 as well. And anything that was done - I don't know how
15 he physically did it, but whatever - it was either
16 transferred. But he arranged it.

17 209 Q. And when he was doing it, was it your understanding
18 that the money was going into a bank account in the
19 name of Foxtown Investments Limited?

20 A. I never asked anything. Anything to do with that was
21 done by him. And we didn't query him in those days,
22 Sir. He was the one who set it up and I had absolute
23 faith in what he was doing. I can't tell you how he
24 actually did it.

25 210 Q. And you don't know into what account, what bank account
26 your money was being put?

27 A. No idea, Sir.

28 211 Q. Did you know the identity of the holder of the bank
29 account into which your money was being put?

30 A. No, Sir.

1 212 Q. And when did you first find out the identity of the
2 bank account into which your money was put and the
3 identity of the holders or account holder on that
4 account?

5 A. That's so detailed. I wouldn't have the faintest idea,
6 and I don't remember names or otherwise or whatever,
7 because that - remember this, I had the absolute
8 confidence in Des Traynor setting it up. He never
9 explained it to me, Sir. And he had the power to do
10 anything he wished, and did it, and looked - and that's
11 the way it was set up.

12 213 Q. When you did put money into this Trust by giving it in
13 whatever manner you gave - you gave it to Mr. Traynor,
14 did you receive any acknowledgment from Guinness &
15 Mahon (Jersey) Trust Limited that they had received
16 that money?

17 A. I don't know, Sir. He acted as, if you like, he in
18 himself acted like a trustee. He managed everything.
19 And if there was any acknowledgment, it would come to
20 him.

21 214 Q. Well, did you ever get a receipt from him?

22 A. No, I never asked him for one. Remember that this was
23 all done on a very, very, very friendly basis, and he
24 had the authority.

25 215 Q. But normally when one has a trust with a professional
26 trust company, one gets a receipt when one puts in
27 money. You are saying that you didn't get a receipt
28 from Mr. Traynor and I infer from your answer, and
29 please correct me if I'm wrong, that you didn't get a
30 receipt from Guinness & Mahon (Jersey) Trust Limited

1 either?

2 A. I can't recollect, but all I can say is this: that
3 whatever was coming, came through Des Traynor. And I
4 wouldn't remember the detail. And I am not a detail
5 man like that. I don't know, Sir, what, if I had - all
6 of this is a hell of a long time ago.

7 216 Q. Well, if you had been knocked down by the proverbial
8 bus, how would any members of your family be aware that
9 this arrangement was in place? What files would they
10 look at to look at what the nature of the arrangement
11 was? Would there be any records in your office --

12 A. I don't think so, Sir. I don't think so. And if I was
13 knocked down by a bus and if Liam McGonagle survived
14 me, it would have been that somebody would have gone to
15 him.

16 217 Q. Yes.

17 A. Or Mr. Traynor.

18 218 Q. Yes. And when did Mr. Traynor cease to act in this
19 particular direct capacity in relation to this Trust?

20 A. Mr. Traynor, up until he died, was a person who was, up
21 until then, he was the person - he had a very close
22 connection.

23 219 Q. Yes? Well, we know, for example, that there has been
24 at least two changes of Trustees that we are aware of
25 during the lifetime of this Trust.

26 A. Oh.

27 220 Q. Is it your position that notwithstanding those changes,
28 that he continued to act directly in connection with
29 yourself and your dealings with the Trust?

30 A. Yes, Sir.

1 221 Q. We know, for example, that College Trustees Limited
2 became the Trustees of this Trust at some point in
3 time, and we know that College Trustees Limited were
4 registered in Guernsey on the 6th of March of 1975.
5 Presumably, therefore, some point after that they
6 became the Trustees of this Trust. Do you know under
7 what circumstances this particular company were
8 substituted, as it were, for the original Trustees,
9 which was Guinness & Mahon (Jersey) Trust Limited?

10 A. No, Sir.

11 222 Q. Well, did anybody tell you about it at the time?

12 A. Well, was it a real change?

13 223 Q. Well, College Trustees Limited is an entirely different
14 company to Guinness & Mahon (Jersey) Trust Limited.

15 A. Des Traynor would have been involved, absolutely, at
16 that time, and he would have done it.

17 224 Q. As far as we are aware, it's not a change of name; it's
18 simply a different company entirely, which would mean
19 that the provisions of the Trust Deed with regard to
20 the substitution of different or new Trustees would
21 have had to have been invoked by somebody?

22 A. Well, if they were, they were done by Mr. Traynor.

23 225 Q. When do you think College Trustees Limited took over as
24 Trustees of this Trust?

25 A. I don't know.

26 226 Q. Well, was it in the seventies or in the eighties?

27 A. I am not - I am not aware, Sir, when --

28 227 Q. You told us on Friday, when you put in money, and again
29 this morning, that it was done through Mr. Traynor.
30 Isn't that right?

1 A. Mm-hmm.

2 228 Q. And you indicated that you were in business with
3 Mr. Traynor. Does that mean that the proceeds of your
4 business with Mr. Traynor, and I am not asking you what
5 that was, but that that is what was put into the Trust
6 at that stage?

7 A. Well, yes, I think that the benefit of some of the
8 transactions we were involved with were put into the
9 Trust, Sir.

10 229 Q. Would I be right in thinking that in the early stages
11 of the Trust, at least, the arrangements, generally,
12 would have been that monies were being put into it
13 rather than monies being taken out of it?

14 A. Yes, Sir.

15 230 Q. And presumably those monies, when they were put in,
16 were invested in investments which were deemed by the
17 Trustees, presumably, to be prudent investments of your
18 money?

19 A. Yes, Sir.

20 231 Q. At what point in time did you arrive at a point where
21 the time came for monies to be taken out of the Trust
22 for the benefit of the categories of beneficiaries,
23 including yourself named in the Trust instrument?

24 A. Could you say that again?

25 232 Q. At what point in time did you or the other
26 beneficiaries start being in receipt of monies from the
27 Trust?

28 A. I don't know. Personal receipt of?

29 233 Q. Either yourself or your children or any of the other
30 persons named as beneficiaries in the Trust.

1 A. I think over the period, Sir, I can't say to you when
2 it started, but certainly when the children - the
3 children would be very young then, but when the
4 children grew up, at that stage, certainly, there were
5 disbursements.

6 234 Q. And at the time of these disbursements, presumably they
7 would have been - there would have been communications
8 between you and somebody in connection with the
9 disbursements?

10 A. Yes, with Mr. Traynor.

11 235 Q. With Mr. Traynor?

12 A. Yes.

13 236 Q. And would you inform Mr. Traynor of your wishes in
14 relation to these matters and would he then implement
15 them?

16 A. Mr. Traynor would - he then would have a habit to
17 implement it.

18 237 Q. By the Trustees?

19 A. Yes, whoever. Whoever.

20 238 Q. And insofar as it required the payment out of monies,
21 would he make the arrangements for the payment out of
22 monies to whom they - to whomsoever they were being
23 paid out?

24 A. Yes, Sir.

25 239 Q. And were those monies paid out abroad or were they paid
26 out through Guinness & Mahon in Dublin?

27 A. Well, I don't know, Sir, which - whether it was abroad
28 and here - I am not sure of that.

29 240 Q. And would any documentation be generated in respect of
30 the payment out of these monies?

1 A. No. Actually, it was that anything like that was done,
2 and the documentation would have been held by Traynor.

3 241 Q. Yes. Well, we know that Mr. Traynor died in the last
4 couple of years?

5 A. That's right, Sir.

6 242 Q. Have you retrieved your files from Mr. Traynor or from
7 his Estate, at least?

8 A. No, I haven't.

9 243 Q. See, where I am coming from here, Mr. Finnegan, is that
10 in the documentation which you have discovered to this
11 Tribunal, there is no trace of the kind of
12 documentation that one would expect normally to come
13 into place or come into being in the case of the
14 existence of a trust of this nature. There are no
15 receipts for the monies that were put into the Trust.
16 There isn't a scrap of correspondence between you and
17 the Trustees of the Trust. There are no transactional
18 documentations showing payments in or payments out to
19 the Trust. There are no accounts, annual accounts,
20 audited or otherwise, in respect of the Trust. There
21 is no documentation about the investments that the
22 monies put into the Trust were invested in. There is
23 nothing about the income which was earned on those
24 investments. There is no document indicating any
25 communication of any kind whatsoever at any point in
26 time since the start of this Trust in 1973 between the
27 Trustees and yourself --

28 A. All right. Well, now - Sir --

29 244 Q. Sorry, I am not finished.

30 A. Sorry.

1 245 Q. There is no indication of any decisions made by the
2 Trustees with regard to the decisions that they made
3 for the payment out to beneficiaries or categories of
4 beneficiaries. There are no statements of bank
5 accounts of the Trust. There are no annual accounts of
6 the investment vehicle which the Trust used, which is
7 Foxtown Investments Limited. There are no legal
8 documents in connection with the establishment of the
9 Trust. There are no legal documents in connection with
10 the conduct of the Trust. And there are no documents
11 of any kind whatsoever in relation to the - at least
12 two changes of Trustees that we know have occurred
13 since the inception of this Trust, including, in one
14 case, a change of Trustees involving a change in the
15 seat of the Trust from Jersey over to Guernsey.
16 .
17 All of these documents are the kind of documents one
18 would expect to exist, and documents one would expect
19 to be sent by a professional trust company on a regular
20 basis, either monthly, quarterly, biannually or
21 annually to the persons who are beneficiaries of the
22 Trust. Not one single document, apart from the Trust
23 document itself which we were given, and another copy
24 of it this morning, has been furnished to this Tribunal
25 in connection either with the Trust or, indeed, and in
26 particular, with Foxtown Investments Limited, which is
27 the company into which the monies, which are the
28 subject matter of the Tribunal's particular interest,
29 were put.
30 .

1 Now, how could that be?

2 .

3 MR. HUSSEY: I'm sorry. I don't wish to interrupt, and
4 I'll try not to interrupt to aid the witness. But I am
5 just wondering, is that question - is that litany of
6 documents and litany of omissions, as Mr. Hanratty has
7 read out, is that fair in the context of the documents
8 that have been furnished? Accounts from Foxtown and
9 the accounts that it had with Guinness & Mahon,
10 together with explanations of those accounts since
11 1973, way before anything to do with matters which have
12 become relevant to this Tribunal, up to 1979, have been
13 furnished. And I am wondering is Mr. Hanratty going to
14 acknowledge that those documents have been furnished to
15 explain the ins and outs and the interest earned and
16 the investments that have been made in the accounts?

17 .

18 He has given a litany of documents that haven't been
19 furnished. However, the amount of entries disclosed in
20 the Foxtown accounts that have been furnished, I think,
21 is upwards of 150 entries of transactions within the
22 Foxtown vehicle between a period from 1973 to 1979,
23 have been furnished and have been explained, some in
24 great detail, some in lesser detail, but have been
25 explained to a large extent.

26 .

27 And I am merely putting that to show that the question
28 that has been put by Mr. Hanratty is, in my submission,
29 an unfair - it's unfair to put it in those terms. We
30 have given in the Trust document and we have given in

1 the transactions since, basically, since the Trust was
2 set up in 1973, up to the 1979 - these are the
3 documents that were found two or three weeks ago. So
4 it's not fair to suggest that absolutely nothing, and
5 you know nothing about the workings of the account of
6 the Foxtown investments. These have been furnished
7 fully to the Tribunal without any editing whatsoever,
8 or without any - and with - and an explanation of each
9 entry and a full explanation of the entries which we
10 could identify as being relevant to this Tribunal's
11 inquiry.

12 .

13 And I just think that if the question is to be put, it
14 should be put fully and fairly and not just one side of
15 what wasn't given, but what was given as well.

16 .

17 Thank you, Sir.

18 .

19 MR. HANRATTY: I am afraid, Sir, there is a certain
20 looseness of language creeping into My Friend's
21 vocabulary. what has been furnished to this Tribunal,
22 as he well knows, is 28 pages of extracts from the bank
23 accounts of Foxtown Investments Limited, from the bank
24 accounts. Not accounts, bank accounts of Foxtown
25 Investments Limited.

26 .

27 We have nothing about the bank accounts of the Amber
28 Trust. We have none of the categories of documents
29 which I have listed out there, and that list which I
30 listed out is by no means complete. The documents to

1 which I made reference are the documents and categories
2 of documents which one would expect would come into
3 existence in the ordinary way in a case of a trust
4 administered by a professional trust company.

5 .

6 Now, there is nothing in anything I put to this witness
7 to suggest that he was in any way misled. And I did
8 not mention the bank accounts of Foxtown Investments
9 Limited because I hadn't yet got to that. And I will
10 come to that in due course. But leaving aside the
11 extracts, the 28 pages of bank accounts, which are
12 incidentally incomplete, of Foxtown Investments
13 Limited, what I am putting to the witness is that none
14 of the other documents or categories of documents which
15 one would expect to exist in the normal way have been
16 discovered to this Tribunal.

17 .

18 What I am trying to explore with this witness is where
19 are these documents? That's all.

20 .

21 CHAIRMAN: I agree that you are proceeding in a correct
22 manner.

23 .

24 246 Q. MR. HANRATTY: Where are those documents, Mr. Finnegan?

25 A. Any documents that there are would be in the - in
26 Guernsey.

27 247 Q. We know that the Trustees in the present trustee
28 company, which appears to be Sovereign Trustees
29 Limited, is that right?

30 A. Yes, Sir.

1 248 Q. -- would have their own files?

2 A. Mm-hmm.

3 249 Q. They are obliged to keep files because they are
4 providing a professional trust service to you and many
5 others, I presume. And that Sovereign Trustees Limited
6 is now a company which appears to be owned or
7 controlled by Credit Suisse --

8 A. That's correct.

9 250 Q. -- and is some sort of a subsidiary of that company,
10 isn't that right?

11 A. So I believe, yes.

12 251 Q. When did the takeover of the Guinness & Mahon Trust
13 operation, if I might put it like that, in the Channel
14 Islands by Credit Suisse, take place?

15 A. I can't say. I think they took over a company - I
16 can't say when.

17 252 Q. Well, was it in the last few years? Was it 10 or 20 or
18 30 years ago?

19 A. I don't know what the date - what year it happened, but
20 I think that - it may have been in the last, I don't
21 know, but I think it may have been in the last ten
22 years, Sir.

23 253 Q. Well, was it at some point in time before Mr. Traynor
24 died?

25 A. I think so.

26 254 Q. Yes. And after Mr. Traynor died, he would have had no
27 further involvement with this Trust, isn't that right?

28 A. That's right.

29 255 Q. Isn't that right?

30 A. Sorry?

1 256 Q. After the Guinness & Mahon operation and trusteeship
2 was taken over by Credit Suisse, or the Credit Suisse
3 Group --

4 A. Sorry, I thought when he died --

5 257 Q. No, after the takeover by the Credit Suisse Group, that
6 would have been the end of Mr. Traynor's functions in
7 relation to this Trust, isn't that right?

8 A. No, he - I don't know when - I don't know when that
9 changeover - you see, these changeovers wouldn't be as
10 important to me, Sir, where the linkage - because
11 Mr. Traynor was involved up to the time he died.

12 258 Q. I see. Well, does that mean then that when Credit
13 Suisse took over the Guinness & Mahon operation, they
14 continued to send your material, your documentation to
15 Mr. Traynor?

16 A. Actually, what the situation that - the Credit Suisse
17 people, that what they did do is they did come to
18 Ireland every so often and would come and see one. But
19 they didn't leave documentation behind. They would
20 come in and report and would say to me, "This is the
21 position" of so-and-so and so-and-so.

22 259 Q. Are you saying that Credit Suisse did their business
23 with you in their capacity as Trustees of your family
24 Trust by word of mouth?

25 A. Yes, Sir.

26 260 Q. And are you saying that they did not send you any
27 document of any kind, at any time since they took over
28 this trusteeship?

29 A. I can't say that, Sir.

30 261 Q. Well, did they? Did they send you any documents?

1 A. I think the normal thing - I can't remember them
2 leaving - normally what happened was this, that
3 anything that they would come over and they would
4 discuss whatever they had to discuss and they didn't -
5 I didn't hold on to any documentation.

6 262 Q. I am not at this point in time inquiring as to whether
7 you held onto it or not. What I am inquiring about is
8 whether they sent you any documentation?

9 A. No.

10 263 Q. Credit Suisse never sent you any document, or their
11 trustee subsidiary, Sovereign Trustees Limited never
12 sent you anything about this Trust, is that right?

13 A. I don't know whether I'm saying never. I don't know.
14 But it wasn't - it wasn't the policy - the Trustees
15 handled the affairs in Guernsey and the business was
16 done there in Guernsey.

17 264 Q. We'll check this. But if we are not mistaken, it
18 appears that Credit Suisse took over in 1987. Does
19 that sound right to you?

20 A. If you say so, Sir. I wouldn't recollect. These dates
21 wouldn't be important to me, but if that's when it --

22 265 Q. Let's assume for the moment that it was, subject to
23 checking, that it is, in fact. And if it is the case,
24 it would appear that, on the basis of your evidence
25 that Mr. Traynor dealt with your affairs in connection
26 with this Trust up until the time he died, that Credit
27 Suisse, after their takeover of the Guinness & Mahon
28 trusteeship operation in the Channel Islands, continued
29 to interface with you through Mr. Des Traynor, is that
30 right?

1 A. Well, he was very much - he was very much involved and
2 then the Credit Suisse, the like of Mr. Ducqueman, used
3 to come to Ireland and come and see me. And he would
4 just run down through a summary of the investments.
5 And that was the way they reported.

6 266 Q. Verbally?

7 A. Yes, verbally.

8 267 Q. And did they ever send you a document setting out what
9 the capital, the state of the capital and the income
10 earned on that capital was for any particular year?

11 A. I can't say that never - I think generally, though,
12 Sir, I can't remember when I last got one of those from
13 them. But I think some years ago we got them.

14 268 Q. And what did you do with them when you got them?

15 A. They were not kept, Sir.

16 269 Q. Why not?

17 A. Mr. Traynor said the business was being transacted in
18 Guernsey and all business should be transacted in
19 Guernsey and not here.

20 270 Q. Yes, but you live in Ireland?

21 A. Yes, Sir.

22 271 Q. So that if the Trustees are to account for their
23 stewardship to the beneficiaries of the Trust, they
24 have to write to them wherever they could find them, in
25 your case, in Ireland. Isn't that so?

26 A. Yes, Sir.

27 272 Q. As I understand the evidence you've given so far, that
28 for the period from the inception of this Trust,
29 certainly up until the time that the Guinness & Mahon
30 operation was taken over by Credit Suisse, all dealings

1 were through Mr. Traynor?

2 A. Mm-hmm.

3 273 Q. And as I understand your evidence, and correct me if

4 I'm wrong, any documents which the Trust may have sent

5 to anybody would have been sent to Mr. Traynor, not to

6 you?

7 A. Yes, but there wouldn't have been an awful lot of

8 documentation, Sir.

9 274 Q. Well, how do you know?

10 A. I don't know, but I imagine that - because if they -

11 when Ducqueman or the other - Ducqueman would report to

12 me and there would be a summary. And they had the

13 discretion on the equities --

14 275 Q. We are talking about before Mr. Ducqueman's time now.

15 We are talking about Mr. Traynor's time.

16 A. Oh, yeah.

17 276 Q. And we are talking about between 1973 and, say, 1987.

18 A. Yeah.

19 277 Q. As I understood your evidence, and if I say anything

20 that you think I am incorrect about, please do not

21 hesitate to intervene and say so, as I understand your

22 evidence, during that period, certainly, Mr. Traynor

23 dealt with all matters relating to your dealings with

24 this Trust, including the putting in of money and the

25 getting out of money?

26 A. He was the person, he was the one.

27 278 Q. And was he the one with whom the Trust communicated

28 when they needed to communicate with the beneficiaries?

29 A. Yes, because he would - when he was alive, Sir, he

30 would ring me and say, "I want to have a chat with you,

1 and here we are, and this is how things are," whatever.

2 279 Q. Was he the one to whom they sent correspondence,

3 documents, accounts, or whatever it is they sent to

4 whoever they sent it, was he the one who would have

5 been in receipt of that documentation?

6 A. As far as I am aware, Sir, yes.

7 280 Q. Well, now, on his death have you made any attempt to

8 obtain from his estate his files in relation to his

9 dealings with Sovereign Trustees Limited or College

10 Trustees Limited or Guinness & Mahon (Jersey) Trust

11 Limited on your behalf?

12 A. Not that I - not that I am aware of, Sir.

13 281 Q. Why not?

14 A. Well, it goes on. The things continue, Sir, and there

15 wasn't anything particular.

16 282 Q. Well, there was an order for the discovery and

17 production of documents by a Tribunal for a start?

18 A. Yes, Sir.

19 283 Q. Well, did it occur to you, in the context of the

20 Foxtown connection, that it might be prudent to go and

21 see what's on those files?

22 A. Well, I don't know what - in connection with that, Sir,

23 that would have been dealt with through the lawyers,

24 and I don't know if there had been any requests through

25 the lawyers to see what they had.

26 284 Q. Which lawyers?

27 A. Through my lawyers.

28 285 Q. You don't know whether they requested --

29 A. Yes.

30 286 Q. -- these files from the Traynor estate?

1 A. I don't know. I don't know if there had been any
2 contact with Traynor.

3 287 Q. You mean with his estate, I take it?

4 A. Estate, yes.

5 288 Q. Yes. Well, I take it that if they had, they would have
6 told you about it?

7 A. I would say yes, Sir.

8 289 Q. So it seems likely that your solicitors did not contact
9 the Traynor estate, who were dealing with all of these
10 affairs, certainly for a very substantial period in
11 connection with this Trust, including the crucial
12 period between, say, 1978 and 1984. Isn't that right?

13 A. Well, as far as I am aware, but I - I am not sure on
14 that, Sir. I would have to check that for you.

15 .

16 CHAIRMAN: Could we just break at that point until,
17 say, twenty past two.

18 .

19 THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

20 .

21 .

22 .

23 .

24 .

25 .

26

27

28

29

30

1 THE TRIBUNAL RESUMED AS FOLLOWS AT 2.20PM.

2 .

3 CONTINUATION OF EXAMINATION OF MR. FINNEGAN BY

4 MR. HANRATTY:

5 .

6 290 Q. MR. HANRATTY: Before lunch, Mr. Finnegan, we were

7 discussing the files and documentation which the late

8 Mr. Traynor would have held immediately prior to his

9 death, and whether or not either yourself or your

10 solicitor had made any attempt to recover those files

11 on his death, and you have indicated that neither of

12 you had done that.

13 A. Can I answer?

14 291 Q. Yes.

15 A. I wasn't quite sure what the position was on that, but

16 I have since checked, and they had been formally asked,

17 the estate by my lawyers.

18 292 Q. And when was that?

19 A. I am not quite sure, Sir. I just got the message back

20 now, so -- and that there weren't any files.

21 293 Q. There were no files?

22 A. No. All his files, I think -- I can check further

23 from the lawyers, but that's what I just said, that

24 there weren't files regarding this.

25 294 Q. But if Mr. Traynor was the person who was dealing with

26 all matters relating to your dealings with the trustees

27 of the Trust, surely there must be files?

28 A. Well, Sir, I'll tell you, I asked. I am just back in

29 -- I just got the response to what -- and I don't know

30 any more than that. I just -- I was anxious to get

1 word for you, so I made an inquiry. So I can --

2 295 Q. And I think the inquiry was made from Mr. O'Shea, who

3 was, I take it, the solicitor who made the inquiry on

4 your behalf?

5 A. Yes, Sir.

6 296 Q. Well, perhaps you might be able to get a little bit

7 more detail from whom it was sought, what was sought

8 and when it was sought, and we can leave that over

9 until tomorrow?

10 A. I will, Sir.

11 297 Q. Just on the question of leaving matters over, we did

12 leave over some matters from last Friday, if you

13 recall, and one of the matters that you were going to

14 make inquiries about was the question of how many

15 trusts there were? Have you found that out, in

16 Jersey/Guernsey?

17 A. No. As far as I know, Sir, that the, it's only the

18 Trust that we have.

19 298 Q. Just the one?

20 A. Just the one.

21 299 Q. We also made reference this morning to the question of

22 the precisely identifying the point in time at which

23 the Guinness & Mahon operation in Guernsey was taken

24 over by Credit Swisse, and I suggested 1987 to you.

25 And I just want you to try and do your best to assist

26 the Tribunal as to when this may have taken place. We

27 know that it was Mr. Traynor who was himself personally

28 involved in his capacity as either Chairman or some

29 other officer of Guinness & Mahon, that set up the

30 Guernsey branch, as it were, of Guinness & Mahon, isn't

1 that right?

2 A. So I believe, Sir.

3 300 Q. He set up a company called Guinness & Mahon (Channel
4 Islands) Limited which, in 1974, for a short period,
5 held a banking licence, but didn't renew it, and
6 subsequently another company called Guinness & Mahon
7 Channel Islands Limited, which is the bank in which the
8 Foxtown Investments Limited company was held was set
9 up, again we understand, by Mr. Traynor. We also know
10 that he set up College Trustees Limited, which took
11 over the trusteeship at some point in time from
12 Guinness & Mahon (Jersey) Trust Limited.

13 .

14 Now, you have told us that Mr. Traynor was the person
15 who dealt with all of your dealings with this trust,
16 isn't that so?

17 A. Yes, Sir.

18 301 Q. And as I understand your evidence, he continued to do
19 that even after the Guinness & Mahon business was taken
20 over by Credit Swisse?

21 A. Yes, Sir.

22 302 Q. Originally, he would have been doing it presumably on
23 the basis that he was, in any event, an officer of
24 Guinness & Mahon, and he was also perhaps representing
25 you in some advisory or representative capacity. But
26 after the takeover by Credit Swisse, he could only have
27 been doing it in the latter capacity?

28 A. Yes.

29 303 Q. Because as far as you were aware, he wasn't an officer
30 of Credit Swisse?

1 A. No.

2 304 Q. We do know that in the registration office in the
3 Channel Islands for College Trustees Limited, the
4 company itself was established on the 6th March of
5 1975, and on the searches that we have done, Credit
6 Swisse Trust Holdings Limited are registered as the
7 principal shareholder of that company?

8 A. Sorry, I just -- sorry, I missed the beginning of that.
9 Of which company?

10 305 Q. Of College Trustees Limited.

11 A. All right.

12 306 Q. Now, that is not to say that they were the registered
13 shareholders from the time the company was formed.
14 They could have become the registered shareholders
15 after that point in time. And the nearest we can
16 identify as the point in time when College Trustees
17 Limited was actually taken over by Credit Swisse Trust
18 Holdings Limited, was around 1987, but without being
19 dogmatic about it, does that sound more or less right
20 to you; mid-eighties, in other words, or slightly later
21 than mid-eighties?

22 A. I am saying it would, but it didn't -- the occurrence
23 of that wouldn't have meant an awful lot to me. But if
24 that's when it happened, it happened.

25 307 Q. Presumably, Mr. Traynor told you there has been a
26 takeover, and the trusteeship of your trust was passing
27 from a Guinness & Mahon management to, essentially, a
28 Credit Swisse management?

29 A. Well, when exactly that happened -- but you know, I am
30 sure -- yes, he would.

1 308 Q. Do you remember him telling you that? This would have
2 been a fairly major departure, because up to then it
3 was, as it were, in-house in Guinness & Mahon of which
4 he was an officer?

5 A. Well, my friendship with Traynor did not change. I
6 always had -- he looked after -- I think it's more a
7 group of people. You see, Liam McGonagle was
8 extraordinarily friendly with him, and I think that
9 because of that, I think that - I wouldn't say lingered
10 on, but there was this contact of whenever we were
11 doing anything, that it was Des Traynor, he felt that
12 he was involved, and that's whom I did the
13 things -- any business with. Now, what date exactly
14 that that transfer took place, I wouldn't be quite
15 sure.

16 309 Q. Well, if I could just refer you, for example, to page
17 2037. If you look at the right-hand side of the page
18 which relates to Foxtown Investments Limited. And it
19 appears to be an extract from the Companies Office in
20 the Channel Islands relating to Foxtown Investments
21 Limited. And if I can refer you in particular towards
22 the bottom of the page, the third last line, where it
23 says "Guinness & Mahon (Jersey) Trust Limited." And it
24 lists that company as holding 94 shares in Foxtown
25 Investments Limited.
26 .
27 Now, Guinness & Mahon (Jersey) Trust Limited, we know,
28 was a Guinness & Mahon company, and as far as we are
29 aware, never came into the ownership of any Credit
30 Swisse company. So it seems a reasonable inference

1 from that, subject, perhaps, to further checking and
2 confirmation, that whenever Credit Suisse took over the
3 Guinness & Mahon operation, it was not before the date
4 on that document, which is the 18th July of 1985. Do
5 you see what I am saying?

6 A. Yes.

7 310 Q. And the nearest so far that we have been able to
8 pinpoint it is approximately, and we can put it no
9 higher than that at this point, is 1987. So that
10 would mean that if it's correct, from about 1987 Mr.
11 Traynor was acting for you in a somewhat different
12 capacity to the extent that he was no longer acting as
13 an officer of Guinness & Mahon, and he was merely your
14 representative vis-a-vis Credit Suisse, the new
15 trustees, through whatever company they had, whether it
16 was College or Sovereign, of your trust, isn't that
17 right?

18 A. Yes, Sir.

19 311 Q. And is it the position that whenever Credit Suisse took
20 over, any correspondence which they may have sent was
21 sent not to you, but to Mr. Traynor?

22 A. Yes, any -- yes.

23 312 Q. And is it the position that you did not receive any
24 correspondence of any kind ever at any time from Credit
25 Suisse or from any trustee company which they owned?

26 A. I think that there may have been some overlaps when the
27 business of -- when the business of the sale of the
28 lands in Sandyford were taking place. I think at that
29 stage, there was a correspondence -- not
30 correspondence, there was contact through my lawyers --

1 313 Q. Yes?

2 A. -- with Credit Suisse.

3 314 Q. Well, we know that the sale of the lands in Sandyford
4 took place in or around 1990?

5 A. 1990.

6 315 Q. Which would have been at a point in time after the
7 takeover by Credit Suisse, isn't that right?

8 A. Yes, Sir.

9 316 Q. But that at that point in time, Credit Suisse would
10 have owned College Trustees Limited?

11 A. Yes, Sir.

12 317 Q. We also know that there was, in fact, correspondence
13 between College Trustees Limited and various parties,
14 including Mr. O'Shea of Kennedy McGonagle in connection
15 with the transaction, written by both Mr. Barry and
16 Mr. Naylor, who still, it appears, worked for College
17 Trustees and Sovereign Management Limited, isn't that
18 so?

19 A. Yes, Sir.

20 318 Q. We have had that correspondence already?

21 A. Yes.

22 319 Q. So it does appear, at a point in time when the Foxtown
23 one-third shareholding in Ardcarne was sold, Credit
24 Suisse was already the - or a company owned by Credit
25 Suisse was the trustees of your Trust. Did you ever
26 receive any documentation from Credit Suisse or any
27 subsidiary of Credit Suisse being the trustees of your
28 Trust at any stage since they took over?

29 A. Since?

30 320 Q. Did you ever receive any correspondence, any

1 documentation, any circulars, any accounts of the
2 Trust, any accounts of Foxtown or any kind of
3 documentation at all from Credit Suisse or any
4 subsidiary of Credit Suisse since the time they took
5 over this Trust?

6 A. Not that I am aware of. I think I mentioned this
7 morning to you, Sir, that when the Trust was handled by
8 Credit Suisse, but I must say, by the way, that until
9 Mr. Traynor died, he was involved because he was
10 involved also at the time of the sale of the lands at
11 Sandyford.

12 321 Q. In 1990?

13 A. 1990.

14 322 Q. Yes. That was the sale of lands owned by Foxtown?

15 A. Foxtown, yes.

16 323 Q. But we do know that at that point in time, when we know
17 that Credit Suisse at that stage had taken over the
18 Guinness & Mahon business, you were still calling the
19 shots and making the decisions. You remember the
20 conversation we had or, sorry, the correspondence we
21 had on Friday --

22 A. Yes.

23 324 Q. Where Mr. O'Shea wrote to them telling them about the
24 500,000 and the two 100,000s, and the time scale over
25 which this would be paid and so on. Do you remember
26 that letter?

27 A. Yeah.

28 325 Q. You, in effect, were telling the trustees what was
29 happening in relation to the sale of Foxtown, sorry, of
30 Foxtown's interest in Ardcar, isn't that right?

1 A. I was relaying and Michael O'Shea.

2 326 Q. Yes, and Mr. O'Shea was drafting all kinds of different
3 documents, some of which had to be executed by the
4 trustees for the purpose of the transaction, isn't that
5 right, documents which he himself drafted?

6 A. (Nods head.)

7 327 Q. That's what the letter said. I'll open it again if
8 you like --

9 A. I take what you say, Sir.

10 328 Q. So, even after the Trust was taken over or the Trust
11 business of the Amber Trust was taken over from
12 Guinness & Mahon by Credit Suisse, you were still the
13 person making the decisions and still the person giving
14 the instructions in relation to Foxtown Investments
15 Limited, isn't that so?

16 A. I was?

17 329 Q. Yes.

18 A. Well, I was -- particularly, on the interface of the
19 sale of the lands here.

20 330 Q. Yes.

21 A. Yes, the fact that the asset was here, yeah.

22 331 Q. And you have told us on Friday last week that that
23 situation, and that sort of relationship between
24 yourself and the trustees, pertained right up to the
25 very recent past when, for some reason, they suddenly
26 decided that they weren't going to give you the
27 documents that you were looking for?

28 A. Yes.

29 332 Q. Right up to the 8th or 9th September, isn't that right,
30 being the date that they communicated to you that they

1 had made a decision, a policy decision that they would
2 not give you these documents, isn't that right?

3 A. That's correct.

4 333 Q. And at no stage prior to that was there any indication
5 that they would in any sense disobey your instructions?

6 A. No, but there weren't many instructions going, Sir.

7 334 Q. Well, there would have been instructions with regard to
8 the disposition of the trust property from time to
9 time?

10 A. Well, regarding the investments held by the
11 trustees -- Credit Suisse had the discretion, it was
12 full authorisation to deal with the investments.

13 335 Q. Yes. And hopefully deal with them professionally?

14 A. Exactly.

15 336 Q. But when it came to spending them or to distributing
16 them or paying them out to the beneficiaries, whether
17 it be yourself or your children, you would inform them
18 what you wanted them to do and they would do it?

19 A. They were -- if there was a request on behalf of the
20 family or otherwise, it was made to them, and yes, they
21 did, Sir, they did.

22 337 Q. But everything seems to have changed on the 8th or 9th
23 September, when they informed you on the telephone
24 conversation that they were not going to comply with
25 your instructions or request for certain information
26 and documents, isn't that right?

27 A. That is correct.

28 338 Q. Now, so far as the documentation which Mr. Traynor may
29 have had, and I fully appreciate that you are going to
30 have to get further information from Mr. O'Shea about

1 it, but I take it you would have been aware throughout
2 this entire period, from the inception of this Trust,
3 that Mr. Traynor would have kept files in relation to
4 your dealings with, originally Guinness & Mahon
5 (Jersey) Trust Limited and subsequently College
6 Trustees Limited and subsequently again Sovereign
7 Trustees Limited?

8 A. I don't know what files he kept, Sir. But he was -- I
9 don't know.

10 339 Q. Did you know that Mr. Traynor was, shall we say,
11 interfacing with these trustees, vis-a-vis other trusts
12 for other people? You were not the only one that had
13 a trust -- you were not the only client of Mr. Traynor
14 who had a trust with Guinness & Mahon (Jersey) Trust
15 Limited or its successors in title, isn't that right?

16 A. No, I don't think so.

17 340 Q. And I take it you would be aware that Mr. Traynor
18 wasn't carrying all of this information about your
19 trust and about the trusts of his other clients around
20 in his head; that he must have had records and files?

21 A. Yeah, I think that -- I think that Mr. Traynor
22 certainly had eased off on all of what he was doing
23 with a lot of people. I think he wound down quite a
24 lot.

25 341 Q. Yes?

26 A. And he -- I think there was -- just because I think of
27 my connection through Liam McGonagle in particular,
28 that he stayed on of what we knew, because we did have
29 some business together years ago, that he did --

30 342 Q. How would you know at any particular point in time what

1 the Trust fund was worth?

2 A. At a particular time, I could make a call to Credit
3 Suisse.

4 343 Q. Yes, and what would they tell you?

5 A. Yes, they'd give me whatever information they had at
6 the time.

7 344 Q. Yes. Whatever information you sought?

8 A. Yes, Sir.

9 345 Q. And did they ever send you a statement of account in
10 relation to the Trust fund?

11 A. No, you asked me that, Sir. No, they didn't send me.

12 346 Q. Ever?

13 A. Well, they may have many, many, many years ago --

14 347 Q. Well, do you recall ever having received a statement of
15 account in relation to the Trust fund from any trustee
16 of this Trust?

17 A. I recollect seeing them, that they did give -- when
18 they called to see me, they would do a run down through
19 what the situation was, and they did that either
20 annually or maybe once ever six months they would call
21 to Dublin.

22 348 Q. And what?

23 A. And they'd call and see me.

24 349 Q. At your office?

25 A. Yes, Sir.

26 350 Q. Are you talking about Mr. Barry and Mr. Naylor?

27 A. Mr. Ducqueman.

28 351 Q. Well, when did he come into the picture?

29 A. Oh, he came in -- well, Mr. Barry retired some years
30 ago.

1 352 Q. Yes.

2 A. And Ducqueman came in quite a few years ago.

3 353 Q. Would that have been around 1987 when Credit Suisse

4 took over?

5 A. No, I don't think --

6 354 Q. Perhaps it wasn't, because we do know that there is

7 correspondence from Mr. Barry/Naylor around 1990?

8 A. No, no, I think it's in more recent times.

9 355 Q. So they would come over here and do what? Call to

10 your office?

11 A. They would call to my office and they would give a

12 brief rundown -- they wouldn't be that much involved

13 anyway, but they would call in and just give a quick

14 synopsis of what the situation was.

15 356 Q. And would they give you a sheet of paper?

16 A. No, Sir, they wouldn't give me a sheet of paper. They

17 showed it to me and they kept it.

18 357 Q. Why?

19 A. I don't know, Sir.

20 358 Q. Were you not tempted to take a photocopy, since it was

21 your own information or information about your own

22 Trust?

23 A. No, once -- No, Sir.

24 359 Q. Well, was there some secret about it, or was there some

25 surreptitious thing about it that you didn't see fit to

26 take a photocopy?

27 A. It was something that was dealt with through a trust.

28 It wasn't for anybody's information except for mine.

29 360 Q. Yes, but there is nothing wrong with a trust. Why

30 wouldn't they just give you a photocopy of the annual

1 account or biannual account, whatever it was that they
2 were showing you?

3 A. Well, they didn't.

4 361 Q. Why?

5 A. I don't know why. Sorry, go on --

6 362 Q. Did they ever send it to you?

7 A. No.

8 363 Q. Did they ever send it to Mr. Traynor?

9 A. They may have sent it to Mr. Traynor.

10 364 Q. Well, was there anybody kind of keeping track of this
11 situation over in Jersey?

12 A. What do you mean, Sir?

13 365 Q. Well, anybody monitoring the progress of the
14 investment, anybody looking -- taking the accounts up
15 for this year and comparing them to the accounts of
16 last year to see how it performed?

17 A. The trustees, Sir, and their obligation -- the
18 trustees, and that was their job, to look after the
19 matters, and they would report occasionally. They had
20 full discretion to do what they wished to do.

21 366 Q. Do you have any knowledge of these trustees ever having
22 sent written or printed accounts to anybody ever in
23 relation to this Trust?

24 A. Not that I am aware of, Sir.

25 367 Q. Well, do you not think that that's a most extraordinary
26 situation?

27 A. Well, it is what it is, Sir. That is the situation and
28 that's the way they carry out their business.

29 368 Q. Well, I have to suggest to you, Mr. Finnegan, that it
30 isn't, that no reputable trust company carrying on the

1 most important financial business of a trust and the
2 management of substantial funds on behalf of an
3 individual would not, on a regular basis, correspond
4 with the beneficiaries of the trust, inform them in
5 writing of what they were doing in relation to the
6 investments of the property of the trust, inform them
7 of the annual accounts of the trust, and send them
8 copies of the annual account of the trust. I suggest
9 to you that that is virtually the invariable practice
10 of all financial service providers, including trust
11 financial service providers, and that it is just
12 incredible to suggest, as you appear to be suggesting,
13 that you never were in receipt of one set of accounts
14 of this Trust to the day it was set up to the present
15 day.

16 A. As I said to you earlier, that the affairs of the Trust
17 were discussed with Traynor, who was in charge of them.

18 And so I am -- I would expect that he did do that.

19 369 Q. We know that at one stage it appears that Foxtown
20 Investments Limited lent ú800,000 to the Trust. Are
21 there any documents about that?

22 A. No, I haven't, Sir.

23 370 Q. Well, do you remember it?

24 A. I don't specifically remember what transaction that
25 was, Sir.

26 371 Q. You have no recollection of Amber Trust borrowing
27 ú800,000 off Foxtown Investments Limited?

28 A. Well, now, when we talk about this sort of thing, Sir,
29 this was something that was done by the trustees, and
30 if it was in the proper management of the fund, that

1 would be done, but I couldn't tell you when that
2 happened.

3 372 Q. And do you suggest it would be done without your
4 knowledge?

5 A. When -- you have me now. When you mention that, I
6 think -- was that just a question of the management
7 between the parties?

8 373 Q. Well, it was the subject of correspondence with Mr.
9 McGonagle, between him and Sovereign Management. If we
10 could just look at page 1383. It's a letter dated the
11 30th March, 1990, and it's from, as you can see,
12 Sovereign Management Limited, signed by Mr. Naylor, and
13 it's to Mr. Liam D McGonagle of Kennedy McGonagle, and
14 it's "Re: Foxtown Investments Limited" and it says:

15 .
16 "Dear Liam, I refer to our recent telephone
17 conversation regarding the above company and set out
18 below the assets and liabilities of the company as at
19 the 31st December, 1989, as requested.

20 .
21 Assets. Loan due from the Amber Trust, ú810,527."

22 .
23 So it appears that the Amber Trust was indebted to
24 Foxtown Investments Limited in the sum of ú810,527.

25 Do you see that?

26 A. Yes, Sir.

27 374 Q. Well, did you not know about that?

28 A. I didn't know about that, but I think I would
29 have -- now that you flag it up here, Sir, I think that
30 that's just part of the general business of the Trust.

1 375 Q. When was that, Sir?

2 376 Q. 3rd March, 1990.

3 A. Well, Mr. McGonagle -- you see, Mr. McGonagle
4 was -- this was his sort of -- he was an old friend and
5 lawyer, and he -- you can see the way he was taking
6 things up on my behalf or on behalf of Foxtown,
7 whatever -- he would have done this sort of thing. I
8 don't know what effect this has, actually, you know, on
9 the overall situation. Liam seemingly was doing it.

10 377 Q. Well, obviously a transaction of that nature would
11 generate some kind of documentation?

12 A. Well, Sir, you have this documentation. Anything that
13 was generated was generated between McGonagle and the
14 Trust, or Naylor - was it Naylor, who was it?

15 378 Q. Mr. Naylor of Sovereign Management Limited. So you are
16 saying that you knew nothing about this loan, is that
17 right?

18 A. Sir, I don't want to be emphatic about that. I don't
19 recollect the situation. I am not -- it just doesn't
20 come clean to me like that. A while ago, whether it
21 was on the general looking after the affairs of the
22 company --

23 379 Q. We know that more money went into this Trust after this
24 particular transaction, isn't that right? Because we
25 know that the first tranche of ú500,000 for the sale of
26 Foxtown's interest in Ardcarne was paid in the end of
27 that year, I think in December, and the following year
28 the second tranche, which was ú100,000, came in as
29 well, isn't that so?

30 A. Mm-hmm.

1 380 Q. We know how the ú500,000 was paid. We had it this
2 morning about the arrangements that were made about
3 government stocks purchased through ICC and so on.
4 Was there any documentation generated as between
5 yourself and the Trust in relation to those
6 transactions?

7 A. No, Sir.

8 381 Q. The ú500,000 that was paid was directed to be paid to
9 an account in the name of Guinness & Mahon in Princess
10 Street in London, and to be transmitted to an account
11 in the name of Ansbacher, which may or may not be
12 related to Ansbacher Cayman Limited, formerly known as
13 Guinness & Mahon Cayman Limited. Did that money go
14 into Foxtown or did it not?

15 A. It did, Sir.

16 382 Q. It did?

17 A. Yes, Sir.

18 383 Q. Does that mean that, therefore, Foxtown had an account,
19 an Ansbacher Account in London or in Guernsey or
20 elsewhere?

21 A. No. That was transmitted, apparently -- my lawyers
22 could tell you more about that. They transmitted it
23 on the instructions, I think, of Traynor to go
24 through -- it went through via those accounts.

25 384 Q. I see. It was transmitted through those and ended up
26 in the Foxtown account, is that right?

27 A. Yes, Sir.

28 385 Q. The name of the company was -- the letter is number
29 1487. If we could just have that, please. It's
30 actually in February of 1991. And it's a letter from

1 Mr. O'Shea of Kennedy McGonagle to Mr. Hardy, ICC Fund
2 Management Limited, and it's his instructions to
3 Mr. Hardy in connection with this money.

4 .
5 "Would you please arrange to transfer the amount to
6 credit in the amount of Foxtown with ICC duly converted
7 sterling."

8 .
9 This is, in other words, the proceeds of sale of the
10 government stocks, isn't that right?

11 A. Yes, Sir.

12 386 Q. And it says:

13 .
14 "Duly converted to sterling to the Royal Bank of
15 Scotland, 62/63 Threadneedle Street, London, for credit
16 of Henry Ansbacher and Company Limited, account number
17 11215626 for the account of Ansbacher Limited, account
18 number 190017-101.

19 .
20 The funds should be transferred as speedily as
21 possible.

22 .
23 Would you please confirm compliance with these
24 instructions in due course.

25 .
26 Yours sincerely, Michael O'Shea."

27 .
28 Now, just to trace the movement of this money, a cheque
29 came, as I understand it, correct me if I am wrong,
30 from Mr. Caldwell, is that right, or at least

1 Mr. Caldwell arranged for the purchase of ú500,000
2 worth of government stocks in ICC in the name of
3 Foxtown Investments Limited?

4 A. Right --

5 387 Q. Those stocks were immediately cashed, turned into Irish
6 punt cash?

7 A. That was all handled by Michael O'Shea.

8 388 Q. Yes. That money then was, under this instruction,
9 converted to sterling and sent to the Royal Bank of
10 Scotland, in Threadneedle Street in London, isn't that
11 right?

12 A. So I understand and understood later, Sir.

13 389 Q. And it was "for credit to the account of Henry
14 Ansbacher and Company Limited" with an account number,
15 for the account of another Ansbacher Account Limited
16 number. What does that mean?

17 A. I have no idea.

18 390 Q. But is it your belief that that money was subsequently
19 transferred from either or both of these accounts to an
20 account in the name of Foxtown Limited?

21 A. Yes, Sir.

22 391 Q. In Guernsey?

23 A. In Guernsey.

24 392 Q. We know that Foxtown Investments Limited did have an
25 account in Guernsey in the branch of Guinness & Mahon
26 (Guernsey) Limited, isn't that right?

27 A. I can't say, Sir.

28 393 Q. Well, is that the account into which the ú500,000 went?

29 A. This ú500,000 -- offhand, I can't say to you
30 which -- it went to --

1 394 Q. Offhand, are you in a position to say, and you may not
2 be, does it show up on any of the accounts that we have
3 been provided, any of the 28 sheets that we have been
4 given?

5 A. I would say it probably does, Sir.

6 395 Q. I don't think it does.

7 .

8 MR. HUSSEY: I am sorry, Sir, those accounts only go up
9 to 1979.

10 .

11 396 Q. MR. HANRATTY: Right, so it couldn't have. And you
12 don't have, you say, the accounts which would show this
13 money coming into Foxtown's account?

14 A. No. No, Sir, but I was informed by Michael O'Shea that
15 it did go into Foxtown.

16 397 Q. Would you have received any letters of verification
17 from either Royal Bank of Scotland or Henry Ansbacher
18 and Company Limited or Ansbacher Limited that this
19 transaction was, in fact, effected or from Guinness and
20 Mahon (Guernsey) Limited, that they had, in fact,
21 received this ú500,000 through this route?

22 A. First of all, Sir, I did not know that McGonigals were
23 transmitting the money through the source that it went
24 through. I didn't know that until it happened. That
25 was done by Michael O'Shea, and I think it was done, I
26 think, maybe it was done in conjunction with Mr.
27 Traynor.

28 398 Q. Well, presumably it was done on your instructions?

29 A. Well, put it this way: That the deal was done, and I
30 think this is where, when advisers are dealing with a

1 situation and these were the advisers. Well, it
2 went -- I am informed by Michael O'Shea it arrived in
3 Foxtown.

4 399 Q. Where?

5 A. In Guernsey, but I don't know -- I don't know which --

6 400 Q. How many accounts did Foxtown have?

7 A. I don't know, Sir.

8 401 Q. You don't know how many accounts it had?

9 A. No.

10 402 Q. Because it does appear that Foxtown, at one time or
11 another, held a considerable proportion of the total
12 Trust fund, of the capital of this Trust, isn't that
13 so?

14 A. Mm-hmm.

15 403 Q. I mean, at one stage it lent ú810,00, as we have seen
16 earlier to the Trust, so it had at some point in time
17 ú810,00 which it lent to the Trust, and which the Trust
18 then recorded itself as being indebted to Foxtown
19 Investments Limited for. Now, do you know whether
20 that money was held by Foxtown at the time it was
21 handed over to the Trust?

22 A. No, I don't, Sir.

23 404 Q. When the Trust made this borrowing from Foxtown,
24 obviously the effect of it would have been to reduce
25 the assets of Foxtown, or at least the book balances of
26 Foxtown by that amount, and to increase the book
27 balances of the Trust by that amount, and it would have
28 had a significant and dramatic effect on the accounts
29 of the Trust, isn't that right?

30 A. Yes, Sir. I don't know if --

1 405 Q. Maybe, in fairness, it may be that it was essentially a
2 bookkeeping exercise, or maybe it wasn't, we just don't
3 know. But from your point of view, how did your
4 advisers explain to you that the, shall we say,
5 assets -- sorry, the liabilities of the Amber Trust had
6 increased by ú800,000, in that it had incurred an
7 indebtedness to Foxtown, a company which it used as a
8 vehicle for your investments?

9 A. I don't recollect, Sir. Really, I don't understand
10 how it was done.

11 406 Q. And you don't have any documents at all about this
12 transaction?

13 A. No, I haven't.

14 407 Q. Do you have any documents at all about the ú500,000
15 transaction and the disposition of the proceeds of sale
16 of the Foxtown shares?

17 A. No, but I think that Michael O'Shea got acknowledgment
18 of that.

19 408 Q. Yes. We know that Guinness and Mahon (Guernsey)
20 Limited was a bank account in which Foxtown Investments
21 Limited had at least one account. We know that from
22 documents that we have seen. We know from documents,
23 for example, sent by Mr. Wheeler to that bank, when he
24 was sending the various sums of money over, he sent
25 them to Guinness and Mahon (Guernsey) Limited. And we
26 have seen the letters, we'll see them again in due
27 course. But that's just a bank account and, generally
28 speaking, while one can see the necessity for a trust
29 or a company owned by a trust having a bank account,
30 through which it effects the various transactions that

1 it is engaging in, in the end of the day, the duty on
2 trustees is to invest the capital of the Trust, isn't
3 that so?

4 A. Yes, Sir.

5 409 Q. And to earn as high a yield as possible, presumably, on
6 that investment. Now, what investment or investments
7 did this Trust invest this capital in?

8 A. I can't say, Sir.

9 410 Q. Because we are in a worse position, vis-a-vis the
10 investments of this Trust, than we are even in relation
11 to the Foxtown bank accounts, because we haven't seen
12 any document at all in relation to the investment of
13 the Trust fund, including all of the monies that were
14 paid over to the Brennan and McGowan. Do you have no
15 idea at all what investments were used for investing
16 your money?

17 A. Well, there are equities that were held by the Trust.

18 411 Q. Yes. Did Guinness & Mahon, for example, have a number
19 of capital funds or investment funds, as it appears
20 other banks did at this time, I am talking now 1978,
21 say, to 1984, in Jersey and Guernsey, into which your
22 monies might have been invested, in other words,
23 Guinness & Mahon investments?

24 A. I don't know, Sir.

25 412 Q. You don't know?

26 A. I don't know.

27 413 Q. And did Mr. Traynor not tell you?

28 A. I don't -- I don't recollect having discussions like
29 that with him, Sir.

30 414 Q. You know that in the normal course of events, people

1 engaged in the stewardship of other people's money
2 produce a mixed or balanced portfolio in which they
3 invest in a range of investments, ranging from high
4 yield investments to low yield safer investments,
5 including equities, government stocks, property,
6 property funds, equity funds and all that sort of
7 thing, isn't that right?

8 A. Yes, Sir.

9 415 Q. What sort of a range of investments were your monies
10 invested in?

11 A. Well, as far as I know, it was mainly equities, Sir,.

12 416 Q. Mainly equities?

13 A. Mm-hmm.

14 417 Q. So that insofar as you were being informed about the
15 performance of your investments, you would have to be
16 told about the constituent elements of that
17 performance, namely, equities which did extremely well
18 and equities which didn't do so well and equities maybe
19 you should get out of?

20 A. I think maybe the fund had discretion to --

21 418 Q. Yes, a full power of investment as trustees would
22 normally have?

23 A. Mm-hmm.

24 419 Q. And did they keep you informed of what they were doing
25 with your investments?

26 A. No -- well, as I say, Sir, the position is that they
27 did like I said to you earlier on, inform me with
28 coming along and paying a visit and letting me know
29 what was going on in principle.

30 420 Q. Did you ever get a breakdown of the equities into which

1 your monies had been invested?

2 A. I would, Sir, yes, at some --

3 421 Q. And was this done verbally, or did you get it in
4 writing?

5 A. There wouldn't have been an awful lot of change -- I
6 would have known it, yes, Sir, there wouldn't have been
7 a ferocious list.

8 422 Q. And when these gentlemen would arrive in your office
9 and tell you about this, would you commit all of this
10 information to memory?

11 A. I just took it on board, Sir.

12 423 Q. And you wouldn't have been interested in maybe getting
13 a copy so that you could study it at your leisure and
14 inform yourself in some way as to the relevant
15 performance of the equities in which your money had
16 been invested?

17 A. But I would -- I'd have known the main stocks that were
18 involved, Sir.

19 424 Q. Yeah. But is the answer to my question that they
20 never gave you a breakdown in writing of the equities
21 into which your monies had been invested?

22 A. I think that they may have some time ago, but there
23 wasn't an awful lot of buying and selling in it, Sir.

24 425 Q. Well, when you say they may have some time ago, does
25 that mean that they did?

26 A. No. I don't recollect when I got anything from them.
27 They did come and see me. And they did explain where,
28 what, give me a rundown on it, and that's what -- the
29 information I got from them.

30 426 Q. You don't know when, but do you know whether? Did

1 they in fact ever give you a breakdown in writing of
2 the investments in which your money had been invested?

3 A. As far as I recollect, no. I certainly got them -- I
4 got them verbally.

5 427 Q. Right. So you have no recollection at all ever of
6 having received a breakdown of the investments into
7 which your money was invested, is that right?

8 A. I don't -- I don't recollect when we might have got
9 that, Sir.

10 428 Q. No. No. That wasn't the question, Mr. Finnegan.

11 Mr. Finnegan, the question was: Do you have a
12 recollection of ever having received a breakdown in
13 writing of the investments into which your money had
14 been invested?

15 A. I think way, way back, I think we did get something.

16 429 Q. Does that mean that you do have a recollection?

17 A. I don't have, no. We may have.

18 430 Q. Well, we seem to be going around in a circle now. I

19 am really only talking about recollection now. I am
20 not talking about anything else.

21 A. OK.

22 431 Q. Do you have a recollection?

23 A. No, I haven't --

24 432 Q. Of ever receiving such a thing?

25 A. No, I haven't a recollection of getting it. I have a
26 recollection, though, of the manager telling me what we
27 were involved in.

28 433 Q. Yes, you have told us that, but I am just talking about

29 something in writing now. Because, you see, we have
30 been at this for a good part of today, Mr. Finnegan,

1 and over the 28 years or so that this Trust had been in
2 existence, the only document we still have is the Trust
3 document itself?

4 A. Well, I don't know what the reason behind this was, but
5 Mr. Traynor said that he would look after all of this,
6 and as it was an offshore fund, all the documents would
7 be kept in Guernsey. And he did look after, up to the
8 time of his death, he did look after my affairs.

9 434 Q. But the problem, you see, is that apart from this Trust
10 document, which we understand resided in a file in the
11 offices of Kennedy McGonagle Ballagh, you do not have
12 one sheet of paper --

13 A. Actually, Sir, the one sheet of paper you mention, we
14 did have, apparently, that Trust document.

15 435 Q. Yes, I mentioned that. Apart from that, apart from the
16 Trust document, or indeed, as it now transpires, the
17 two copies of the Trust document were effectively
18 different documents, or different copies of the same
19 document. You know the document that was produced this
20 morning?

21 A. Yeah.

22 436 Q. That document, that is not the same document which has
23 been produced previously to the Tribunal. It is a
24 copy of the same Trust, but it is a different document?
25 Do you understand what I am saying? In other words,
26 there was two of these in your solicitor's office, one
27 with "Exhibit No. 11" written on it, one without
28 "Exhibit No. 11" written on it.

29 .

30 MR. HUSSEY: May I interrupt. Before you answer that,

1 Mr. Finnegan.
2 .
3 I had understood that -- I had explained this yesterday
4 to Mr. Hanratty in open court. The document that is
5 now presented was a document that resided, in fact, in
6 the safe of Finnegan Menton, which was produced some
7 years ago to Mr. O'Shea, which Mr. O'Shea copied and
8 exhibited as number 11 to one of the -- I think to the
9 inspector, that copy that I think was returned from the
10 inspector and retained in Mr. O'Shea's possession.
11 It's the -- however, it's the same document, except
12 that one is simply a copy of the other with Exhibit 11
13 for the inspector, but the origin of this document
14 has -- was that this document was in the safe of
15 Finnegan Menton. That's where it came from, as I say,
16 some years ago.
17 .
18 Mr. O'Shea took a copy of it, called it Exhibit 11 and
19 gave it into the inspector. That is the origin of
20 this document. It's exactly the same document, and I
21 had understood that that was clarified yesterday when
22 we actually handed in this, the second copy of the
23 document without the legend "Exhibit 11". There is no
24 mystery about this document.
25 .
26 MR. HANRATTY: I am not suggesting there is a mystery.
27 I am dealing fundamentally with issues relating to
28 documents which have been, or have not been discovered.
29 My point about the document which was produced this
30 morning is that it is, while it is undoubtedly a copy

1 of the same Trust that has already been produced, it is
2 physically a different document. And as My Friend well
3 knows, when you are making a proper Affidavit of
4 Discovery, if you have 20 different drafts of the same
5 document, or 10 different copies of the same document,
6 you itemise each one of them.

7 .
8 The point I am simply making is that the original
9 document, which up to this morning, when this large
10 document was produced, that was discovered to this
11 Tribunal either by Mr. Finnegan or his solicitor, is
12 the one with "Exhibit 11" written on it. The one
13 without "Exhibit 11" written on it has never previously
14 been discovered to the Tribunal. That's the only point
15 I was making.

16 .
17 437 Q. MR. HANRATTY: Now, in relation to the Trust document,
18 Mr. Finnegan, we have been told in a letter this
19 morning by your solicitor that, in fact, this
20 deed -- this is the Trust deed -- was furnished by
21 Kennedy McGonagle Ballagh to the Tribunal on your
22 behalf, and on the basis that they had received that
23 document from you, is that right --

24 A. Say that again, Sir.

25 438 Q. Kennedy McGonagle Ballagh have told us in a letter this
26 morning that they got this document from you?

27 A. Yes.

28 439 Q. So where did you have it?

29 A. That's what's my counsel just said, that we had that
30 document which we gave to Michael O'Shea.

1 440 Q. We is "who"?

2 A. Well, I mean, I had it -- it was in my office.

3 441 Q. I see. And whereabouts in your office did you have
4 it?

5 A. This was in the safe.

6 442 Q. Yes. And approximately when did you give it to
7 Messrs. Kennedy McGonagle and Ballagh?

8 A. I would have to refer to -- I don't know when. I
9 didn't do it myself, Sir.

10 443 Q. Presumably, it was in the context of the Tribunal's
11 request for documents?

12 A. Yes, Sir. Was it? Sorry, I am not -- I am not quite
13 sure when it was given, but we -- Kennedy McGonagle
14 -- I'll have to qualify that for you, Sir. We had it,
15 we gave it to Kennedy McGonagle.

16 444 Q. And you don't know when. You were saying something,
17 but Mr. Hussey seems to be disagreeing with you.

18 .

19 MR. HUSSEY: I am sorry, I withdraw --

20 A. I don't know when it was, but I can certainly find out.

21 I would have thought it was the time you requested it.

22 .

23 445 Q. MR. HANRATTY: All right. It doesn't matter. Apart
24 from that document, that single, sole document, and
25 incomplete set of bank accounts from Foxtown
26 Investments Limited for a limited period, you have not
27 produced to this Tribunal one sheet of paper in
28 relation to your family settlement, which has been in
29 existence for about 28 years now, not a letter from the
30 trustees, not a set of accounts about -- and I mean

1 company accounts about Foxtown, not a set of accounts
2 about the performance of the Trust, not a single
3 document about the investments of the Trust, nothing
4 about the various changes of trustees that have taken
5 place in this Trust. Not a single communication of
6 any kind whatsoever have you produced to this Tribunal.
7 And having told us that Mr. Traynor was the person who
8 was in receipt of such documents as the trustees might
9 send, you have now told us that your solicitor has been
10 told that Mr. Traynor had no documents either.

11 A. Yes, Sir, I was told that at lunch time, just quickly
12 before I came up here.

13 446 Q. Well, you are going to get further instructions on
14 that, and I could I suggest that perhaps we just park
15 that particular issue until such time as you have had
16 an opportunity of discussing it with Mr. O'Shea, and we
17 will revisit it tomorrow morning.

18 A. Yes, Sir.

19 447 Q. Now, we'll move on then to another subject, and that is
20 your relations and your dealings with Mr. Brennan and
21 Mr. McGowan. And can I ask you, in the first
22 instance, to inform the Tribunal when did you first
23 engage in any form of commercial transaction with
24 Messrs. Brennan and McGowan?

25 A. Well, first of all, I came across Brennan and McGowan a
26 long, long time ago when -- they were in the
27 market -- I met Joe McGowan first many, many, many
28 years ago.

29 448 Q. Can you say approximately when?

30 A. God -- I think it was somewhere roundabout, certainly

1 roundabout the seventies or maybe before -- in or

2 around that time.

3 449 Q. Yes?

4 A. And they were, at the time, very big builders, the late
5 sixties/seventies, and we would have -- they would have
6 been in the marketplace buying and selling land, and it
7 would have been in or around the late sixties, I think,
8 I came in touch with Mr. Joe McGowan.

9 450 Q. Yes?

10 A. And the -- so we would have had -- we had some sales of
11 land or purchases of land with them as an agent and --

12 451 Q. When would the first of those have taken place?

13 A. I think somewhere in around, going from recollection,
14 Sir, somewhere in around about the very early seventies
15 or the late sixties.

16 452 Q. Yes. And when you say "we", are you referring to the
17 auctioneering firm of Finnegan Menton?

18 A. Yes, Sir.

19 453 Q. And you mention sales and purchases. Were you
20 referring to purchases or were you also intending to
21 refer to sales?

22 A. I think then there was probably more, I think it was
23 probably more purchases, Sir.

24 454 Q. Yes. They would have been as house builders, looking
25 for various lands to build houses on?

26 A. Yes, Sir.

27 455 Q. And is it the position, then, that in the late sixties,
28 early seventies, Finnegan Menton acted for these
29 individuals or their companies in the context of
30 purchasing lands for building?

1 A. Or sold it to them, or either we had lands -- yes, Sir,
2 I think we -- probably either. At the time there would
3 have been a mixture of either advising or selling them
4 land.

5 456 Q. Yes. And were you their standing auctioneer at that
6 time, or were they using others as well?

7 A. They would have been using others as well.

8 457 Q. And in terms of selling their houses, did you act for
9 them in the selling of the houses that they built on
10 their various properties that they bought, or was
11 somebody else doing that?

12 A. Somebody else was doing that in the main.

13 458 Q. Yes. And from the late sixties/early seventies, would
14 you, therefore, or your firm, have been, on a regular
15 basis, engaged in the purchase of land for Brennan and
16 McGowan or companies which they owned or controlled ?

17 A. I suppose on a regular basis, we -- I think there would
18 have been a lot of discussions about land. I don't
19 know quite how many transactions we would have had with
20 them.

21 459 Q. Yes. These would have been transactions in which
22 Finnegan Menton would have been providing services of
23 the kind provided by auctioneers to their clients on a
24 fee-paying basis?

25 A. Yes, Sir.

26 460 Q. And in respect of any particular transaction, Finnegan
27 Menton would send out an invoice to Messrs. Brennan and
28 McGowan for such services as they provided, presumably,
29 at the conclusion of the transaction?

30 A. Whatever that would be.

1 461 Q. Yes. Well, if you -- or if Finnegan Menton were
2 acting for them in the purchase of a particular
3 property, and the purchase of the property was
4 successfully negotiated on their behalf, some sort of a
5 skill fee, presumably, would have been charged and
6 invoiced?

7 A. Yes, Sir.

8 462 Q. Is that the way it worked, or was there some different
9 arrangement?

10 A. No, I think that's -- I think that there was sometimes
11 help given about, and they were coming in and saying,
12 "What would you think of this particular piece of land"
13 or whatever, whilst we mightn't necessarily have been
14 the agent who offered it to them, but they
15 would -- there was a sort of a general sort of
16 situation we had with them -- from knowing Joe McGowan,
17 he was a sort of a -- there would have been a lot of
18 sort of that casual discussion about property.

19 463 Q. Yes, undoubtedly so, but in the case that you just
20 mentioned, for example, where you offered land to them,
21 you would be doing that, presumably, in your capacity
22 as auctioneer for the vendor?

23 A. No, Sir. What you can come across, actually, although
24 another agent could have the property for sale, that
25 agents would broke land, or mention it to them, to a
26 builder, and very often what you did say, what has
27 happened in other cases, where people would get the
28 sale of -- sometimes in anticipation of getting the
29 sale of the properties on the land.

30 464 Q. Yes. In other words, you wouldn't be charging a fee?

1 A. That's right, Sir, sometimes.

2 465 Q. Would there be occasions when they'd come into you and

3 say, "Look, do you have any interesting area that we

4 might be interested in building on?"

5 A. I think, yes, I think they were known -- first of all,

6 Brennan and McGowan around that time were very big

7 developers, very big house builders, and they would

8 have been one of the few, if you like, big buyers at

9 the time. They were -- you see, there weren't that

10 many big builders around at that particular time, and

11 they would be one of the leaders of the pack at the

12 time.

13 466 Q. Yes. But insofar as services were provided by

14 Finnegan Menton to Brennan and McGowan in their

15 capacity as auctioneers, for, say, the purpose of

16 negotiating the purchase of a property, an auctioneer's

17 fee would be charged for that, isn't that so?

18 A. Yes, if we put it to them and done some work on it, and

19 it's, "Maybe we'll pay you the next time, Sir," or

20 something, yes, but in the normal course of events they

21 would owe us.

22 467 Q. They would be sent an invoice in the normal way and,

23 presumably, would pay it in the normal way. Would

24 Finnegan Menton have provided valuations to Brennan and

25 McGowan from time to time for which they would charge a

26 fee?

27 A. I am sure she did, I can't remember what, but I am sure

28 that would be the general course of one's business.

29 468 Q. And would they, for example, have advised them on

30 planning matters?

1 A. I don't think -- I think that apart from -- if we were
2 doing a valuation, Sir, we would have to carry out our
3 own inquiries regarding planning and the -- if we were
4 valuing, what we would have to do is, first of all, we
5 would have to see what sort of land we were valuing,
6 whether it was agricultural land, was it agricultural
7 land with hope, or was it development land or whatever.
8 And in doing that, very often lands would be either
9 zoned, and then whether -- then one would have to
10 check, and our firm would have to check, to the best of
11 their ability, as to what services were available. And
12 in doing that, one would have to, before you could
13 say -- well, although you have zoned land, it may be
14 that that land couldn't be developed for a particular
15 length of time, because there wouldn't be drainage, and
16 in those days, that was one of the biggest things, it
17 was lack of services.

18 469 Q. The normal kind of things that an auctioneer has to
19 take into account when he was providing a valuation?

20 A. Yes, Sir.

21 470 Q. And a valuation would be given and a fee would be
22 charged and the invoice sent out and the fee would be
23 paid?

24 A. Yes, Sir.

25 471 Q. And the client has to decide whether or not he is going
26 to proceed further with the matter and so on. When
27 was the first time that you became involved in a
28 commercial transaction with Brennan and McGowan either
29 as a partner or on the basis of some kind of joint
30 venture?

1 A. From my recollection, it was around about '72, Sir.

2 472 Q. And what have the nature of that transaction in general
3 terms?

4 A. The nature of that transaction, to the best of my
5 recollection, was after the lands out at
6 Monkstown/Mount Town, where we had -- where we sold to
7 Brennan and McGowan, and sometime later I was asked to
8 get involved in -- we sold -- Brennan and McGowan
9 bought it.

10 473 Q. From?

11 A. Well, there was some land which we were instructed in
12 Monkstown/Mount Town belonged to the nuns.

13 474 Q. You are not talking about Carrickbrennan, I take it?

14 A. Yes, Sir.

15 475 Q. But that didn't happen in 1972.

16 A. I thought it was around '72, Sir.

17 476 Q. No, no, it was much later than that.

18 A. Sorry, what am I talking about? Sorry, when you were
19 talking about '72 --

20 477 Q. No, you had indicated to us that it was in the late
21 sixties/early seventies that you got to know and
22 started to become involved in commercial dealings with
23 Brennan and McGowan and, in particular, Finnegan Menton
24 in his capacity as auctioneer providing professional
25 services to them for which they were charged. As I
26 understood your evidence, that on a regular basis, the
27 periodicity of which we haven't quite established,
28 Finnegan Menton would have provided these kind of
29 auctioneering services to Brennan and McGowan from time
30 to time on a fee-paying basis?

1 A. Mm-hmm.

2 478 Q. And I take it that -- did that go on throughout the
3 seventies?

4 A. Yes, Sir. It went on -- yes, through the seventies.

5 479 Q. Yes. I then asked you what was the first commercial
6 transaction that you became involved with Brennan and
7 McGowan with in the form of either a partnership or
8 some kind of a joint venture agreement, and you
9 identified a Mount Town transaction, which I now
10 understand you to mean the Carrickbrennan deal, the
11 Sacred Heart Nuns in Monkstown, albeit you incorrectly
12 identified it as a 1972 transaction.

13 A. Sorry.

14 480 Q. This was about 1976, I think. Is that so?

15 .

16 CHAIRMAN: Before you go on to that, would you like to
17 take a five-minute break?

18 .

19 MR. HANRATTY: Yes, Sir.

20 .

21 THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND

22 RESUMED AS FOLLOWS:

23 .

24 481 Q. MR. HANRATTY: You were just about to tell us, Mr.
25 Finnegan, that the first commercial transaction in
26 which you engaged with Messrs. Brennan and McGowan,
27 other than, as it were, purely in your capacity as a
28 member of the firm of Finnegan Menton, was this
29 transaction with the nuns in Monkstown, is that right?

30 A. Yes.

1 482 Q. Do you want to qualify that in any way?

2 A. No -- shall I just tell you about the run into that,
3 Sir?

4 483 Q. Well, yes, please do.

5 A. I was instructed by the nuns to sell, to dispose of the
6 property at Monkstown.

7 484 Q. This was, I take it, in 1976, or was it before 1976?

8 A. About 1976.

9 485 Q. The contract, we know, was signed in 1976?

10 A. Yeah, in around that time.

11 486 Q. Yes.

12 A. So when we -- we were asked to dispose of the property,
13 and then when we looked at it, the land was situated at
14 the back end of Monkstown, and I said Mount Town, going
15 on to Mount Town, and we looked at it from the point of
16 view, it was a convent, and it had the buildings, the
17 convent and some parts of the school and a little
18 church. And we looked as to what the position would be
19 regarding selling it, and naturally, looking at a
20 property like that, what the development potential
21 might be on it.

22 .

23 Now, when we were looking into that, Sir, we then
24 discovered that the property was held under -- it was
25 leasehold, and that there were restrictive covenants
26 regarding the development. And we -- I advised that we
27 should investigate the acquisition of the freehold, and
28 that was owned by the Longford and De Vesci, and as far
29 as I recollect, there were two leases on the property.
30 Now, one hadn't, as far as I can recollect, we hadn't a

1 right to acquire, it would be a question of a
2 negotiation.

3 .

4 Now, we advised the nuns and the lawyers acting were
5 Messrs. Vincent and Beattie, and I discussed the matter
6 with Mr. Walter Beattie. And it was decided that
7 certainly what we should do is to try and see if we
8 could acquire a freehold or agree terms. We embarked
9 on, and we informed the nuns about this, so we embarked
10 on the preliminary discussions with the estate Longford
11 and De Vesci. We opened up negotiations with them, and
12 we were then referred to their agents. And their
13 agents, actually, who were instructed in the matter
14 were Adams, then the discussions took place about
15 the -- the preliminary introduction was made and we
16 wished to acquire the freehold.

17 .

18 Now, it didn't just happen immediately, but they had to
19 naturally look into all of the questions. We
20 eventually entered into negotiations and had a deal
21 agreed, eventually got a deal agreed -- an agreement on
22 a price in principle, subject to the De Vesci estate
23 accepting. But sometimes you get to a stage, Sir,
24 where both parties would recommend a figure, and that
25 went on for quite a while, but we did succeed in
26 getting the heads of agreement to acquire the freehold.
27 So then what -- having that there, we decided to -- we
28 offered the property for sale and there was some nine
29 acres.

30 .

1 Now, there is no doubt about it that the land had a
2 development potential, but it had -- the nuns had
3 wished, though, that they would -- that we would
4 keep -- that the small, the small chapel would be kept
5 on the property intact. We talked to -- at this
6 stage, then, when -- hearing the requests of the nuns,
7 we then went out to market the property. As I said to
8 you before, I just mentioned earlier on, Sir, that
9 there weren't as many big builders in the field then as
10 there are now, but one of the parties whom we took up
11 negotiations with were Brennan and McGowan, for the
12 sale to them.

13 .

14 This went on for quite a while, and there were other
15 parties interested. Eventually we got down to a stage
16 of hard negotiation on the basis of a -- the ability of
17 this property being redeveloped for residential, for
18 houses, that there would be a condition, Brennan and
19 McGowan made a bid on it, and we entered into
20 negotiations for the sale of it, subject to planning
21 permission being obtained on the property.

22 .

23 So at that stage it was a question of planning
24 permission for, I think as far as I recollect, it was
25 for 60 units, 60 houses. So there was quite a lot of
26 discussion then as to who would make the application,
27 and it was felt that the application should be made
28 by -- it could be made in the name of the nuns -- the
29 order would facilitate that the application would be
30 made in their name, to the best of my knowledge. And

1 we ended -- then terms were agreed, and it took
2 ú210,000 for the property, plus the cost of acquiring
3 the freehold, which hadn't been -- terms had been
4 agreed on, but it hadn't been settled.

5 .
6 So then that was -- the solicitors prepared the
7 necessary documentation and one thing and another for
8 that. That went on and the deal -- eventually the
9 contracts were exchanged for the disposal of the
10 property, and at that time we felt that there was no
11 doubt in my mind whatsoever, that that was a fine price
12 for the property. There wasn't that much property
13 changing hands at the time, and we felt that the
14 figure, then, that the figure that we sold was a good
15 figure of ú210,000. It was, however, conditional, and
16 it was hopeful that the planning would come through.

17 .
18 Now, that did take quite a considerable time for the
19 planning to come -- to mature. And at the time of
20 acquisition, Brennan and McGowan felt -- the wishes
21 they expressed to me that they intended to carry out a
22 development on it and build on it themselves. During
23 the course -- that was their intention. During the
24 course of the planning period, sometime during that
25 period, there was discussions with Brennan and McGowan,
26 and they said to me they now had made up their mind
27 that they weren't necessarily going to build on it
28 themselves, but they had, having talked to their
29 accountant, they had another scheme whereby they
30 could -- there was a scheme where they could take

1 advantage, not advantage, but they could bring in other
2 people whom they knew into this, who had been
3 previously either working or subcontractors or small
4 builders on this.

5 .
6 And there was a question of, through a financial
7 arrangement, that Owens Murray, that Hugh Owens, a
8 scheme that he had suggested to him, there was an
9 opportunity of what we call to front load the profits,
10 the anticipated profits from the proposed development,
11 and they asked me, would I participate in that scheme.

12 .
13 So that was sometime before the -- well after the
14 contracts had been exchanged. This was a new -- and
15 this was a new proposal, or a new scheme, and the thing
16 was that they told me that this was something that --
17 it was a financial operation, and invited me, would I
18 get involved in it? And through having had various
19 discussions with them, I said that I would do, which I
20 eventually did get involved with them in the scheme.

21 .
22 They gave me a broad outline of what might be done;
23 that they were going to take on these other builders or
24 people, and it would involve arranging finance for them
25 and in some cases guaranteeing some loans and/or
26 backing for them, and it would be divided up through a
27 number of people. And in that way, then, looking to
28 what -- in that way they would be able to calculate
29 what the future profits might be, and through this
30 scheme -- it was rather involved at the time -- but it

1 was explained briefly, but I must say I didn't fully
2 understand it at the time, and it's only afterwards
3 that you get -- and even now some things have been
4 pointed out to me about it. But it was involving a lot
5 of mortgages being raised, and as I say, dealing, which
6 they did do, with these other parties.

7 .
8 And that came to pass, then, that they decided then
9 that that -- they would go forward down that path of
10 dealing with and so passing on to these other
11 developers, taking them on board, and as we said,
12 frontloading the potential profits that were to be
13 taking place over the next years. So it was bring it
14 forward. And that is where, in principle, I had
15 done -- the price paid was the price that -- what we
16 felt was a very good price at the time. But this was
17 now another figure that was coming in, which was, as I
18 said to you earlier, say, that it was the frontloading
19 of forward profits, and that's where I would think, in
20 summary, was it -- or is the situation regarding the
21 Monkstown property.

22 487 Q. Mr. Finnegan, I think you have just won the record for
23 the longest history ever given to a question that
24 wasn't asked. Did you leave out anything?

25 A. Sorry? I don't know -- perhaps I did. Sorry.

26 488 Q. Did you leave out anything?

27 A. I don't know whether --

28 489 Q. The €105,000 that you were paid by Brennan and McGowan?

29 A. Yes, Sir. There was another transaction -- the first
30 thing was, Sir, that the transaction was completed on

1 the sale on to Brennan and McGowan on the property, and
2 that was the full value of the property at the time.

3 .

4 I was asked then, would I participate in this other
5 financing deal, and would I then participate and pay
6 whatever the sum of money was into it? And that
7 scheme was put in operation on the frontloading of the
8 property, the future profits, which was not available
9 to -- that was available to Brennan and McGowan, that
10 they were in a position of organising that.

11 490 Q. What was the arrangement you had with Messrs. Brennan
12 and McGowan?

13 A. The arrangement that I had with Brennan and McGowan was
14 would I -- they asked me to get involved with them in
15 this -- that they now had a package that was being
16 prepared by Owens, Hugh Owens of Owens Murray, and they
17 were not going to develop the property themselves, and
18 would I come in as a third -- as a third holder with
19 them in this scheme, but it would entail an investment
20 on my behalf.

21 491 Q. How much?

22 A. As far as -- somewhere -- it was 30 odd thousand.

23 492 Q. For what?

24 A. For a, as I thought at that time, a third share in the
25 future profits, that they were drawing up by doing
26 these package deals with their builder friends or
27 associates, and I think some of these were people who
28 had built for them somewhere else in other development
29 sites. And this would give them an opportunity of
30 getting involved in building, but they, Brennan and

1 McGowan, were going to guarantee the loans and packages
2 for these people. But it didn't come up that I had to
3 do that, Sir.

4 493 Q. All we know, Mr. Finnegan, is that a scheme was put
5 together involving two Jersey companies in which a
6 pretence was set up that one company would provide
7 management services to another, creating an
8 indebtedness in the sum of ú350,000. That a scheme was
9 set up by Mr. Owens under which phoney correspondence
10 would be exchanged between a variety of parties which
11 he wrote in advance of it being exchanged. He even
12 wrote the dates on which it had to be written, and by
13 and large those dates were complied with and the
14 correspondence was exchanged. And the upshot of it
15 all was that the ú10,000 freehold was converted into a
16 ú350,000 freehold, that the ú350,000 was sent over to
17 Jersey, and after payment of expenses, you got a third
18 of it. That's what we know.

19 A. Well, the position is that the -- Hugh Owens had got
20 this deal as more or less outlined by you there, Sir,
21 but I wasn't -- I didn't follow all of the intricacies
22 of it, but I understand that it did involve quite a lot
23 of borrowing from different parties around the houses,
24 sorry, around --

25 494 Q. We know that when Brennan and McGowan decided to buy
26 the nuns' property, they were not going into the
27 convent business, isn't that right? They were house
28 builders?

29 A. Yes, Sir.

30 495 Q. We know that the land was subject to a very severe

1 restrictive covenant in both of its leases, which
2 prevented any development on the land?

3 A. Yes, Sir.

4 496 Q. We know that in addition to the difficulty about the
5 restrictive covenant, Brennan and McGowan were not
6 going to commit themselves to pay money for this land
7 unless they are sure they got planning permission,
8 isn't that so?

9 A. Yes, Sir.

10 497 Q. And planning permission was made a condition of the
11 contract to buy this land off the nuns for ú210,000?

12 A. Yes, Sir.

13 498 Q. So that makes it absolutely clear that Brennan and
14 McGowan wanted this land so that they could build
15 houses on it, and they were not going to buy this land
16 unless they knew that there was no impediment to their
17 building houses on it, isn't that so?

18 A. Yes, Sir.

19 499 Q. Which means that, as Mr. Walter Beattie has told us,
20 the solicitor for the monies, there was no question of
21 this land being bought unless the freehold was got in,
22 and that the freehold was an issue from the very
23 outset.

24 A. Yes, Sir.

25 500 Q. We know that the price agreed for the land was ú210,000
26 to the nuns. We know that there was, at the time
27 Brennan and McGowan committed themselves to buy the
28 leasehold interest which the nuns held, there was no
29 binding contract of any kind whatsoever in existence
30 under which anybody was entitled, including the nuns,

1 to get in the freehold, isn't that right?

2 A. As far as I recollect, Sir, at that particular time,
3 the terms had been agreed.

4 501 Q. There was no binding agreement?

5 A. Well, I would say -- well, there is no binding
6 agreement until a contract is in existence, but there
7 was -- might I say that in carrying out a negotiation
8 for a freehold, what would happen is that you go
9 through all your negotiations with the agent and
10 particularly with an estate like the Longford and De
11 Vesci, once the terms would be recommended by the
12 agent, and they would have -- that the estate were
13 prepared to go ahead with, subject to, like, board
14 approval --

15 502 Q. What the nuns bought -- sorry. What the nuns sold to
16 Brennan and McGowan was a convent on 10 acres?

17 A. Correct.

18 503 Q. Which could not be developed?

19 A. That is on foot of their leases.

20 504 Q. That's all they had. They did not have anything else,
21 and they did not have any entitlement at that point in
22 time to anything else?

23 A. Whilst they hadn't got any entitlement, the broad terms
24 had been, as far as I recollect, had been agreed with
25 Longford and De Vesci.

26 505 Q. The nuns had no title in this land other than their
27 leasehold title, and they signed a contract in August
28 of 1976 to sell that title, which was subject to
29 restrictions on development. That's what Brennan and
30 McGowan signed a contract to buy in August of 1976.

1 A. Well, at that particular time, Sir, that my
2 recollection, having gone down through it at the time,
3 and we discussed this when we came across the
4 restrictive covenants in the lease initially when we
5 discussed this with Walter Beattie in Vincent and
6 Beattie, that we should go, and we advised that we
7 should clear the title and get the terms -- that would
8 be the sort of thing that one would do, actually, to
9 clear out that sort of thing.

10 506 Q. The problem with this estate, from Brennan and
11 McGowan's point of view, is that there were restrictive
12 covenants preventing development on any part of this
13 property. The restriction in both leases effectively
14 amounted to a provision that no more than 3, or is it 4
15 buildings could be built on the entire property?

16 A. Mm-hmm.

17 507 Q. That was already a convent, a school and a church.
18 There was maybe -- I can't remember the figures. Yet
19 Brennan and McGowan enter into a contract in August
20 1976 to buy a bare leasehold interest subject to
21 covenants which prevent the land from being developed,
22 and in circumstances where, if they are going to have
23 these covenants removed, they don't just have to go to
24 one party, they have to go to two parties because the
25 title was devised between the De Vesci Estate and the
26 Longford Estate.

27 A. Yes. Could I explain that to you a little bit?

28 508 Q. Yes.

29 A. Like, there is the estate -- an estate like this could
30 have two lots of families involved, or different

1 entities like the Longford Estate and the De Vesci, and
2 they could be a connection through the families, and
3 that was known as the Longford and De Vesci.

4 509 Q. There were two different lots sold?

5 A. Yes, Sir. But that wouldn't be an extraordinary
6 situation, Sir, where you would have the two leases run
7 by the same -- say Longford and De Vesci would have
8 been collecting the rents from it.

9 510 Q. But they were two different titles?

10 A. Yes, they were two different titles, yes.

11 511 Q. Vested in two different entities?

12 A. Yes, technically, yes, Sir, that would be the position,
13 but part -- but it was the Longford and -- they were
14 known as the Longford and De Vesci Estate.

15 512 Q. When the time came for the freehold title to be
16 conveyed, both entities had to join in the deed of
17 conveyance?

18 A. Yes, Sir.

19 513 Q. And convey their respective lots, forming the totality
20 of the 10 acres?

21 A. Yes, Sir.

22 514 Q. So at the time that Brennan and McGowan entered into a
23 contract to buy a convent and 10 acres from the nuns,
24 the nuns had nothing to offer except land which could
25 not be developed and had no entitlement, legal or
26 otherwise, to anything else?

27 A. Well, it was -- at that particular stage, Sir, what I
28 am saying is there were terms agreed, whilst there
29 mightn't have been a binding contract involved, with
30 the estate with the Longford and the De Vesci holding,

1 as you say, the two different leases, but there was an
2 agreement with them that they would sell the freehold.
3 Now, mind you, it took a little while for that to be
4 thrashed out, but there was an agreement.

5 515 Q. A gentleman's agreement?

6 A. I would say that particular time, that once you get
7 the -- when you would get the agent's acknowledgment,
8 we would have done quite a lot of this, that they were
9 prepared to sell, and their recommendation, I can't say
10 now whether -- there could very well have been an
11 exchange of letters at that stage.

12 516 Q. Mr. Finnegan, there was no legally binding agreement,
13 is what I am putting to you, no legally binding
14 agreement. The De Vesci Estate and/or the Longford
15 Estate could have turned around and said, "Sorry, we
16 have changed our mind, we are not selling the
17 freehold." What then would happen to the nuns'
18 contract if that happened?

19 A. Well, I think that the position then, if the -- it
20 would be up to the purchaser at that stage -- there was
21 other conditions. There was a condition on obtaining
22 planning permission for --

23 517 Q. Yes, there was no impediment to the obtaining of
24 planning permission?

25 A. No, except that they had to make the application and
26 they mightn't have got it, and there could be third
27 party --

28 518 Q. Subject to them getting planning permission. Sure,
29 they could get 20 planning permissions, they could get
30 planning permission for a skyscraper or 20 houses, they

1 couldn't get a covenant on their title preventing them
2 from building regardless of what planning permission
3 they had?

4 A. Absolutely couldn't.

5 519 Q. So no matter what happened, one way the other, if they
6 weren't going to run a convent, they had to get the
7 freehold title to get rid of these covenants?

8 A. Yes, Sir. Yes, you'd have to -- that's the only way.

9 520 Q. At the time that they signed on the dotted lines with
10 the nuns, the nuns had nothing to offer them except a
11 convent and 10 acres that could not be developed?

12 A. Yes. Yes, Sir.

13 521 Q. The contract under which the nuns agreed to buy the
14 freehold wasn't signed until December of 1976, isn't
15 that so?

16 A. Yes, Sir, yes.

17 522 Q. But the nuns did not, at that time, commit themselves
18 to sell the freehold to Brennan and McGowan and, in
19 fact, did not do so until July of 1977?

20 A. But I think that the situation then was that the nuns
21 were aware of the transactions -- they had agreed to
22 pass over the freehold to Brennan and McGowan.

23 523 Q. Where is that recorded?

24 A. Well --

25 524 Q. They could have said to Brennan and McGowan in, say,
26 June of 1977, "You have agreed to pay ú210,000 for a
27 convent and 10 acres which you can't develop. We now
28 have a contract to buy the freehold, and we'll sell it
29 to you for ú350,000, if you want to develop it." And
30 there is nothing Brennan and McGowan could have done if

1 they had done that, isn't that right?

2 A. Yes, Sir.

3 525 Q. But that's not what happened. What happened is that

4 the nuns passed on their contract to buy the freehold

5 for the same money virtually that they paid for it,

6 plus a couple of hundred pounds expenses?

7 A. Yes.

8 526 Q. And Brennan and McGowan sold on the freehold for

9 £350,000 to an offshore company in circumstances where

10 you shared in one-third of the proceeds. Now, the

11 reason I am putting this to you, Mr. Finnegan, because

12 the question I am going to ask you, and I am going to

13 ask you this question in respect of all of these land

14 transactions is: Why did Brennan and McGowan pay you

15 these monies?

16 A. Well, I was invited to get involved in the scheme,

17 whilst it just so happens that -- of the frontloading

18 of the property -- they had a scheme where they could

19 sell on to these parties, and that they had the

20 builders and old associates of theirs who were involved

21 from then. They were doing big house building and they

22 had this scheme whereby they could, instead of -- they

23 calculated with these guys what they could sell on and

24 lease on or give licences to them on, for the various

25 units, and in turn they were to maximise -- maximising

26 the price to them, they were prepared, that is Brennan

27 and McGowan or their associates, were prepared to

28 guarantee the loans, bank loans and otherwise in giving

29 these people an opportunity. So they were coming in at

30 a very slender margin, the people whom they were

1 selling on to, that it was -- the scheme was to, as I
2 said to you, was to frontload, and that was
3 what -- that was what Hugh Owens had -- that's the
4 scheme he had devised.

5 527 Q. I'll be returning to this tomorrow, Mr. Finnegan, but
6 you appreciate from the examination of previous
7 witnesses, particularly Messrs. Brennan and McGowan
8 themselves, that the Tribunal is seeking to understand
9 the motive of Brennan and McGowan in making these
10 payments to you, and it's seeking to identify in that
11 context, the range of possible reasons as to why they
12 might have done so. You understand that?

13 A. (Nods head.)

14 528 Q. Obviously, in circumstances where you were the
15 auctioneer acting for the vendors of this property, the
16 Society of the Sacred Heart, one of the range of
17 reasons that might be related to that, and that is
18 unfortunately for you, one of the possibilities that
19 the Tribunal has to consider.

20 A. Yes. Well, I would say that -- I would say, very,
21 very, very firmly that the fact that what I am very
22 satisfied about, and one, I am an authority on
23 property, that the price that was paid, the initial
24 price for this property was the very good market value.
25 And what I would say to you, Sir, is that this offer
26 that came in was not something that was offered open to
27 a religious order to get involved. The nuns would not
28 have got involved in a scheme such as what they had
29 asked me to get involved in, Sir.

30 529 Q. Mr. Finnegan, we know that the nuns were not going into

1 the house building business, no more than Brennan and
2 McGowan were going into the convent business, but the
3 point fundamentally is the nuns wanted, presumably, to
4 get the maximum possible return on their lands?

5 A. Yes, which they did do, Sir.

6 530 Q. They sold for ú210,000, a convent on 10 acres which
7 could not be developed?

8 A. No, Sir. What I wanted to say to you on this: That
9 there was an agreement in principle, and one of the
10 things I just recollect, because Walter Beattie -- I
11 remember this discussion, and I think that at the
12 particular time, that when the contract was entered
13 into, that I feel that there would have been a comfort
14 also -- I know Vincent and Beattie are an excellent
15 firm of lawyers, and they would know what the situation
16 was and the position regarding the contract and the
17 conditions in it, and the position regarding the
18 acquisition of the freehold.

19 .
20 Now, at the particular time, whether it was convenience
21 or otherwise, that the firm of Vincent and Beattie did
22 act in the acquisition, I think it was Mr. Maguire in
23 there, acted on the -- for Brennan and McGowan, and
24 they would have been in the position to confirm the
25 status of the contract regarding, or the position
26 regarding the acquisition of the freehold.

27 531 Q. Do you wish to leave it at that?

28 .

29 CHAIRMAN: If you wish to continue, by all means do so.

30 .

1 MR. HANRATTY: Obviously, I am going to spend sometime
2 on it tomorrow.

3 .

4 CHAIRMAN: You are welcome. If you want to continue,
5 you are welcome. You are in the middle of a major
6 issue.

7 .

8 MR. HANRATTY: We will be returning to it in any event.

9 .

10 CHAIRMAN: Very good. Whenever you are ready in the
11 morning? Half past ten? Very good. Half past ten
12 tomorrow morning.

13 .

14 THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
15 WEDNESDAY, 10TH OCTOBER, 2001 AT 10.30AM.

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