

1 THE TRIBUNAL RESUMED ON THE 6TH OF DECEMBER, 2001, AT
2 10:30 A.M. AS FOLLOWS:

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4 CHAIRMAN: Good morning, everyone.

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6 MS. DILLON: Good morning, Sir.

7 .

8 You will recollect, Sir, that on the last occasion in
9 which we were here I had indicated to you that while
10 that was the conclusion of the Brennan and McGowan
11 Module, the Tribunal were attempting to get in touch
12 with one further witness, namely Mr. Delany from Bank
13 of Ireland in Whitehall.

14 .

15 Now, Mr. Delany is here this morning, Sir. But I
16 should inform you, that up to this point he has been
17 represented by the solicitor for Bank of Ireland. And
18 apparently Mr. Delany tells me that as of yesterday he
19 was informed by Bank of Ireland that they felt there
20 was some difficulty in connection with representing
21 him, due to a communication from the Tribunal.

22 .

23 Now, I am aware of the communication from the Tribunal,
24 and I cannot see that it gives rise to the difficulties
25 that apparently have been reported to Mr. Delany.

26 .

27 I have told Mr. Delany that he's entitled to have a
28 solicitor present if he wishes, but Mr. Delany is
29 happy, as he is only a witness as to fact, to proceed
30 in the absence of a solicitor. But I have advised him

1 that he is entitled to have a solicitor present, if the
2 bank do not see their way to representing him, but
3 Mr. Delany says he is happy to proceed on that basis.

4 .

5 CHAIRMAN: Well, if Mr. Delany has been advised as to
6 what his situation is, and he is a simple witness of
7 fact, and as far as I know, in no other way concerned
8 with the Tribunal. I mean, I only know the broad
9 principle of what his situation is here. I see no
10 reason why he has to have, though is he perfectly
11 entitled, as any other citizen is entitled, to have a
12 solicitor with him.

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14 MS. DILLON: Mr. Delany, please.

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1 MR. J. K. DELANY, HAVING BEEN SWORN, WAS EXAMINED AS

2 FOLLOWS BY MS. DILLON:

3 .

4 1 Q. MS. DILLON: Good morning, Mr. Delany.

5 .

6 I think that you are a retired former employee of Bank
7 of Ireland?

8 A. That's correct, yes.

9 2 Q. And I think that you were posted to Bank of Ireland in
10 Whitehall on the 1st of December, 1968, in the position
11 of cashier?

12 A. That's right.

13 3 Q. Thereafter, when the bank opened a full office in
14 Whitehall, you were appointed sub-agent, but what would
15 commonly be known as an assistant manager?

16 A. That's correct.

17 4 Q. And at that time Mr. Burke was a customer of Bank of
18 Ireland, Whitehall when you became - when you arrived
19 in 1968?

20 A. Yes.

21 5 Q. And I think the position is that you had not previously
22 known Mr. Raphael Burke, but that you had known his
23 father?

24 A. That's correct.

25 6 Q. And is it the position that you had worked in Ormond
26 Quay for Bank of Ireland, at which accounts were held
27 for PJ Burke (Sales) Limited?

28 A. That's correct.

29 7 Q. The accounts of PJ Burke (Sales) were transferred to
30 Bank of Ireland, Whitehall, is that right, from Ormond

1 Quay?

2 A. Yes, around 1971 or '72.

3 8 Q. And was that done as a result of representations that
4 you made to Mr. Burke, or that were made to Mr. Burke?

5 A. I can't recall. It would have been more aptly - he
6 just lived down the road, but I can't recall whether he
7 requested that we transfer the account or that someone
8 solicit the account. I can't remember that.

9 9 Q. We'll come to deal with those matters.

10 .

11 If I can take you through first of all a few relatively
12 short matters, Mr. Delany. The first of which deals
13 with an application for Exchange Control that was made
14 by the Bank of Ireland in Whitehall on behalf of
15 Mr. Burke, I think, in or around October, November
16 1972.

17 .

18 Document 5396.

19 .

20 If you look at the screen beside you, Mr. Delany, the
21 document will come up on screen.

22 .

23 Are you able to read that?

24 A. Yes.

25 10 Q. Now, I understand that these documents were documents
26 that were in currencies or were required in the 1970s
27 in relation to travelling abroad and taking money out
28 of the country?

29 A. Yes, that's correct.

30 11 Q. The document - if we scroll down to the bottom of the

1 document, Mr. Delany, it's dated the 22nd of November,
2 1972. And it's signed by Mr. Burke.

3 A. Yes.

4 12 Q. And in the normal course, as I understand it, what
5 would happen is a customer would apply to the bank to
6 take currency out of the country, the bank would fill
7 out the document that's on screen and send it into the
8 Central Bank of Ireland, who would then issue, in
9 effect, an authorisation to the bank to release the
10 funds?

11 A. That's correct.

12 13 Q. All right. And the funds that were being released here
13 are in the sum of ú1,000?

14 A. Yes.

15 14 Q. Can you tell the Sole Member of the Tribunal what you
16 recollect about this transaction?

17 A. My recollection is vague, but I do recall that he
18 requested the funds, and I told him that I was not in a
19 position to give it to him without Exchange Control
20 approval. I understood he was going on a holiday, but
21 he told me, as far as I can recall, that it was a
22 business trip. And I said on the basis - if it's a
23 business trip, I can apply to the Central Bank and get
24 permission.

25 15 Q. And the note at No. 7 on the document that's on screen,
26 in relation to the purpose of the visit describes it as
27 a property deal in Miami, Florida, business
28 discussions, et cetera. "Applicant is estate agent.
29 Palm Beach Investment Properties Inc., 1440 - 79th
30 Street, Causeway, Miami, Florida."

1 .

2 Do you see this?

3 A. Yes, I do. Yes.

4 16 Q. And from whom would that information have been obtained

5 by the bank?

6 A. From the customer, Mr. Burke. I didn't actually fill

7 out this document myself, but I know - I recall being

8 approached.

9 17 Q. In the normal course these documents would be completed

10 by the bank or forward by the bank to - the local bank,

11 as it were, to the Central Bank?

12 A. That's correct.

13 18 Q. And then the authorisation would come back approved or

14 refused, and the money would be issued?

15 A. That's right.

16 19 Q. And in this case the application was approved, and

17 presumably, then, the funds issued?

18 A. That's correct, yes.

19 20 Q. It would appear from what

20 Mr. Burke has told the Tribunal, that in fact the

21 purpose of the visit or the trip in question was his

22 honeymoon.

23 A. I read that in the paper. I have some vague

24 recollection, which I can't qualify, that when he asked

25 originally for the money, I had an idea that it was

26 for, not a honeymoon, but a holiday. And he obviously

27 then stated it was a business trip. And I said if it's

28 a business trip, that could be passed by the Central

29 Bank, which they subsequently did.

30 21 Q. And if it was a holiday, would it have been passed by

1 the Central Bank?

2 A. No, it wouldn't, because I think there was limited

3 Exchange Control at that time. I can't remember what

4 the figure was, something like 200 or ú250.

5 22 Q. The next matter I want to ask you about was the account

6 that was opened for Mr. Burke in Manchester?

7 A. Yes.

8 23 Q. Can you tell the Sole Member what you recollect about

9 that?

10 A. Well, under oath I can say that I can't recollect

11 anything, other than the fact that you showed me the

12 file and I saw that I opened the account sometime

13 around 1971.

14 24 Q. 1974, I think?

15 A. '74. Sorry.

16 25 Q. If we have - do you have any of these documents with

17 you?

18 A. I have.

19 26 Q. Yes, I'll bring it up on the screen for you,

20 Mr. Delany, at page 5377. We'll give you a hard copy

21 of the document as well.

22 .

23 This is a copy of the book deposit account that was

24 maintained at Bank of Ireland in Manchester for

25 Mr. Raphael Burke?

26 A. Yes, that's correct.

27 27 Q. And the account was opened with a lodgement of ú1,350

28 on the 6th of December, 1974?

29 A. That's correct.

30 28 Q. And thereafter there are a number of lodgements and

1 interest credits. And leaving aside the ú10 transfer
2 in the centre of it, ultimately there was ú14,584, I
3 think, 49 pence, which was withdrawn in December '77?

4 A. It appears from this, yes.

5 29 Q. The Tribunal understands that the ú10 withdrawal that
6 is referred to related to the opening of a current
7 account in Manchester in anticipation of a threatened
8 bank strike?

9 A. I can't confirm that. I wasn't working in Whitehall at
10 this stage.

11 30 Q. Insofar as the opening of the bank account is concerned
12 on the 6th of December, 1974, are you the person who
13 made that entry?

14 A. No, that is not my initial. The second initial and the
15 third initial for the second entry and the third
16 entries are mine.

17 31 Q. Yes. And in view of the fact that the second and third
18 entries are yours, does that mean that the book was
19 written up in Whitehall?

20 A. Yes.

21 32 Q. So that even though the funds were being transferred to
22 Manchester, to the credit of an account in Manchester,
23 was it the position that the book was retained in
24 Whitehall?

25 A. Obviously so, yes.

26 33 Q. Yes. I think you've seen from the file that - a copy
27 of the file that you've been furnished with, that on
28 some occasions these transfers were made by way of bank
29 drafts that were sent by post, and on other occasions
30 they were transferred through the clearing system?

1 A. That's correct, yes.

2 34 Q. I think the position is that if they went by post they
3 were credited far quicker, whereas the clearing system,
4 because you were operating between the English clearing
5 house and the Irish clearing system, took two to three
6 weeks?

7 A. That's correct.

8 35 Q. Is it the position, then, that this deposit account was
9 kept in Whitehall, the book itself was kept in
10 Whitehall?

11 A. No, I can't remember that, but it's quite possible that
12 the customer might have requested that we keep the
13 book. I can't remember. And if it were the case that
14 they were kept in Whitehall, any time he had a
15 transaction on the account, the book would be entered
16 up.

17 36 Q. And if the book was kept in Whitehall, as appears to
18 have been the position from the file, how would one
19 effect these transfers or transactions? What would
20 happen?

21 A. If he came in and made a lodgement to his account, one
22 example would be that the book would be taken out, the
23 entry written, and bank draft posted over to
24 Manchester, or in one case we saw that it was sent to
25 the clearing, to an internal clearing voucher.

26 37 Q. Which was a slower, more complicated system?

27 A. It was, yes.

28 38 Q. And so that what was required in order to effect one of
29 these transactions, was that Mr. Burke would come into
30 the bank, he would require to lodge a sum of money to

1 his account in Manchester, the book would be taken out
2 and written up, and the money would be transferred
3 across through one of two systems to Manchester?

4 A. Yes.

5 39 Q. And in the normal course of events, would the bank
6 normally hold customers' deposit accounts in the
7 branch, as it were, the actual book?

8 A. Well, I would say maybe in the branches I worked in
9 now, I can't speak for any other branches, up to five
10 percent, maybe some more. People kept them for
11 confidential reasons, they didn't want them lying at
12 home, especially a lot of old ladies. They wanted
13 confidentiality, and they said "Please keep the book".

14 .

15 We kept not that many books, but we kept them in
16 alphabetical order. In a branch like Whitehall you
17 would have 50 or 60 books.

18 40 Q. In the main, would they be deposit accounts of accounts
19 held at Whitehall?

20 A. Oh, yes.

21 41 Q. In a case such as this, where the account was in
22 Manchester and the bank had the deposit book, how many
23 cases do you recollect occurring during your time in
24 Whitehall, where a customer had an account in some
25 place like Manchester where the deposit book reflecting
26 that account was maintained in the bank in Whitehall?

27 A. I can't recall. I can't even recall this one. It may
28 have been kept, but I can't recall it, nor can I recall
29 any other individual accounts.

30 42 Q. You left, I think, Whitehall in - the bank in

1 Whitehall. When did you leave the bank in Whitehall?

2 A. I left about - the first fortnight of July 1975.

3 43 Q. 1975. And this account was then closed subsequently?

4 A. It appears from here it was, yes.

5 44 Q. And the funds were withdrawn.

6 .

7 Can you assist the Tribunal at all in connection with

8 the transaction involving Foster Finance in Northern

9 Ireland --

10 A. None whatsoever. I read that in the paper recently,

11 and I have no recollection of who dealt with him in

12 that.

13 45 Q. Were you aware that Foster Finance or, sorry, is it the

14 position that Foster Finance (Northern Ireland) Limited

15 was a wholly-owned subsidiary of Bank of Ireland?

16 A. Yes.

17 46 Q. And in August of 1971, it appears that a sum of ú5,000

18 was placed on deposit on behalf of Mr. Burke with

19 Foster Finance (Northern Ireland Limited)?

20 A. Yes, I saw that from the file.

21 47 Q. At that time you were the Assistant Manager in

22 Whitehall?

23 A. Yes.

24 48 Q. Is this a transaction that would have been conducted by

25 the then manager, Mr. McEvoy?

26 A. What date was that?

27 49 Q. This is August of 1971. If we could have Document

28 5398, please?

29 A. I can't recall when Mr. McEvoy came to Whitehall. The

30 branch was opened in 1969, and the Manager appointed

1 was a Mr. Ronald Osborne, and I can't actually remember
2 when the change took place. It was around about 1971,
3 I think.

4 50 Q. The correspondence between Foster Finance (Northern
5 Ireland), if we scroll down through the document that's
6 on screen, is addressed to the Manager --

7 A. Yes.

8 51 Q. -- Bank of Ireland Limited, Whitehall --

9 A. Yes.

10 52 Q. -- Dublin 9. And if you turn to page 5395, and you
11 scroll down to the bottom of that page, you see there
12 is a stamp for Bank of Ireland with what appears to be
13 an initial beside it?

14 A. That's my initial.

15 53 Q. That's your initial?

16 A. Yeah.

17 54 Q. The fact that that's your initial, Mr. Delany, does
18 that mean that you must have been at that time aware of
19 the fact that there was a deposit?

20 A. Oh, I would presume so. The system was, at the time,
21 that incoming post like that - I usually opened the
22 post, the Manager and myself, and we put the branch
23 stamp brand on it and initialed it. So, you know, we
24 knew what was happening. We had a very small office at
25 the time.

26 55 Q. But you have no recollection, as I understand your
27 evidence, of anything involving this transaction with
28 Foster Finance (Northern Ireland)?

29 A. No, I have no recollection.

30 56 Q. You have looked at the documentation that was furnished

1 to you, and it would appear that in August of 1971 a
2 sum of ú5,000 was placed on deposit for
3 Mr. Burke?

4 A. Yes, I saw that.

5 57 Q. With Foster Finance (Northern Ireland) Limited, which
6 ultimately, I think, was returned on the 29th of
7 November, 1972. Page 5395.

8 A. Yes.

9 58 Q. Again to the Manager, Bank of Ireland?

10 A. Yes.

11 59 Q. And again there is a stamp on the document, and that's
12 your initial?

13 A. It is, yes.

14 60 Q. So presumably, with that letter came a cheque for
15 ú5,064.47?

16 A. Yes, he said: "We enclose herewith our cheque."

17 61 Q. Which presumably would have been dealt with in
18 accordance with whatever instructions the bank received
19 from the customer?

20 A. Yes.

21 62 Q. Mr. Burke?

22 A. Mm-hmm.

23 63 Q. If I could turn to ask you then, Mr. Delany, about the
24 loan that Mr. Burke sought from the Property Loan
25 Investment Company in connection with these premises at
26 Briargate?

27 A. Yes.

28 64 Q. Can you tell the Tribunal, first of all, from your own
29 recollection, what you remember about that application
30 and the matters that transpired?

1 A. Well, I remember the Manager at the time, Mr. McEvoy
2 made an application for a mortgage to a Bank of Ireland
3 subsidiary company called Property Loan and Investment
4 Company, which was a company set up specifically for
5 that purpose, because we were not in the general way of
6 giving mortgages in the bank at that time.

7 .

8 And Mr. McEvoy made the application for a mortgage, I
9 think around the region of ú15,000, which was
10 successful.

11 65 Q. Yes. The Property Loan Investment Company on the 12th
12 of December, 1972, provisionally approved a mortgage of
13 ú15,000 for Mr. Burke - that's page 5374 - subject to
14 the terms and conditions that were set out in the
15 letter?

16 A. Yes.

17 66 Q. And if we scroll back to the top of that, you will see,
18 Mr. Delany, that this letter is addressed to the
19 Manager, Bank of Ireland, Whitehall?

20 A. Yes.

21 67 Q. And was that, at that time, the way mortgage
22 applications with Property Loan Investment Company were
23 processed?

24 A. It's the only one that I recall.

25 68 Q. This is the only mortgage you recall?

26 A. At that time, yes.

27 69 Q. At that time with that company?

28 A. It's the only mortgage I have ever - well, I wasn't
29 actually involved in it, but I have seen in relation to
30 Property Loan and Investment.

1 70 Q. So you have nothing against which to compare this --

2 A. I haven't, no.

3 71 Q. Okay. All right. But you do know, or it's your
4 position that Property Loan Investment Company Limited
5 was a wholly-owned subsidiary of Bank of Ireland?

6 A. Yes, it was.

7 72 Q. And it was set up for the purpose of effecting
8 mortgages?

9 A. Yes.

10 73 Q. Because the bank wasn't, at that time, in the business
11 of granting mortgages?

12 A. As I understand it, yes.

13 74 Q. Were you aware at that time of this application?

14 A. I would have been, yes.

15 75 Q. The mortgage was - the mortgage facility was granted by
16 the Property Loan and Investment Company. And all
17 correspondence, then, between the Property Loan and
18 Investment Company Limited in connection with this
19 mortgage appears to have been with the manager in Bank
20 of Ireland in Whitehall?

21 A. Yes. As I recall from reading the file, yes.

22 76 Q. They don't appear to have communicated directly with
23 Mr. Burke?

24 A. I am not aware of that.

25 77 Q. All right. Would that have been the normal practice,
26 if the application was made by the bank, as appears to
27 be the position on behalf of the customer, that the
28 Property Loan and Investment Company would then deal
29 thereafter with the customer - I beg your pardon, with
30 the bank as opposed to the customer?

1 .
2 MR. WALSH: Sorry, Sir. I am just wondering, this
3 witness, Mr. Delany, has fairly said he has nothing to
4 compare this loan application with, because this is the
5 only loan application he dealt with, with the Property
6 Loan and Investment Company Limited. So coming from
7 that factual basis, I think it's unfair to ask him,
8 would this be the normal way that the Property Loan and
9 Investment Company Limited dealt with mortgages and
10 their customers.

11 .
12 CHAIRMAN: Mr. Walsh, the question was: "Would that
13 have been the normal practice, if the application was
14 made by the bank, as appears to be the position on
15 behalf of the customer, that the Property Loan and
16 Investment Company would then deal thereafter with the
17 customer?"

18 .
19 MS. DILLON: I said "the customer", and I corrected
20 myself and I said, "I beg your pardon, with the bank."

21 .
22 CHAIRMAN: I see the force of what you are saying, but
23 this is - this is a formal banking matter, and I think
24 it's within his ken as to what would normally happen.
25 I don't necessarily say that it happened in this case,
26 but I think he is entitled to give evidence about what
27 he would have expected to have happened, having regard
28 to the process. I don't think it in any way - I don't
29 think it's going to affect you in any way. It's simply
30 a sequence of - the manner in which this sort of job

1 would have been handled in the normal way.

2 .

3 Now, the witness has said this is the only one he ever
4 saw, but he did see it. I mean, he was aware that it
5 was in progress, if I put it that way.

6 .

7 MR. WALSH: My point, Sir, is that if this is the only
8 one he saw, how can he say this was dealt with any
9 differently to any other? How can he say this was the
10 norm --

11 .

12 CHAIRMAN: Mr. Walsh, I see the force of what you are
13 saying, but he is a bank official. He is a bank
14 manager. And the sequence of events, while he may not
15 have dealt with a number, would be within his ken, as
16 to how the bank operates. That's the way I would look
17 at it now.

18 .

19 As I say, I am not being very forceful in any way, but
20 I don't think it's going to affect - if you feel that
21 we are going further than you feel is appropriate,
22 perhaps you would bring the matter to my attention
23 again.

24 .

25 78 Q. MS. DILLON: I think I can deal with the matter in a
26 way that will take care of Mr. Walsh's concerns.

27 .

28 Insofar as this particular transaction is concerned,
29 Mr. Delany, you have looked at the file that has been
30 provided by Bank of Ireland, Whitehall?

1 A. Yes.

2 79 Q. That file shows, subject to any correction Mr. Walsh
3 wants to make in relation to the matter, that the
4 Property Loan and Investment Company dealt with the
5 manager in Bank of Ireland, who in turn wrote to
6 Mr. Burke?

7 A. Yes, it appears that way.

8 80 Q. There does not appear to be any instance of any direct
9 communication between the Property Loan and Investment
10 Company and Mr. Burke?

11 A. Well, if there were, we wouldn't be aware of it.

12 81 Q. Yes. But insofar as the Property Loan and Investment
13 Company were communicating matters such as the security
14 they required, requesting the title deeds, changes in
15 rates of interest, in the first instance they appear to
16 have communicated with the manager?

17 A. Yes.

18 82 Q. Who thereafter then corresponded with Mr. Burke?

19 A. Yes.

20 83 Q. And from your perusal of that file, subject to anything
21 Mr. Walsh wishes to say in connection to it, that seems
22 to be how the transaction was dealt with?

23 A. Yes, it appears to be.

24 84 Q. Okay. And after the 12th of December, 1972, when the
25 loan offer was made by Property Loan and Investment
26 Company, the letter was acknowledged on the 13th of
27 December, 1972, by the manager of Bank of Ireland,
28 Whitehall. Page 5421, please. 5421.

29 .

30 And it's addressed to Property Loan and Investment

1 Company from the manager. And setting out that
2 Mr. Burke was on his honeymoon and not due back until
3 the end of next week. And, "Immediately upon his
4 return I shall obtain from him the necessary Letter of
5 Consent, which I will forward in due course."

6 A. Yes.

7 85 Q. Then there is a handwritten note at the bottom of that
8 letter which says: "Notice of intention to avail of
9 loans sent to Property Loan, 4th January, '73."

10 A. That's right. The initial under - the initial on the
11 right, is that of the late Mr. McEvoy.

12 86 Q. Who was then the manager in Bank of Ireland in
13 Whitehall?

14 A. Yes.

15 87 Q. And if we go back to the Letter of Offer of the 12th of
16 December, 1972, at page 5374, one of the requirements,
17 and I think it's set out beneath paragraph B, where it
18 says: "Property protection life policy."

19 .
20 "Please request the applicant to instruct his solicitor
21 to forward for examination the title deeds relating to
22 the above-mentioned house, and also the life policy,
23 when available, to the company's solicitor."

24 A. Yes.

25 88 Q. So that would be the Property Loan Investment Company
26 putting in place its security?

27 A. It's requirements, yes.

28 89 Q. And I think on the 4th of January, 1973, Bank of
29 Ireland, Whitehall, again Mr. McEvoy, the manager,
30 wrote to Mr. Burke, at page 5423, and setting out in

1 letter form the Letter of Offer, the offer that had
2 been made by Property Loan and Investment Company in
3 connection with the proposed mortgage?

4 A. Yes. He is really forwarding the Property Loan
5 instructions or requirements on to Mr. Burke in that
6 letter.

7 90 Q. And again one of those contained a request in the
8 centre of the letter: "I shall be obliged if you will
9 instruct your solicitor to forward for examination the
10 title deeds relating to the above property, and also
11 the life policy, when available, to the company's
12 solicitor."

13 A. Yes.

14 91 Q. And then details in connection with the fire insurance
15 policy to be arranged - to arrange temporary fire
16 cover?

17 A. That's correct, yes.

18 92 Q. And I think on the same date, the 4th of January, 1973,
19 Mr. McEvoy wrote to the Property Loan and Investment
20 Company indicating Mr. Burke's intention to avail of
21 the loan offer? Page 5425.

22 A. Yes.

23 93 Q. The letter says: "Customer will now proceed with the
24 mortgage protection insurance, and will instruct his
25 solicitor to forward for examination the title deeds
26 when available."

27 A. Yes.

28 94 Q. It's signed by Mr. McEvoy?

29 A. That's correct.

30 95 Q. And it refers to enclosures which are not copied to the

1 file, but which presumably was a letter or a document
2 from Mr. Burke of his intention to avail of the
3 proposal?

4 A. That appears to be it, yes.

5 96 Q. That would be standard, again?

6 A. I can't confirm that, because it's the only one I can
7 recall dealing with.

8 97 Q. All right. The correspondence, then, between - between
9 then and for some period of time, consists, apparently,
10 of correspondence passing between the Property Loan and
11 Investment Company to the manager in Whitehall, asking
12 him to progress things, and to obtain the title deeds,
13 and, in effect, to get the matter moving.

14 .

15 Now, if Mr. Walsh has any difficulty with my
16 summarising it in this way, I will take you through
17 each of the letters passing between the Property Loan
18 and Investment Company and the manager of the Bank of
19 Ireland in Whitehall.

20 .

21 But it would seem that during that period, certainly up
22 to June of 1973, the Property Loan and Investment
23 Company were looking for particulars of the title, and
24 were also furnishing some information in relation to
25 interest and interest changes?

26 A. That's correct, yes.

27 98 Q. On the 5th of July, 1973, page 5434, please,
28 Mr. Conlon, who was then Mr. Burke's solicitor, wrote
29 to Mr. Black of the Law Department of Bank of Ireland.
30 And setting out that he acted for Mr. Burke, who had

1 obtained loan sanction from the Property Loan and
2 Investment Company to assist in the purchase of the
3 property.

4 .
5 "We've been asked by our client to write to you,
6 advising that the title documents will be forwarded to
7 you in early course. We confirm that the documents
8 have not, as yet, been furnished to us by the vendor's
9 solicitors, but immediately on receipt of same we will
10 forward them to you."

11 A. Yes.

12 99 Q. At this point in time, Mr. Delany, there was not, in
13 fact, in existence a written contract in connection
14 with the purchase of the land?

15 A. Well, I would have no idea. I didn't deal with the
16 matter.

17 100 Q. I know that.

18 A. And I can't recall if I read - it is 30 odd years ago,
19 I just don't know.

20 101 Q. If I could ask you in connection with that, about what
21 the bank's requirements would have been for security?

22 A. When you say "the bank", are you talking about the
23 Property Loan and Investment Company or the Bank of
24 Ireland, Whitehall?

25 102 Q. Well, at this point in time about Property Loan and
26 Investment Company, on foot of the letters that we've
27 seen.

28 A. Other than what you can glean from it yourself. I
29 wouldn't know what their rules or requirements were.

30 103 Q. It seems that they had been seeking copies of the title

1 deeds?

2 A. It would appear that way, yes.

3 104 Q. And they hadn't been furnished?

4 A. I wasn't dealing with it. I have no idea why they were
5 furnished.

6 105 Q. Yes. But it would appear from the file that they
7 weren't furnished?

8 A. Well, if you say so.

9 106 Q. Well, it would appear that if they had been furnished,
10 that Property Loan and Investment Company would not
11 have been writing looking for them?

12 A. Yes, obviously.

13 107 Q. And Mr. Conlon would not have been writing on the 5th
14 of July, 1973, saying that "the documents have not yet
15 been furnished to us by the vendor's solicitors."

16 A. Mm-hmm.

17 108 Q. But it is normal course in banking practice,
18 Mr. Delany, and there is nothing untoward about it,
19 that where the bank agreed to advance mortgage
20 facilities, or a financial institution agrees to
21 advance mortgage facilities to somebody, one of the
22 first things they want secured is the property on foot
23 of which the mortgage facilities are being advanced?

24 A. Yes, but that's secured by a Letter of Undertaking from
25 the solicitor. The bank wouldn't have direct
26 involvement in that. They would just rely on the
27 undertaking.

28 109 Q. Yes. Are you talking about the undertaking in this
29 case?

30 A. Yes, the undertaking in this case, in any case,

1 normally.

2 110 Q. Normally the solicitor would give an undertaking that
3 he would hold the title deeds --

4 A. In trust.

5 111 Q. -- in trust for the bank?

6 A. And when they are available, then they would be
7 forwarded to release his undertaking.

8 112 Q. But up to this point in time, by July of 1973, there
9 had been no undertaking given in connection with this
10 transaction?

11 A. Well, I can't remember that.

12 113 Q. Yes. But from the file, Mr. Delany, that we've looked
13 at, that would appear to be the position?

14 A. Well, would Oliver Conlon not have given the Letter of
15 Undertaking to Property Loan and Investment Company
16 directly?

17 114 Q. That doesn't appear to be the position, because in this
18 letter of the 5th of July, 1973, they appear to be
19 informing Mr. Black of the Law Department that they act
20 for Mr. Burke.

21 A. Right.

22 115 Q. In other words, this appears to be the first letter
23 that's written by Mr. Conlon.

24 A. Okay.

25 116 Q. Right. "And we have been asked by our client to write
26 to you advising you that the title documents will be
27 forwarded in the early course, and confirm the
28 documents have not yet been furnished to us by the
29 vendor's solicitors, but when we receive them we'll
30 send them on."

1 A. That's right.

2 117 Q. And, in fact, Mr. Conlon did subsequently give an
3 undertaking, but an undertaking directly to Bank of
4 Ireland, Whitehall, in connection with the bridging
5 loan facility. We'll come to deal with that in its
6 sequence.

7 A. Okay.

8 118 Q. But it would appear, as of the 5th of July, 1973, that
9 the factual position appears to be that Mr. Burke had
10 not signed a written contract for the purchase of the
11 property?

12 A. I wouldn't be aware of that.

13 119 Q. You weren't aware of that?

14 A. No.

15 120 Q. Is that something that would have affected, in your
16 opinion, Property Loan and Investment Company granting
17 mortgage facilities?

18 A. This Property Loan Investment Company was only set up a
19 short time before that, and I had never any experience
20 in dealing with a mortgage before. So I can't answer
21 your question. I don't know.

22 121 Q. From your general experience in banking, Mr. Delany, if
23 the situation was that a bank had agreed to advance
24 €15,000 on foot of a piece of land, would the bank have
25 advanced that money and paid out that money if there
26 wasn't a signed contract to buy the land in place?

27 A. No.

28 122 Q. Because it would appear that the contract to purchase
29 the site on which this house was built was not signed
30 until the 1st of August, 1973. Page 1523.

1 .
2 This is a memorandum of an agreement between Oakpark
3 Developments Limited and Raphael Burke. And the
4 purchase price is "ú7,500 - Oakpark." The closing date
5 is the 3rd of December, 1973. It's signed for Oakpark
6 by Mr. Michael J Foley, a director, and witnessed by
7 Esmond Reilly. It's signed by Mr. Burke on behalf of
8 himself, and witnessed by Oliver Conlon. And it's in
9 connection with the sale of one acre of land,
10 approximately. If we look at page 3411, which
11 describes the land. This is the land on which
12 Mr. Burke built his house.

13 .
14 And it would appear, despite the application to the
15 Property Loan and Investment Company, and despite the
16 correspondence that had been passing, that up to this
17 point in time there was not, in fact, any signed
18 contract to buy the land in existence. Does that
19 strike you as usual?

20 A. Well, first of all, I know nothing about that
21 particular case.

22 123 Q. But from your own experience?

23 A. That's a totally different thing altogether. I mean,
24 the banks usually rely on --

25 .
26 MR. WALSH: Sorry, Sir, Mr. Chairman. Mr. Delany was
27 called here as a witness as to facts in his dealings
28 with Mr. Burke and the bank, presumably. He is now
29 being proffered as a professional witness and asked for
30 general opinion evidence on matters which are, at best,

1 only barely related to the sort of technical subject
2 matter we are dealing with. And I don't think it's
3 fair to Mr. Delany, it's not fair to Mr. Burke, that he
4 should be asked these questions and proffered as a
5 witness.

6 .

7 The transaction here, as Ms. Dillon knows from all of
8 the evidence we've gone through for the past few
9 months, was a two-phase transaction.

10 .

11 On the one hand there was a transaction to buy the
12 site. And on the other hand there was a transaction to
13 build the house. The transaction in relation to the
14 building of the house was being financed by a mortgage.

15 The transaction in relation to the purchase of the
16 site, of which the house was being built, was paid for
17 separately and was worked off by professional fees as a
18 contra-account. And we all know that.

19 .

20 And whether the bank's general practice was not - was
21 to grant mortgage facilities of whatever type, only on
22 production of a signed contract of sale, in a general
23 sense, is irrelevant, because this wasn't a usual
24 transaction, Sir. And we just have to deal with the
25 position of the vendors and the purchasers and the
26 builders as they existed at the time.

27 .

28 And we know what loan sanction was made available. The
29 bank made application for a mortgage facility to the
30 Property Loan and Investment Company Limited.

1 Mr. Burke, obviously, met their criteria, because they
2 granted loan sanction, which was available for a
3 certain period of time. That period of time was
4 extended, as we know from the correspondence, from time
5 to time to allow the mortgage to be drawn down, if
6 Mr. Burke wanted to draw it down. In the end of the
7 day, we know he didn't draw down the mortgage. But
8 that has absolutely no connection with the signing of a
9 contract of sale in this particular case, and I don't
10 think it's in any way relevant to ask Mr. Delany's
11 opinion as to what was general practice in relation to
12 the sale of a new house in a housing estate or anywhere
13 else.

14 .

15 MS. DILLON: If I might reply briefly to that, Sir?

16 .

17 I didn't mention a housing estate, to the best of my
18 recollection. Mr. Walsh says that this transaction,
19 meaning his client's transaction in connection with the
20 purchase of this house or the building of this house
21 was not usual. That is in the teeth of Mr. Burke's
22 evidence, because when I put it to Mr. Burke that this
23 transaction was unusual, Mr. Burke vehemently
24 disagreed. And I would like first of all that
25 Mr. Walsh would clarify for you, Sir, so that we can
26 all understand that when Mr. Walsh describes his
27 client's transaction, in connection with the purchase
28 of this property as not being usual, what exactly does
29 Mr. Walsh mean by it?

30 .

1 The second point that Mr. Walsh --

2 .

3 MR. WALSH: If I could just mention, what I mean, it's

4 a once-off house, that's what I meant, rather than a

5 house in a housing estate. That's what the reference

6 to the housing estate was at the end of my submission.

7 .

8 MS. DILLON: That's not the comment he made in

9 connection with "usual". He said "This was not a usual

10 transaction."

11 .

12 The second point that Mr. Walsh makes, is that he says

13 there are two transactions involved here. One is the

14 site, and the other is the building of the house.

15 .

16 You will, of course, Sir, recollect Mr. Burke's

17 evidence, that this was a single transaction in which a

18 portion of the purchase price was attributed to the

19 cost of the land, and the balance to the building of

20 the house. And it was his view that the figure was

21 ú22,500, and a portion was attributed to the land, and

22 thereafter was used or paid for, on Mr. Burke's

23 evidence, by working it off against commissions or

24 sales.

25 .

26 Mr. Burke did not describe it, and indeed, when I put

27 it to him, did not accept that there were two

28 transactions involved here, and insisted at all stages,

29 as referring to it as one single transaction for

30 ú22,500. So if Mr. Walsh could clarify that also? Is

1 he now saying that it is his client's position that
2 what was involved here were two separate transactions,
3 one for the sale of the site, and a separate
4 transaction in connection with the building of the
5 house? And if that is his client's position, then of
6 course we can recall Mr. Burke to clarify that, if that
7 is now Mr. Burke's position.

8 .

9 MR. WALSH: Mr. Burke's case has at all material times
10 been that this was one transaction. As a layman that's
11 his view of it. Ms. Dillon has engaged in the process
12 of a technical parsing and legal analysis of the
13 situation on a second-by-second, step-by-step basis.

14 .

15 Adopting her terminology, Ms. Dillon's terminology and
16 Ms. Dillon's analysis of the situation on a
17 step-by-step basis, I adopted that by saying that there
18 are, in fact - you can analyse it and regard it as
19 being two sub-transactions but one transaction.

20 .

21 As far as Mr. Burke is concerned, he was buying the
22 house, but the house hadn't yet been built, and the
23 land hadn't been transferred to him. So that the land
24 was being transferred to him, and the house was being
25 built. It's the same analysis that would be carried on
26 in a building estate where 500 houses are being built.
27 Your Lordship would have judicial notice of the fact
28 that there are, in many cases, two contracts. One is
29 to buy the site - to buy the site and the building of
30 the house, where you have a building contract and a

1 contract for the sale of the land. That had - for
2 example, you will be aware, it had Stamp Duty
3 implications in the beginning, because you only paid
4 Stamp Duty on the value of the site, not on the value
5 of the house.

6 .
7 So if you take that as one transaction, as far as the
8 layman is concerned, and then you go beneath that and
9 you analyse it from a legal point of view, you can
10 create two little sub-transactions, and that's all I
11 was saying when I was making that observation. It is
12 one transaction.

13 .
14 MS. DILLON: I am glad that Mr. Walsh has clarified
15 that.

16 .
17 In relation to the point that Mr. Walsh has originally
18 made, which was that this witness should not be asked
19 to answer questions in relation to general banking
20 practice, this witness has been a banker for most of
21 his working life, as I understand it. Insofar as he is
22 here as to fact, it is to deal with the documents and
23 the transactions which he is familiar.

24 .
25 The document that is presently on screen is not a
26 document with which Mr. Delany would be familiar, I
27 would think, because it is not on the Bank of Ireland,
28 Whitehall file. However, it is a relevant fact, and I
29 can ask this witness to comment on whether or not if
30 the bank had known, as a lending institution, that

1 there was, in fact, no signed contract, even to
2 purchase the land in existence, until the 1st of
3 August, 1973, whether they would, some considerable
4 number of months prior to that, have agreed to advance
5 monies on foot of it.

6 .
7 It's a simple proposition, and any banker would be able
8 to deal with it. It's a question of security, only.

9 .
10 CHAIRMAN: Well, I would think that the situation is
11 this: That this witness is a professional witness of
12 bank practice. It's a matter for him to answer that
13 question in terms of banking practice.

14 .
15 I can't - I don't purport to know what his answer is
16 going to be, but I don't think he can be asked to go
17 further and say, in relation to the details of this
18 particular transaction, as to whether - what he thinks
19 about it, because he is not familiar with this
20 transaction. But so far as it's put to him, he
21 certainly has a - a lifetime experience of the broad
22 principles upon which these transactions are carried
23 out. And within those limitations, I think he should
24 be allowed to answer the question.

25 .
26 124 Q. MS. DILLON: In the normal course of banking practice,
27 Mr. Delany, is it the position that the bank, in
28 advancing money against land, will require proof of
29 ownership of the land?

30 A. No. The bank will act, as I already stated, on a

1 solicitor's undertaking, and that's the job of the
2 solicitor, to act for the customer. And the bank will
3 rely on his undertaking. Something else I would like
4 to say; bank branches in the Bank of Ireland never gave
5 out mortgages. They sent up applications to the
6 relevant department of the mortgage of the bank -
7 Property Loan and Investment, or ICS, as it is
8 nowadays, that type of thing, but we were just the in
9 between. We got the application, we processed it, sent
10 it up, and we were intermediaries only.

11 .

12 So the idea of contracts and that sort of thing, we
13 would never be privy to that.

14 125 Q. At that time?

15 A. Even today. It hasn't changed.

16 126 Q. But what the bank would require, what a financial
17 institution would require would be either, as you've
18 said, a Letter of Undertaking to hold the title deeds
19 to the order of the institution?

20 A. That's right.

21 127 Q. And if the bank were advancing a bridging facility, for
22 example, to bridge a loan for either the mortgage
23 company or for the Property Loan and Investment
24 Company, they too would require --

25 A. They would require an undertaking.

26 128 Q. A Letter of Undertaking, which would be that the title
27 deeds would be held to the order of the bank?

28 A. Yes, held in trust, yes.

29 129 Q. So that the bank would have to be - would be satisfying
30 itself on the back of the solicitor's undertaking that

1 their money was well-secured on the property?

2 A. Yes.

3 130 Q. So that the whole purpose of the - of any financial

4 institution advancing - there is no great secret about

5 it, advancing money against land, it is that the bank

6 want to know if they can call on the land if there is

7 default, or the financial institution?

8 A. On the basis of the strength of their undertaking, yes.

9 131 Q. Or indeed, if somebody subsequently effects a legal

10 mortgage, it's a mortgage against the property?

11 A. Yes.

12 132 Q. Against the land. So at all stages the financial

13 institution's monies are secured on the actual land in

14 question?

15 A. They are, yes.

16 133 Q. For a property transaction?

17 A. For a property transaction.

18 134 Q. I mean, it may be different, say, if somebody is

19 depositing stocks and shares as securities. Then the

20 bank would have a lien over the stocks and shares of

21 the securities?

22 A. Or a simple deposit.

23 135 Q. But a simple deposit of title deeds would also be

24 security against the lands?

25 A. It would, in terms of possession of the title deeds,

26 yes.

27 136 Q. Where a financial institution is advancing money

28 against land, they like to know, or to be satisfied

29 that they can have recourse to the land, if there is

30 default --

1 A. Yes.

2 137 Q. -- on the loan?

3 A. Yes.

4 138 Q. And there is no great secret about any of that, and

5 there is nothing sinister about any of that. That's

6 the way building societies and banks do their business?

7 A. That's the main terms and conditions, normally, yes.

8 139 Q. And it was the same with the Letter of Offer that we

9 saw from the Property Loan and Investment Company, they

10 wanted the --

11 A. Yes.

12 140 Q. As part of their terms and conditions they were going

13 to hold the title deeds, they wanted to have their

14 security on the land?

15 A. That's correct.

16 141 Q. And where you interpose a solicitor's Letter of

17 Undertaking, it is simply that the solicitor is now

18 holding the title deeds to the order of the bank or the

19 financial institution --

20 A. Yes.

21 142 Q. -- until the legal - the legalities are put in place,

22 the legal mortgage is effected?

23 A. Yes.

24 143 Q. Which then perfects the bank's title or claim over the

25 land?

26 A. That's correct.

27 144 Q. And this is something that happens thousands of times a

28 week --

29 A. Yes.

30 145 Q. -- all over the country?

1 A. Mm-hmm.

2 146 Q. But it is necessary, therefore, that the person who is
3 borrowing the money has title to the land or an
4 interest in the land?

5 A. Well, I mean, that's - I don't quite understand what
6 you are saying. I mean, it's for his benefit. It's
7 his land, his money, yes.

8 147 Q. But it has to be his land. Isn't that right?

9 A. Yes, correct.

10 148 Q. Of course. So if it's not his land, will the bank give
11 him the money?

12 A. Well, I mean, it wouldn't be his land yet, in the fact
13 that the title wouldn't have been perfected or changed.
14 As I said before, they were relying on a solicitor's
15 undertaking. And that takes time to perfect.

16 149 Q. Yes. But if there isn't even a contract in existence
17 to buy the land --

18 A. A contract - I mean, you are relying on the solicitor's
19 word.

20 150 Q. You don't want to go into that, that's fine,
21 Mr. Delany. But in the normal course it would be the
22 position that the bank would satisfy itself that the
23 person had ownership or title of the land?

24 A. No. I'll give you an example. A person comes into the
25 bank, "I want to buy land for ú15,000. Will you give
26 it?" And the bank agrees to give it. Now, the bank
27 don't get out and inspect the land or anything. They
28 get a Letter of Undertaking from a reputable solicitor
29 and they rely on that, full stop.

30 151 Q. But the Letter of Undertaking, Mr. Delany, is to hold

1 the title deeds --

2 A. In trust for the bank.

3 152 Q. And what do the title deeds do, Mr. Delany?

4 A. Well, when - you see, title would have to be produced

5 --

6 153 Q. Exactly.

7 A. -- subsequent to that.

8 154 Q. In order for title to be produced there would have to

9 be an agreement to buy the land?

10 A. There would, yes.

11 155 Q. So what would be the first step before you can have

12 title is, that you must have a contract or an agreement

13 to buy the land?

14 A. Now --

15 156 Q. Isn't that right?

16 A. That's in theory, but we didn't go into that. We

17 simply relied on the solicitor's undertaking.

18 157 Q. But at this particular point in time in July of 1973,

19 the letter that's been sent by Mr. Oliver Conlon,

20 Mr. Burke's solicitor, to Property Loan and Investment

21 Company, if we could have page 5434, is not a

22 solicitor's Letter of Undertaking. Isn't that right?

23 A. It's not worded as such.

24 158 Q. Well, do you see any part of it, Mr. Delany, that

25 indicates to you it's a Letter of Undertaking?

26 A. Well, there is - there is a promise, in the last

27 paragraph, when he said: "We confirm that the

28 documents have not, as yet, been furnished to us by the

29 vendor's solicitors, but immediately on receipt of same

30 we will forward them to you."

- 1 .
- 2 Now, it's written on solicitor's notepaper, would you
- 3 consider that an undertaking?
- 4 159 Q. I'll show you Mr. Conlon's undertaking to the bank, and
- 5 we can compare the two - page 5437?
- 6 A. The wording in a normal undertaking is different. "We
- 7 hereby undertake to" is the first part.
- 8 160 Q. In order for something to be an undertaking, as you
- 9 well know, Mr. Delany, it is necessary that the
- 10 solicitor in question, being a professional person,
- 11 give a clear and unambiguous undertaking about what he,
- 12 the professional person, is agreeing to do?
- 13 A. We would accept that as an undertaking, yes.
- 14 161 Q. Would you have accepted the first letter as an
- 15 undertaking?
- 16 A. Well --
- 17 162 Q. It's not an undertaking?
- 18 A. It appears to be more of a promise, but it's written on
- 19 a solicitor's notepaper.
- 20 163 Q. But it doesn't promise to hold the title deeds --
- 21 A. It doesn't.
- 22 164 Q. -- to the order of the bank. Neither does it promise
- 23 to lodge the net proceeds, and it doesn't use the word
- 24 "undertake"?
- 25 A. That's right.
- 26 165 Q. So it is more a Letter of Information - page 5434 -
- 27 unlike the letter that's sent to Bank of Ireland,
- 28 Whitehall, which, in fact, is a Letter of Undertaking.
- 29 This is a Letter of Information from Mr. Conlon?
- 30 A. It is, yes.

1 166 Q. And at the time that that letter was written about the
2 title deed documents not having been furnished, and
3 that they would be - on receipt of them they will
4 forward them - there was no contract even to buy the
5 land in existence?

6 A. I am not aware of that.

7 167 Q. You are not aware of that. But you have seen from
8 Document 1523 that that, in fact, was the case, because
9 the contract to buy the land between Mr. Burke and
10 Oakpark is the 1st of August, 1973?

11 A. Yes, it would appear.

12 168 Q. Now, it would appear that subsequent to the signing of
13 the contract there was further correspondence in 1973
14 between the Property Loan and Investment Company, that
15 we'll go through fairly briefly, page 5435, please, and
16 the Manager, Bank of Ireland, Whitehall. And in this
17 letter the bank are being informed about a change of
18 interest?

19 A. Yes.

20 169 Q. And on the 15th of August, page 5436, the bank -
21 yourself, in fact, inform Mr. Burke of this proposed
22 change of interest?

23 A. Yes.

24 170 Q. And then, on the 28th of September, 1973, a Letter of
25 Undertaking is furnished by Oliver Conlon & Company in
26 connection with this property, page 5437.

27 .

28 And if we scroll down to the very bottom of the page,
29 we see that the undertaking is addressed to the
30 Manager, Bank of Ireland, Whitehall, Dublin 9?

1 A. Yes.

2 171 Q. And if we go back up, we see that, "On the instructions
3 of our client, Mr. Burke, and in consideration of
4 facilities afforded by your bank to him, we hereby
5 undertake to lodge the net loan cheque on receipt of
6 same."

7 A. Yes.

8 172 Q. So what Mr. Conlon was promising to do here, or
9 undertaking to do, was that if facilities were granted
10 to Mr. Burke, that when the cheque came in from the
11 Property Loan and Investment Company, the net proceeds
12 of that would be lodged with the bank?

13 A. It appears so, yes.

14 173 Q. And the purpose of them lodging the net loan cheque
15 with the bank would be to wipe out or eliminate
16 whatever facilities the bank had advanced to Mr. Burke?

17 A. Mm-hmm.

18 174 Q. Again, a perfectly normal bank transaction?

19 A. Yes.

20 175 Q. The letter would suggest that by the 28th of September,
21 1973, that Mr. Burke had sought bridging facilities
22 from Bank of Ireland in Whitehall?

23 A. Yes, it appears so.

24 176 Q. Can you explain to the Sole Member of the Tribunal,
25 first of all, what was the limit the bank had available
26 to it in 1973, that it could loan of its own accord?

27 A. Yes. I can't be sure, but probably around two
28 and-a-half thousand pounds.

29 177 Q. And if somebody, or you wanted to lend a customer more
30 than two and-a-half thousand pounds, what was the

1 procedure that the bank would carry out?

2 A. You mean an application to the regional --

3 178 Q. How was such an application made?

4 A. On an application form.

5 179 Q. What would happen to the application when it went to

6 Head Office?

7 A. If they - if they sanctioned it, and if they sanctioned

8 it, they wrote back in and tell you it's sanctioned,

9 and detailed the conditions of repayment.

10 180 Q. And if they refused it with the -

11 A. Just say - the reasons for it - why it was declined,

12 simple, short.

13 181 Q. And if the loan was sanctioned, would Bank of Ireland,

14 Whitehall then write out to the customer?

15 A. They would, yes.

16 182 Q. And in that type of correspondence would the bank set

17 out its terms and conditions?

18 A. It would, yes.

19 183 Q. And would you deal with such things as the security the

20 bank would want to have put in place, such as the

21 Letter of Undertaking?

22 A. Yes.

23 184 Q. The rate of interest that would apply to the bridging

24 loan account, the rate of repayment or method of

25 repayment, matters such as that sort?

26 A. Yes.

27 185 Q. Would you also have dealt with things like fire

28 insurance, and possibly mortgage protection?

29 A. No.

30 186 Q. Not for bridging?

1 A. It's the - the mortgage company would do that - not for
2 a bridging loan, no.

3 187 Q. So that in the normal course, this then was - the loan
4 that was being sought here, or being talked about here,
5 the Tribunal understands was a loan of ú15,000?

6 A. Yes.

7 188 Q. In the event that Mr. Burke had been seeking a loan of
8 ú15,000 from Bank of Ireland, Whitehall, there should
9 be on this file, then, a letter going up to Head Office
10 seeking sanction?

11 A. Correct.

12 189 Q. And there should be a response from Head Office
13 granting sanction or refusing it?

14 A. Yes.

15 190 Q. And there should be correspondence with Mr. Burke
16 informing him of the outcome of what Head Office had
17 decided, and setting out the terms and conditions under
18 which the bank were prepared to make the ú15,000
19 available?

20 A. Yes.

21 191 Q. And that would be the normal practice?

22 A. Yes.

23 192 Q. Right. Now, you've looked at the file, Mr. Delany, and
24 there is no application to Head Office on behalf of
25 Mr. Burke from Bank of Ireland, Whitehall, isn't that
26 right?

27 A. Well, there doesn't appear to be.

28 193 Q. Neither is there any information coming from Head
29 Office in connection with authorising a payment out, or
30 a bridging facility to Mr. Burke, nor indeed is there

1 any letter to Mr. Burke informing him of the fact that
2 he had been granted bridging facilities, or setting out
3 the terms and conditions?

4 A. It appears so, yes.

5 194 Q. What does that suggest to you, Mr. Delany?

6 .

7 MR. WALSH: Sorry, Sir. Before Mr. Delany answers this
8 question. He's brought here to deal with questions of
9 fact.

10 .

11 Now, he said very clearly that these matters occurred
12 almost 30 years ago, and he hasn't much recall of them.
13 He hasn't yet been asked does he have any recall of
14 this particular transaction. And I think he should be
15 asked, has he any recall of this particular
16 transaction. And we all know, from our past dealings
17 with the Bank of Ireland, that some information has
18 been furnished to us on a piecemeal basis, and any
19 information or documents we have is not complete.

20 .

21 It could well be that there were - therefore, that
22 there were applications, and there was correspondence
23 with Head Office and with Mr. Burke and it hasn't yet
24 emerged from the bank, or it may well be misplaced,
25 because all these things took place almost 30 years
26 ago.

27 .

28 CHAIRMAN: I see the force of what you are saying, but
29 surely the situation is this is a matter, as I say,
30 that what he would expect to find on the file is

1 something within his knowledge and within his
2 expertise.

3 .

4 Now, he cannot go further and say why it's not on the
5 file. He can only simply say it's unusual not to find
6 it. That's the furthest he can go, isn't it?

7 .

8 MR. WALSH: And I don't think he should be asked any
9 further. He should be asked what is his recollection
10 of this particular transaction.

11 .

12 CHAIRMAN: That's another matter. I am dealing with
13 the area of his expertise. And he is entitled to be
14 asked in that area, within the realms of that area,
15 what he would expect to find, and indeed, in the
16 absence of it being - has he an explanation, or does he
17 know of an explanation likely. Put it that way.

18 .

19 But he can't deal with what did happen in this case,
20 because he doesn't know. It's not on the file. And he
21 wasn't dealing with it.

22 .

23 MR. WALSH: I agree with you, Sir, he can't deal with
24 this application, because he says he doesn't know and
25 he can't recall. Secondly, there is nothing on the
26 file.

27 .

28 CHAIRMAN: He is informing the Tribunal that it's an
29 unusual situation. Put it no further than that. And
30 that's the furthest his evidence can go, isn't that

1 true?

2 .

3 MR. WALSH: I don't think he should be asked about that
4 at all, Sir. He can only tell you what he recalls, and
5 then it can be augmented by what he sees on the
6 paperwork, such as he sees - all he can see is what's
7 in the paperwork.

8 .

9 Now, the paperwork is deficient. We know that it's not
10 complete. I don't think he should be asked to
11 speculate on what might have been, or what is, or what
12 could have been, and what's now missing or hasn't been
13 found by the bank. That's going outside the realms of
14 fairness and competence.

15 .

16 CHAIRMAN: Within his competence, as a professional, he
17 is entitled to give evidence of what he would expect to
18 find in circumstances. That's, I think, the limit of
19 his expertise or his knowledge, in fact, in this
20 instance.

21 .

22 MS. DILLON: If Mr. Walsh is finished. I mean, first
23 of all, it is unfair for Mr. Walsh to make allegations
24 or complaints against Bank of Ireland in connection
25 with the record-keeping, without giving notice to Bank
26 of Ireland that he proposes to make any such
27 complaints.

28 .

29 That's the first point I just would wish to draw to
30 Mr. Walsh's attention, in case it has repercussions in

1 connection with the submissions that he made insofar as
2 Bank of Ireland is concerned.

3 .

4 This is a witness who has given you evidence, Sir, to
5 the fact that, what would be usual in a transaction
6 where a bridging loan facility is applied for, one
7 would expect to find or to see a series of documents
8 that have been identified by the witness. These
9 documents are clearly not on the file.

10 .

11 I am, therefore, asking the witness, can he assist us
12 as to why that might be so. It is in the absence of
13 the documents that give rise to the question. And it
14 is really putting our heads in the sand if we establish
15 that the documents aren't there, and then we'll - we'll
16 be subsequently criticised by you, Sir, rightly, by
17 saying: Why aren't the bank - asked why aren't the
18 documents on the file?

19 .

20 So, Mr. Delany --

21 .

22 MR. WALSH: Sorry, Sir, I thought the effect of your
23 ruling was that this witness can't be asked something
24 outside the area of his knowledge --

25 .

26 CHAIRMAN: What would he expect to find there, and does
27 he know of an explanation, a common explanation as to
28 what could be the reason.

29 .

30 He cannot go further than that.

1

MR. WALSH: I agree with you, Sir.

3

CHAIRMAN: Within his experience as a banker. The sequence of events is laid down. In every walk of life there is a departure from the actual regulations from time to time. It may be in his experience of what gives rise to this, it may not. He may simply say, "I don't know and I am not going to speculate." I don't know. I have to find out what he is going to say.

11

MR. WALSH: I think it's unfair to put him in that position. He should not be asked for his opinion when he wasn't even party to the transaction.

15

MS. DILLON: With the greatest possible respect to Mr. Walsh, that is a ridiculous submission to make.

18

CHAIRMAN: I am saying that this witness can be asked what should be - what he would expect to find on the file as a matter of practice, what isn't on the file, and does he know from his experience of the average or ordinary explanation if such exists.

24

Now, those are the three topics he can be asked about, and no more.

27

28 195 Q. MS. DILLON: Yes, Sir.

29

30 In connection with this transaction to this particular

1 point in time, Mr. Delany, if Mr. Burke had applied for
2 a bridging loan, for €15,000, as Mr. Burke has --
3 .

4 MR. WALSH: Sir, before we go down this line, this
5 witness should be asked what is his knowledge or
6 recollection of these events in the first place.
7 That's the first premise that should be established.

8 .
9 MS. DILLON: No, I am sorry, it's not, and it's not for
10 Mr. Walsh to continually dictate from behind me as to
11 how he thinks I should be doing my job. I'll do it as
12 best I can, Sir, to elicit the truth of the matter.

13 And if Mr. Walsh doesn't like the way I do it he can
14 clarify any confusion I have caused in his
15 re-examination of this witness.

16 .
17 CHAIRMAN: Can we get the witness to answer the three
18 questions --

19 .
20 MR. WALSH: I am not trying to dictate. I just want to
21 make that clear to my colleague, Ms. Dillon.

22 .
23 CHAIRMAN: Mr. Walsh, nobody is going to interpret you
24 as dictating. But let us deal with it on the basis
25 that if you want to clarify an aspect of the witness's
26 evidence, you do it in cross-examination. Can we do it
27 on that basis?

28 .
29 MR. WALSH: In a general way there is no difficulty
30 with that, but in this particular case when events

1 occurred 30 years ago, I think before any questions are
2 asked of the witness it should first be established,
3 the basis of his knowledge or recollection --

4 .

5 CHAIRMAN: The file says - there is a letter on the
6 file that bridging loan facilities - sorry, that the
7 bridging loan facilities exist. It's my recollection
8 of the actual correspondence. I hope I am correct in
9 that.

10 .

11 Now, that being the situation, this witness is a
12 professional banker. A bridging loan is one of the
13 events of life that happen in a bank frequently. He is
14 entitled to be asked what would he expect to happen
15 where bridging loan facilities are granted. If the
16 file - what would he expect to find on the file. If
17 there is an absence of those documents or events
18 recorded on the file, then he is entitled to be asked
19 does he know of an ordinary - in the ordinary course of
20 his business why this would be departed from. That's
21 as far as this witness can be put, in my view, and
22 that's my ruling now.

23 .

24 MR. WALSH: The reason I am making this objection is
25 that a statement was taken from Mr. Delany, and signed
26 by him, and furnished to us, and none of this evidence
27 is on the statement.

28 .

29 The second point is, we thought he was being called as
30 a witness as to the facts related to Mr. Burke and

1 Mr. Burke's dealings with his account, and Mr. Burke's
2 dealings with this witness over time. Ms. Dillon is
3 now departing from that and proferring him as a witness
4 as to - an expert witness as to banking practice, and
5 that is not fair to us, Sir. I think he should be
6 confined to dealing with what he knows and what he
7 recalls.

8 .

9 CHAIRMAN: As far as --

10 .

11 MS. DILLON: If I could reply?

12 .

13 Insofar as this situation is concerned, Mr. Delany is a
14 witness as to fact. It is a fact that there is not, on
15 this file, any of the correspondence that this witness
16 has already told you would be normal in connection with
17 the bridging loan application. This witness has told
18 you that his recollection was that in or around 1973,
19 the maximum the branch could, of its own accord, lend
20 was two and-a-half thousand pounds. If a greater sum
21 than that was required for a customer, it necessitated
22 a written application to Head Office. Head Office
23 would in turn write back saying whether yea or nay,
24 whether there was sanctions or there was not, and
25 thereafter the customer would be written to.

26 .

27 That is his evidence as to how the bank conducted its
28 business.

29 .

30 And I am simply asking this witness why it is, or can

1 he assist at all as to why no such correspondence in
2 connection with Mr. Burke's bridging loan exists on the
3 file. And that is a matter of fact, and it is based on
4 a matter of fact about which this witness has already
5 given evidence.

6 .
7 CHAIRMAN: In my opinion, and I am so ruling that that
8 question is both relevant and admissible.

9 .
10 196 Q. MS. DILLON: Now, Mr. Delany, you have told the Sole
11 Member that in the normal course of events, because the
12 figure was ú15,000, that an application would have to
13 be made to Head Office in connection with authorising
14 such bridging facilities --

15 A. Yes.

16 197 Q. -- in 1973. Head Office would respond to the bank.
17 And assuming for the moment that the response was
18 positive, and that the bank could grant the bridging
19 facilities, that the bank would then write directly to
20 its customer outlining the bridging facilities that
21 were available to it, and the terms and conditions
22 attached to it?

23 A. Yes.

24 198 Q. It would appear from the file, such as it is, from Bank
25 of Ireland, Whitehall, that there is no such
26 correspondence in connection with Mr. Ray Burke's
27 bridging facilities. And can you assist the Sole
28 Member as to why that is?

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

30 199 Q. Now, subsequent, Mr. Delany - if we could just have

1 page 5437 back on screen.

2 .

3 That letter suggests that the bank were affording

4 facilities to Mr. Burke.

5 .

6 MR. WALSH: Had afforded. It's in the past tense.

7 .

8 200 Q. MS. DILLON: Yes. Is that right, Mr. Delany?

9 A. Not necessarily so.

10 201 Q. Yes.

11 A. The facilities may have been granted, but they wouldn't

12 have been available, if we got a letter like that.

13 202 Q. You wouldn't have allowed Mr. Burke to draw down the

14 funds?

15 A. Absolutely not.

16 203 Q. Are there any circumstances in which you would have

17 permitted Mr. Burke on, say, the 26th of September,

18 1973, to withdraw ú15,000 or advance him ú15,000 before

19 you got this Letter of Undertaking?

20 A. No, it wouldn't have been normal banking practice.

21 204 Q. If the bank had granted bridging facilities to

22 Mr. Burke on receipt of this solicitor's Letter of

23 Undertaking, say Mr. Burke had wanted to draw down on

24 the 29th of September the bridging loan facilities, say

25 the day after you got this letter in --

26 A. Right.

27 205 Q. -- who would you have made the cheque payable to?

28 A. His solicitor. It would be a bank draft payment, not a

29 cheque.

30 206 Q. Would you have paid the cheque out to Mr. Burke?

- 1 A. No, under no circumstances.
- 2 207 Q. Would you have paid the cheque to Mr. Burke?
- 3 A. Under no circumstances. We held - we didn't hold
- 4 Mr. Burke's undertaking, we held Mr. Conlon's
- 5 undertaking, and we were obliged to him.
- 6 208 Q. Yes. And, therefore, if you had received this Letter
- 7 of Undertaking prior to the draw down of the funds on
- 8 the bridging loan facility, the only person to whom you
- 9 would have paid these funds was Mr. Conlon?
- 10 A. Naturally. We couldn't pay it to anybody else.
- 11 209 Q. Yes. And are there any circumstances that you can
- 12 envisage where following receipt of this letter you
- 13 would have issued a cheque to Mr. Burke or to another
- 14 party on Mr. Burke's directions?
- 15 A. No, we would only be dealing with the solicitor. We
- 16 were obliged under his undertaking.
- 17 210 Q. And again, I think you reviewed the file and there -
- 18 presumably if you had been sending the cheque to
- 19 Mr. Conlon, you would send it under cover of a letter?
- 20 A. Absolutely, yes.
- 21 211 Q. And again, there is no such correspondence on file?
- 22 You've looked at the full file?
- 23 A. I have indeed, yes.
- 24 212 Q. I think subsequently in 1974 an article was published
- 25 in the Sunday Independent concerning Mr. Burke. I
- 26 think it was over two weekends, and following which you
- 27 had a communication from a member of the Garda
- 28 Siochana?
- 29 A. That's correct.
- 30 213 Q. Can you tell the Sole Member what you recollect about

1 that?

2 A. Yes. I recollect reading the articles, and then I was
3 the Assistant Manager at the time, Acting Manager as
4 the Manager was on leave. I was contacted by two Garda
5 from, I think it was the Special Branch in those days,
6 and they said they wanted to come and see me.

7 .

8 They came out, I met them, I had a witness, another
9 member of staff, and they said they wanted to see all -
10 to view things, all files and ledger sheets to do with
11 Mr. Burke. And I said that I couldn't give it to them,
12 in view of client confidentiality. Then I asked them,
13 had they a Court Order. And they said "No". So they
14 understood my position.

15 .

16 Being the gentlemen they were, I had a chat with them,
17 and I said that the simplest way out of this, rather
18 than go for a Court Order was - I didn't see anything
19 untoward in Mr. Burke's business at the branch and that
20 if I contacted him and got the authority from him to
21 let the Garda see what they wished to see, it would be
22 the simple way out. I duly contacted Mr. Burke, told
23 him that I had met these gentlemen, and he wrote a
24 Letter of Authority to me authorising me to let the
25 Garda have access to any information they wished with
26 regard to his account.

27 .

28 I forwarded that on, the information on. They came out
29 again. I gave them a room, I asked them what they
30 wanted. They wanted his file, they wanted his ledger

1 sheets, which I gave them. And as I recall, they were
2 there for maybe an hour, an hour and a half, two hours.

3 I can't remember.

4 .

5 They thanked me and left, and that was the last
6 communication I had with them.

7 214 Q. Were you requested by the Gardai to prepare a
8 statement?

9 A. No.

10 215 Q. Okay. Did you, yourself, keep any notes of the
11 meetings that you had with the Gardai?

12 A. It would appear I didn't, reading the file.

13 216 Q. Yes. So if we can - I can take you back through it
14 slightly more slowly, Mr. Delany.

15 .

16 The Gardai approached you initially, is that correct?

17 A. Yes.

18 217 Q. Is that right?

19 A. That's correct, yes.

20 218 Q. So that the first communication you had from anybody in
21 connection with looking at these accounts was from
22 Mr. Casey, is that right, the Guard involved in the
23 matter?

24 A. Yes.

25 219 Q. I can't find - I have a recollection, and it's only a
26 recollection, so I won't deal with them until I find
27 the actual reference to it. It's something Mr. Burke
28 said about this.

29 .

30 But the Gardai approached you and you weren't happy to

1 let them have the documents, because of client

2 confidentiality?

3 A. It wasn't that I wasn't happy, I wasn't allowed.

4 220 Q. You couldn't do it?

5 A. Absolutely.

6 221 Q. So you sought and obtained the authority --

7 A. Yes.

8 222 Q. -- of Mr. Burke?

9 A. Yes.

10 223 Q. Right. And Mr. Burke provided the authority on foot of

11 a request from you?

12 A. Yes - no, not on foot of a request from me, on foot of

13 a suggestion from me.

14 224 Q. Yes. And that is Document 5441.

15 .

16 If you'd like to scroll back to the top so that

17 Mr. Delany can see the date on the document.

18 A. Yes.

19 225 Q. It's addressed to you. And it gives Mr. Burke's

20 authority to provide any information required to

21 Mr. Casey?

22 A. That's right.

23 226 Q. And Mr. Casey was the member of the Garda Siochana in

24 charge of the investigation?

25 A. Yes.

26 227 Q. What did you understand they wanted information about?

27 A. About what I read in the papers.

28 228 Q. Which was?

29 A. Joe McAnthony's article, the general inference of

30 wrongdoing.

1 229 Q. I mean, did the Gardai come to you seeking to limit
2 their inquiries in any way? Were they - for example,
3 did they want to see all his accounts?

4 A. They wanted to see anything pertaining to his business
5 at the branch.

6 230 Q. To his business at the branch?

7 A. Yes.

8 231 Q. So that would be all of his accounts?

9 A. No, no, no. It would refer to Mr. Burke's personal
10 accounts.

11 232 Q. Oh, yes. I mean, not PJ Burke (Sales) --

12 A. No, that had nothing to do with it.

13 233 Q. Nothing to do with that, but insofar as Mr. Raphael
14 Burke himself was personally concerned, the Gardai
15 wanted to see all documents in connection with these
16 affairs at the bank?

17 A. That's right.

18 234 Q. Okay. Did the Gardai confine their inquiry in any way
19 in connection with Mr. Burke's house?

20 A. Never mentioned.

21 235 Q. Was it never mentioned?

22 A. What I have told you is that they came and they
23 requested whatever information, the bank had to get it,
24 which was basically files and ledger sheets. And they
25 never discussed anything with me, other than the
26 initial request to get the information. I had no
27 discussions with the Gardai about anything with regard
28 to houses or anything like that.

29 236 Q. Mr. Burke has suggested to the Tribunal that the letter
30 that you wrote on the 20th of August, 1974, was written

1 as a result of the focus of a Gardai inquiry as to how
2 he had paid for his house?

3 A. Well, I asked for a copy of that letter from
4 Mr. Gallagher at our last meeting, and I took it away,
5 I studied it, I examined it, and I have no recollection
6 of that letter whatsoever.

7 237 Q. Yes.

8 A. I put a lot of thought into it, and I have no
9 recollection whatsoever.

10 238 Q. The document is 5373. This is the letter - I think you
11 are familiar with the letter now, Mr. Delany?

12 A. I am familiar with it now, because I have seen it
13 recently, and I have read it a lot. And I have no
14 recall of it whatsoever.

15 239 Q. Right. Do you recollect to whom it is likely that
16 letter was sent?

17 A. No.

18 240 Q. Do you think it was given to the Gardai?

19 A. I don't know.

20 241 Q. Do you think it was given to Mr. Burke?

21 A. I told you, I have no recall of the letter whatsoever.

22 242 Q. All right. Mr. Burke has told the Tribunal that the
23 purpose of this particular Garda inquiry was to
24 establish whether or not, or how he had, in fact, paid
25 for his house. Does this letter assist or deal with,
26 in any way, as to how Mr. Burke financed the purchase
27 of his house?

28 A. I can't tell you that. As I said, I have no
29 recollection of the letter whatsoever.

30 243 Q. Yes.

1 A. If I had, I would delightedly tell you.

2 244 Q. Mr. Burke has told the Tribunal that the letter was
3 prepared for Mr. Casey. Can you assist, is Mr. Burke
4 correct when he tells the Tribunal that the letter was
5 prepared for Mr. Casey?

6 A. No, I can't help you, unfortunately. I have absolutely
7 no recall of it.

8 245 Q. Mr. Burke has told the Tribunal that the purpose of the
9 letter was to clarify how his house was paid for. Does
10 this letter in any way indicate how Mr. Burke, or to
11 whom Mr. Burke paid for his house?

12 A. No.

13 246 Q. No. Mr. Burke has also told the Tribunal that the
14 purpose of writing this letter was to explain how he,
15 Mr. Burke, had paid for his house. Does the letter
16 explain how Mr. Burke paid for his house?

17 A. It doesn't, no.

18 247 Q. No. Mr. Burke has also told the Tribunal that he
19 regards this letter as evidence that he paid Oakpark
20 Developments Limited ú15,000 for building his house.
21 Do you agree with that?

22 A. No.

23 .

24 MR. WALSH: Sorry, Sir, I think - I didn't want to
25 interrupt, because I was interrupting a lot earlier on.
26 But this line of questioning, asking a witness to give
27 his opinion on a letter that he can't recall, and to
28 comment on evidence he didn't hear, is asking him to
29 form a judgement and to proffer an opinion, and he is
30 here as a witness as to fact, not as to proffering

1 opinions. Opinions are entirely a matter for you, Sir,
2 with respect.

3 .

4 MS. DILLON: It would be entirely and absolutely wrong
5 of me, Sir, and I would be derelict in my duty if I did
6 not put to this witness the positive assertions made by
7 Mr. Burke in connection with this correspondence.

8 .

9 This is the author of the correspondence, who has given
10 evidence to you about what he recollects and does not
11 recollect.

12 .

13 Mr. Burke has given a number of pieces of positive
14 testimony to you, and has suggested to you in his
15 evidence, that based on an interpretation placed on
16 this correspondence by Mr. Burke you should draw
17 certain conclusions.

18 .

19 Mr. Burke has deposed to the fact that this letter was
20 written for Mr. Casey. The author of the letter cannot
21 recollect for whom it was written. Mr. Burke has sworn
22 to you that the purpose of writing this letter was to
23 clarify how his house was paid for, and to explain how
24 his house was paid for. The author of the letter does
25 not appear to be agreeing with that.

26 .

27 Mr. Burke has said that - to you, Sir, that this letter
28 is evidence that he paid Oakpark ú15,000. The author
29 of the letter does not appear to be agreeing with that.

30 .

1 It would be wrong of me, Sir, if I did not put these
2 matters, these positive assertions of Mr. Burke to this
3 witness in connection with this particular document.

4 .

5 CHAIRMAN: I --

6 .

7 248 Q. MS. DILLON: Mr. Burke has also told the Tribunal that
8 the Bank of Ireland in Whitehall knew of the payment of
9 ú15,000, or knew of the payment for his house. Do you
10 have any recollection of that?

11 A. No --

12 .

13 CHAIRMAN: First of all, that question must be phrased:
14 Does this witness know, not the Bank of Ireland?

15 .

16 MS. DILLON: Yes. I mean - I accept that, Sir.

17 Mr. Burke's evidence was not about --

18 .

19 CHAIRMAN: There are other officials in the Bank of
20 Ireland who might have dealt with the transaction.

21 .

22 MS. DILLON: It was - what he said was Bank of Ireland,
23 Whitehall.

24 .

25 CHAIRMAN: Insofar as this witness knows. Confine it
26 to this witness.

27 .

28 249 Q. MS. DILLON: Yes. Mr. Burke said that Bank of Ireland,
29 Whitehall knew that he had paid for his house. Do you
30 have any recollection or knowledge?

1 A. No, none whatsoever.

2 250 Q. Do you have any recollection of the Gardai bringing
3 anything to your attention about Mr. Burke's house?

4 A. No, nothing at all. I told you the exact details of
5 the meetings. One was to request information which I
6 couldn't give. And the second meeting they attended, I
7 gave them a room, I gave them the ledger sheets and the
8 files, and when they were finished we said "Thank you",
9 and we had no discussion about anything. I certainly
10 remember that.

11 251 Q. The Gardai told you that they were investigating the
12 business affairs of Mr. Burke?

13 A. That's right.

14 252 Q. And they wanted access to his personal accounts?

15 A. That's right.

16 253 Q. Did the Gardai indicate to you that they were limiting
17 their inquiry as to whether or not Mr. Burke, or how
18 Mr. Burke had paid for his house?

19 A. I mentioned before there was no discussion about
20 Mr. Burke's house with the Gardai.

21 .

22 CHAIRMAN: I wonder, might I intervene here, and I -
23 don't answer this question until you see what counsel's
24 reaction is.

25 .

26 Can you recollect the circumstances under which whoever
27 it was, and I am not fixing the person, because I just
28 don't know, at least I don't purport to know; the
29 circumstances on which you came to write this letter?

30 A. No, I cannot.

- 1 .
- 2 CHAIRMAN: I think that ends the matter. The witness
- 3 has no recollection of why this letter was written or
- 4 the circumstances which gave rise to it.
- 5 .
- 6 You do accept it is your initial on the bottom?
- 7 A. I do, yes.
- 8 .
- 9 CHAIRMAN: I just want to check that.
- 10 A. Yes, I do. It is my initial.
- 11 .
- 12 254 Q. MS. DILLON: You accept that you are the author of the
- 13 letter?
- 14 A. I do not accept that - I can't say I was the author,
- 15 because I have no recollection of it. If I said -
- 16 admitted I was the author, I would have remembered it,
- 17 but I don't remember it.
- 18 255 Q. When you say you don't accept that you were the author
- 19 of it, do you think somebody else may have given you a
- 20 draft and you signed it?
- 21 A. I can't tell you, because I can't remember it. I am on
- 22 oath and I am telling you the truth.
- 23 256 Q. If Mr. Burke is correct, and if the focus of the Gardai
- 24 inquiries was how Mr. Burke had paid for his house, and
- 25 if Mr. Burke is correct that the reason this letter was
- 26 written was to satisfy the Gardai that he had paid for
- 27 his house, and if the bank knew he had paid Oakpark
- 28 €15,000, do you think, as a matter of probability, you
- 29 would have said that in the letter?
- 30 .

1 MR. WALSH: Sorry, Sir, that again is asking this
2 witness for an opinion on something that he doesn't
3 recall at this remove in time. So I don't think he
4 should be --

5 .

6 CHAIRMAN: I think Mr. Walsh is right. I think the
7 witness has firmly come down on the situation, and I
8 accept the witness to be telling me the truth. I want
9 to make it quite clear about that.

10 .

11 "I do not recall the circumstances."

12 .

13 He is being very, very careful with his evidence, very,
14 very strict in the answers, the information he is
15 supplying us. And in the circumstances I think it's -
16 I think it's only fair to both Mr. Burke and to the
17 witness that we don't proceed further, to push him over
18 the cliff, if I may put it --

19 .

20 MS. DILLON: I don't seek to push him over the cliff at
21 all, Sir. I simply ask him in the light of the
22 positive assertions that have been made to you under
23 oath by Mr. Burke. And Mr. Burke says the purpose of
24 this letter was to satisfy the Gardai that he had paid
25 ú15,000 to Oakpark for his house.

26 .

27 Now --

28 .

29 CHAIRMAN: One would assume that the premises upon
30 which Mr. Burke places that is that he requested or

1 gave authority for such a letter to be written on those
2 terms, and this is the letter that emanated, because we
3 have his signature on the bottom.

4 .

5 Now, the witness says, "I don't know the
6 circumstances."

7 .

8 MS. DILLON: What I wish to ask the witness, Sir, with
9 your permission, would be that if the purpose of - if
10 the focus of this letter was, as Mr. Burke has said, to
11 establish that Mr. Burke had paid ú15,000 to Oakpark
12 for his house, and if he, Mr. Delany, had known that,
13 would he not have said it in the letter?

14 .

15 CHAIRMAN: I think that's acceptable. It is acceptable
16 to this extent: There is the letter there, he can
17 explain - I would have a view about what the letter
18 implies. And if that proposition was put to him, well,
19 he has to tell us whether or not he would have put it
20 into this letter.

21 .

22 MR. WALSH: But, Sir, my original objection, which you
23 ruled with me on, still stands, and it's further
24 amplified and strengthened by the fact that I don't
25 think Mr. Burke's evidence anywhere says that the sole
26 focus of this Garda inquiry in 1974 was about his
27 house. It wasn't. The sole - the - there were a
28 number of different issues raised in those articles.
29 The only one wasn't his house - the house wasn't the
30 only one.

1 .
2 Now, I don't think he ever said that. My recollection
3 is he did indicate that was one of the issues that was
4 under investigation, and that these letters were in
5 connection with the house point.

6 .
7 Now, then this witness, Mr. Delany, has very fairly
8 dealt with all of Ms. Dillon's questions, and has very
9 fairly and forthrightly said that he cannot recall this
10 letter. It is his signature. He can't recall the
11 letter.

12 .
13 Now, beyond that he can't go, and I think it's unfair
14 to him and it's unfair to Mr. Burke to ask him to offer
15 an opinion and to speculate what might have been if X,
16 Y and Z --

17 .
18 MS. DILLON: Mr. Burke gave evidence that the purpose
19 of this letter was to clarify that the house was paid
20 for, and to explain how he had paid for the house.
21 Mr. Walsh will find Mr. Burke's evidence in connection
22 with that matter on Day 324 at questions 303 to 308,
23 questions 338 to 339, and questions 342 to 345.

24 .
25 Mr. Burke said that the letter was written for
26 Mr. Casey. And Mr. Burke's evidence in this regard can
27 be found, by Mr. Walsh, at Day 323, question 154, and
28 Day 324, question 302, where Mr. Burke says the letter
29 is evidence that he paid Oakpark €15,000 for the house.
30 It's at Day 324, question 278.

1 .

2 This witness does not recollect why the letter was

3 written. He is the author, or his signature appears at

4 the bottom of it.

5 .

6 A person who was not, apparently, the author of the

7 letter has given sworn evidence about the purpose and

8 nature and content of the letter, and his evidence

9 being that the purpose of it was to satisfy, in effect,

10 the Gardai he had paid for his house.

11 .

12 The focus of the Gardai inquiry has been in connection

13 with his house - was evidence given by Mr. Burke at Day

14 324, question 302:

15 .

16 "Question: And it is for that reason, is it, that

17 Mr. Delany wrote the letter dated the 20th of August,

18 1974?

19 Answer: Well, it was at the request of Mr. Casey that

20 he would have provided the letter, yes.

21 Question: But the information in the letter deals with

22 the transfer of money in October, and a bridging loan

23 in September?

24 Answer: It was all to do with payment for the house.

25 Question: For the house. So that the sole purpose of

26 the writing of this correspondence was to set out the

27 position in relation to the payment for the house, is

28 that correct?

29 Answer: Yes, to clarify that the house had been paid

30 for."

1 .
2 Mr. Burke's evidence to you has been that the sole
3 purpose of writing this letter was to clarify that he
4 had paid for his house. This witness doesn't know why
5 the letter was written, can't recollect being the
6 person who signed the letter.

7 .
8 I have put to him what Mr. Burke has said. He cannot
9 recollect it. And I think I am perfectly entitled, in
10 view of the positive assertions made by Mr. Burke that
11 the sole purpose for the writing of this letter was to
12 explain that Mr. Burke had paid for his house, put to
13 had witness, if the sole purpose for the writing of
14 this letter was to establish that Mr. Burke had paid
15 for his house, does the letter say that?

16 .
17 And if it doesn't say that, why doesn't it say that, if
18 that was the purpose of the writing of the letter?

19 .
20 MR. WALSH: Sorry, Sir, I think the main factual basis
21 we are coming back to is again these 1974 articles, and
22 what was mentioned in them. And again, what was the
23 subject matter of the Garda inquiry.

24 .
25 The subject matter of the Garda inquiry was
26 wide-ranging and covered many people and many aspects.
27 It included the financial affairs of Mr. Burke, and it
28 wasn't solely confined to the house.

29 .
30 CHAIRMAN: Certainly, the quotation from the transcript

1 suggests that Mr. Burke not only suggests, quite
2 clearly that Mr. Burke was dealing with whether or not
3 - whether this corroborated his evidence that he had
4 paid for the house. That's the effect of that evidence
5 that Mr. Burke gave. Isn't that so?

6 .

7 MR. WALSH: Yes, My Lord, but it is not the only focus.

8 .

9 CHAIRMAN: He also goes on to say, and I don't have the
10 actual transcript in front of me, but he also goes on
11 to say that he authorised the bank to warrant or
12 establish to the satisfaction of executive - Detective
13 Officer Casey that that was the fact.

14 .

15 And for that purpose, presumably authorised Mr. Delany,
16 even though Mr. Delany doesn't remember it, to write a
17 letter of his knowledge of the transaction.

18 .

19 Now, if you read the letter, the first three paragraphs
20 deal with financing, one, two, three, am I right?

21 That's the mortgage aspect of it. The fourth paragraph
22 deals with how monies on deposit receipt were dealt
23 with.

24 .

25 MR. WALSH: Yes.

26 .

27 CHAIRMAN: Now, that's what Mr. Delany on the 20th of
28 August did as a result of whatever request was made to
29 him by Mr. Casey. Isn't that so?

30 .

1 MR. WALSH: I am not sure.

2 .

3 CHAIRMAN: Isn't that the reality?

4 .

5 MR. WALSH: The letter seems to be in reply to a
6 request or a query.

7 .

8 CHAIRMAN: The request to the query, according to my
9 understanding of it, was a request made by Mr. Casey,
10 the Detective Officer.

11 .

12 MR. WALSH: We are only guessing on that.

13 .

14 CHAIRMAN: But it's likely.

15 .

16 MR. WALSH: It's a likely explanation, yes.

17 .

18 CHAIRMAN: That letter is this witness's reaction and
19 his knowledge. It recounts his knowledge, insofar as
20 he had knowledge, as I understand it. I do appreciate
21 the - I want to make it quite clear that I do
22 appreciate the witness at this moment in time has no
23 personal recollection. I want to make that quite
24 clear. But the text of the letter, and I have no
25 reason to think it is not a genuine letter, because
26 it's signed by the witness, is clearly that he was
27 asked some question. Mr. Burke says the question or
28 the area of inquiry was in relation to the payment of
29 his house.

30 .

1 That's the response of this witness to the inquiry made
2 by the Detective Guard.

3 .

4 MR. WALSH: On that topic, yes.

5 .

6 CHAIRMAN: I think, with all due respect, I am stuck -

7 I personally, as the end product here, am stuck with

8 that letter as being the response, if I take

9 Mr. Burke's evidence on board, that he authorised or

10 was dealing with the manner in which he paid for his

11 house.

12 .

13 MR. WALSH: Yes.

14 .

15 CHAIRMAN: That he authorised the Detective Officer.

16 Without knowing what the Detective Officer asked the

17 witness, I can't say whether that's a full or - a

18 complete or incomplete answer. That's the answer he

19 gave.

20 .

21 MR. WALSH: Yes.

22 .

23 CHAIRMAN: As I say, you, I and everybody else --

24 .

25 MR. WALSH: I have no difficulty about that, Sir. I

26 think he could be asked questions about - does he

27 remember it? What does it say? But he can't be asked

28 for his opinion as to what - as to why there isn't

29 anything in it --

30 .

1 MS. DILLON: He can be asked, Sir, with the greatest of
2 respect to Mr. Walsh, if Mr. Burke had not given the
3 evidence that Mr. Burke has given to you, this issue
4 would not arise. It is Mr. Burke who has sworn to you
5 that the sole purpose of writing this letter was to
6 satisfy the Garda that he had paid for his house. That
7 is Mr. Burke's testimony. Therefore, I wish to ask
8 this witness, if that was the purpose of writing the
9 letter, where does the letter deal with that issue?

10 .

11 CHAIRMAN: Might I suggest, and I don't want to
12 interfere with counsel in their conduct of the
13 Tribunal, isn't the situation this: That the witness
14 has now heard what Mr. Burke said here. He's actually
15 heard it from you. You've read it off the transcript.
16 If that's - if that was the sequence of the inquiry,
17 would he have added more to the detail that is in this
18 letter? That's the nut or the centre of this whole
19 matter; would he have expanded on this, on what is in
20 this letter?

21 .

22 MS. DILLON: Yes, Sir.

23 .

24 CHAIRMAN: Would you have expanded in any way on the
25 letter, in the letter, if you had been asked about a
26 house transaction, the manner in which it was paid for?

27 A. As I say, I can't recall anything to do with this. But
28 at your suggestion, if I was asked to give information
29 that made something clear and related to a house, I
30 presume I would. But as I said, I cannot recall

1 anything to do with this particular letter.

2 .

3 257 Q. MS. DILLON: I had understood you to say, Mr. Delany,

4 earlier this morning, that when the Gardai arrived the

5 first time, you spoke with them and said that you would

6 have to speak with Mr. Burke. You did speak with

7 Mr. Burke. You got Mr. Burke's Letter of Authority.

8 The Gardai came back. You gave them the ledger cards

9 and the correspondence file. They conducted their

10 inquiries. You spoke with them briefly, and they left?

11 A. That's right.

12 258 Q. Do you recollect being requested to provide to the

13 Gardai any written documentation, statement or anything

14 such as that?

15 A. No, I have no recall whatever.

16 259 Q. Do you think it's likely, if you had been requested by

17 Inspector Casey to prepare a statement, or to prepare a

18 letter on behalf of the bank to the Gardai, that you

19 would have done so?

20 A. I can't really answer that.

21 260 Q. Yes.

22 A. Because I wasn't in a position, you know - it's - it's

23 an authority question, if you like. I can't answer

24 that.

25 261 Q. Did you prepare the letter that's on screen at the

26 request of Mr. Casey? Would you have sent it on to

27 Mr. Casey?

28 A. I can't answer you. I don't know.

29 262 Q. Well, if this letter was prepared --

30 A. If he asked me for it, I would.

1 263 Q. Yes.

2 A. But I would have surely had his address at the top of
3 the letter as well.

4 264 Q. Yes. That would seem to follow, Mr. Delany, if we can
5 scroll down through - through the document. It would
6 seem to follow, I suggest, and it's perfectly
7 reasonable of you to conclude that if you were
8 preparing this letter at the request of Mr. Casey, that
9 you would have addressed it to Mr. Casey?

10 A. It would seem normal, yes.

11 265 Q. Yes. And that if you had prepared it for Mr. Casey,
12 and if you were either sending it in the format in
13 which it's on screen, or you were sending it to
14 Mr. Casey, there would be a covering letter?

15 A. Maybe yes, maybe no.

16 266 Q. Maybe not. But you don't recollect, do you, or do I
17 understand your evidence to be that from the date that
18 the Gardai left Bank of Ireland, Whitehall after their
19 second visit, you don't recollect any further contact
20 or communication between you or the Gardai?

21 A. No, none whatever that I can recollect.

22 267 Q. And you don't recollect, if I understand your evidence
23 correctly, you doing anything else in connection with
24 the Gardai after they had left on the second occasion?

25 A. No, nothing at all. Nothing that I can recall.

26 268 Q. And it would seem reasonable, Mr. Delany, that if the
27 correspondence that's on screen was directed towards
28 the Gardai, that it would be addressed by you to the
29 Gardai?

30 A. Mm-hmm. You can assume that. But I can't comment.

1 269 Q. No. Because you can't recollect?

2 A. I can't recollect.

3 270 Q. No. And it would seem that the two most likely people

4 for whom you may have prepared this document was either

5 the Gardai or Mr. Burke?

6 A. That's your suggestion.

7 271 Q. Would you agree with that?

8 A. I wouldn't necessarily, no --

9 272 Q. What other part --

10 A. -- because I can't recall it. I have no recollection

11 of it whatsoever, or who it was prepared for. All I

12 can tell you is that my initial is at the bottom of it.

13 273 Q. Can you think about what other party it is likely this

14 letter might have been prepared for?

15 A. No, I can't.

16 274 Q. No. So it would seem, again, just applying tests of

17 reasonableness to the matter, that it is reasonable or

18 that it is likely or more likely that this letter was

19 prepared either for Mr. Burke or for the Gardai?

20 A. Well, that's your opinion. You could be right. I am

21 not sure.

22 275 Q. You don't agree with that?

23 A. I don't have an opinion on it.

24 276 Q. You don't have an opinion?

25 A. Because I can't recall the letter.

26 277 Q. Yes. But the letter does clearly deal with the

27 financial affairs of Mr. Burke?

28 A. Yes, it does.

29 278 Q. The letter must have been prepared for a purpose?

30 A. It must have been.

1 279 Q. I presume - without being lighthearted about it, I
2 presume you are not in the habit of preparing
3 correspondence, or were not in the habit of preparing
4 correspondence such as is on the screen just for the
5 fun of it? There would have been a reason behind this
6 letter?

7 A. There would, but I can't recall it.

8 280 Q. The reason would have either been connected with the
9 Gardai investigation which had taken place immediately
10 prior to the sending of this letter --

11 A. It's something to do with Ray Burke's accounts and
12 their offices, I presume. I can't qualify and say it's
13 in relation to this or that.

14 281 Q. But your recollection of the Gardai visit was not that
15 they were there to conduct an inquiry into Mr. Burke's
16 house, but that they were to look at the business
17 affairs of Mr. Burke?

18 A. In general, yes.

19 282 Q. If we can deal with the letter that's on screen, then,
20 and the matters that are contained in that letter.

21 .

22 If we start at the beginning of the letter.

23 .

24 Presumably, you would have written this after a
25 consideration of the factual documents within the bank,
26 look at whatever material or documentation the bank
27 had?

28 A. I don't quite follow you.

29 283 Q. In order to be able to write this letter you would have
30 looked at, I presume, Mr. Burke's records?

1 A. I presume so, yes.

2 284 Q. I mean, you would have wanted to have satisfied
3 yourself that what you were saying was accurate, to
4 whomever you were saying it to?

5 A. I mean, I just can't recall the letter. For whose
6 benefit it was, or who it was sent to, I do not know.

7 285 Q. Do you agree that it's unlikely that you put inaccurate
8 information into the letter?

9 A. Oh, absolutely.

10 286 Q. Right. Can we take it from that, then, that it is
11 likely that the factual material in your letter, for
12 whatever purpose it was done, is accurate?

13 A. Yes.

14 287 Q. All right. And on that basis, if we go through the
15 letter.

16 .

17 Paragraph 1 states that: "The above gentleman was
18 granted bridging loan accommodation at this office on
19 the 24th September, 1973, to the extent of ú15,000,
20 which was secured by a Letter of Undertaking from his
21 solicitors, Oliver J Conlon & Company, over a mortgage
22 granted by the Property Loan and Investment Company
23 Limited (a subsidiary company of the Bank of Ireland
24 Group)."

25 .

26 That's the first paragraph?

27 A. Yes.

28 288 Q. Does that mean that the bridging loan accommodation was
29 granted two days before the Letter of Undertaking came
30 in? I think the Letter of Undertaking was the 26th or

1 the 28th - sorry, the 28th, four days beforehand.

2 .

3 Perhaps if we approach it this way, Mr. Delany: What

4 do the words "bridging loan accommodation" mean?

5 A. They mean exactly what they say.

6 289 Q. What do they mean?

7 A. They mean that a bridging loan was granted.

8 290 Q. Does that mean the money was drawn down at that time?

9 A. No, it does not.

10 291 Q. All right. Okay. So when you say that bridging loan

11 accommodation was granted on the 24th of September,

12 1973 --

13 A. The facility was made available.

14 292 Q. Yes. And that was secured by the solicitor's Letter of

15 Undertaking?

16 A. That's right.

17 293 Q. And your evidence is that until that undertaking was in

18 place, drawdown would not have been permitted?

19 A. That's right.

20 294 Q. So the Letter of Undertaking was the 28th of September

21 of 1973. You saw that this morning, Mr. Delany?

22 A. Yes.

23 295 Q. So that drawdown wouldn't have been permitted before

24 that date, before the bank were in possession of the

25 letter?

26 A. That's correct, yes.

27 296 Q. So when it says that bridging loan accommodation was

28 granted, the bank had agreed to provide a facility

29 subject to certain terms?

30 A. That's right.

1 297 Q. Okay. The second paragraph states: "Interest on this
2 bridging loan at that time was chargeable at 13
3 percent. And to alleviate this burden Mr. Burke
4 transferred the sum of ú15,000 on the 12th October,
5 1973, from his personal joint deposit account in this
6 office, which has been accruing interest at the rate of
7 9 percent, thereby saving himself 4 percent interest in
8 the interim."

9 A. Yes.

10 298 Q. When you say that interest is "chargeable", does that
11 mean something that will happen in the future or
12 something that has happened in the past?

13 A. It - no. The interest rate chargeable --

14 299 Q. That's not what the letter says.

15 A. Interest on this bridging loan at that time was
16 chargeable at 13 percent.

17 300 Q. Not was charged at?

18 A. No, chargeable.

19 301 Q. Yes. So, I mean, if the interest was running and you
20 had charged interest --

21 A. It would have said "charged".

22 302 Q. It would have said "charged". So if the loan had been
23 drawn down and interest was running on the bridging
24 account, the letter would have said, "Interest on this
25 bridging loan at that time was charged at."?

26 A. Or "Had been charged at."

27 303 Q. Or "Had been charged at." Isn't that right?

28 A. That's right.

29 304 Q. So that the use of the word "chargeable" indicates
30 that, in fact, there was no interest. The loan wasn't

1 drawn down?

2 A. It would appear to be.

3 305 Q. Yes. Paragraph 3: "We wish to clarify that this
4 bridging loan is still available to Mr. Burke, should
5 he decide to avail of same, pending the issuance of the
6 loan cheque from the Property Loan Investment Company
7 Limited, which is expected to come to hand in the very
8 near future."

9 .

10 This would also suggest, Mr. Delany, that the loan
11 hadn't been drawn down, because you are telling whoever
12 you are telling that it's still available?

13 A. No. No. I wouldn't agree with that.

14 306 Q. No.

15 A. It would suggest to me that the loan had been drawn
16 down, repaid out of his deposit account, but should he
17 need his funds again that the facility was still
18 available to him until the cheque came from the
19 Property Loan and Investment Company.

20 307 Q. It suggests to you that the bridging loan was drawn
21 down?

22 A. It suggested in the initial paragraph that the bridging
23 loan was drawn down and repaid by Mr. Burke.

24 308 Q. Sorry, the initial paragraph talks about bridging loan
25 accommodation?

26 A. Yes.

27 309 Q. Right. The letter never states that the bridging loan
28 was drawn down, isn't that right?

29 A. Well, it's inferred in the second paragraph.

30 310 Q. Well, what's inferred at that time is that interest was

1 chargeable, not that it was charged, in the second
2 paragraph?

3 A. He transferred ú15,000 to avail of a better rate of
4 interest, it appears to suggest there. You are trying
5 to interpret each paragraph of this letter. I am
6 trying to help you with it, but I have no recall of any
7 of it. I am not going to jeopardise myself by
8 answering questions I just generally don't know the
9 answers to.

10 311 Q. When I asked you about the words - what does "was
11 chargeable", the question mean, and you say that
12 interest was to be charged, but that if interest had
13 accrued on the bridging loan, you would have said
14 interest was charged at a rate?

15 A. I presume so, yes.

16 312 Q. But you didn't say that, Mr. Delany?

17 A. I said "chargeable", yes, but I mean, you are saying I
18 said it. This letter was written so many years ago,
19 and I have said under oath I have no recall whatsoever.
20 So to start breaking it down paragraph-by-paragraph
21 into something I don't know about, I think you are
22 being very unfair.

23 313 Q. All right. We'll move on and we'll deal with it a
24 different way, Mr. Delany, if you think I'm being
25 unfair in relation to the matter.

26 .

27 At paragraph 3 you said: "We wish to clarify this
28 bridging loan is still available to Mr. Burke, should
29 he decide to avail of same."

30 .

1 What do you understand that to mean?

2 A. Common sense, that he actually had paid off his
3 bridging loan, but if he needed the funds, again it was
4 still available to him.

5 314 Q. And the final paragraph: "The balance of the joint
6 deposit account which stands in the name of Raphael and
7 Patrick Burke on the 12th October, 1973, was
8 ú17,559.50, from which sum Mr. Burke withdrew ú15,000
9 and lodged to his bridging loan account. This deposit
10 balance was made up of an accumulation of lodgements
11 from the date of the opening of the same account, and,
12 in fact, was opened on the 5th of April, 1971.

13 .

14 I trust that that is the information that is required.

15 .

16 Yours faithfully, JK Delaney."

17 .

18 What does that mean?

19 A. It seems to be a statement of fact.

20 315 Q. If you just explain it to the Sole Member of the
21 Tribunal, Mr. Delany?

22 A. The last paragraph?

23 316 Q. Yes.

24 A. It simply stated that there was a balance in October
25 1973 of 17 odd-thousand, and that he withdrew ú15,000
26 from it. And from the earlier paragraph, lodged it to
27 his bridging loan account. That's as I see it.

28 317 Q. Does this letter suggest to you that Mr. Burke had a
29 bridging loan facility in Bank of Ireland which he
30 availed of, and which he repaid from, out of deposit

1 funds?

2 A. It seems to, yes.

3 318 Q. Because Mr. Burke in his evidence doesn't take that
4 view of this letter. Mr. Burke in his evidence is of
5 the view, in the main, though he is not quite as clear
6 as one would wish in relation to it, has told the
7 Tribunal that what he thinks happened, looking at the
8 letter, is that he got a bridging loan facility from
9 the bank that he didn't draw down, because he decided
10 to transfer his funds across from his deposit, joint
11 deposit account, and that it was his funds that were
12 used to pay the sum of €15,000, and that he did not, in
13 fact, draw down the loan from Bank of Ireland.

14 .

15 MR. WALSH: Sorry, Sir, I think - that's an unfair
16 question to this extent: Mr. Burke did, undoubtedly,
17 suggest that at one stage in his evidence, but on at
18 least two other occasions accepted what the letter
19 meant, that there was a bridging facility made
20 available, firstly. Secondly, that the bridging
21 facility was availed of, and that the bridging loan was
22 drawn down for a short period of a couple of days, or a
23 couple of weeks, and then subsequently he paid money
24 out of his deposit account by transferring it from the
25 deposit account to the branch, to the bridging loan
26 account, thereby clearing the bridging loan account and
27 resulting in it being at zero. And that's why the bank
28 then said, "The facility is still available, if you
29 wish to use it."

30 .

1 That, I think, was the last and final resting position
2 on that topic when he was cross-examined by Mr. Martin
3 Hayden.

4 .

5 MS. DILLON: Mr. Burke told you - in response to direct
6 questions from you, following on 214, where you were
7 dealing with this topic with him, that instead of
8 drawing down the Bank of Ireland money, he used his own
9 money. He became slightly unclear towards that. And
10 again at question 216, again I think in response to
11 you, he said that he borrowed money from the bank and
12 repaid it shortly after from his deposit account. And
13 then he came back and he said he did not take up the
14 bridging finance.

15 .

16 And I accept that Mr. Burke's evidence is unclear, and
17 I think that's a fair and accurate summary of it. But
18 the general thrust of Mr. Burke's evidence appears to
19 be that he did not, in fact, take up the bridging loan
20 finance, because he also says, at Day 324, questions
21 217 to 221 that he never utilised any loan facilities
22 from Bank of Ireland. And obviously, Sir, at the end
23 of the day it's an issue you will have to resolve.

24 .

25 But I can probably deal with it in this way: I can put
26 both versions of Mr. Burke's evidence to the witness
27 and see which the witness thinks is most likely, from
28 his interpretation of the letter.

29 .

30 CHAIRMAN: All right.

1

2 319 Q. MS. DILLON: Mr. Burke has told the Tribunal that he
3 did not borrow or draw down any funds from Bank of
4 Ireland in Whitehall in connection with this
5 transaction. Does that seem likely to you, from
6 reading this letter?

7 A. It does, in that on file, as you suggested, there is no
8 Letter of Application to the regional office. There is
9 no sanction from the regional office. There is no
10 Letter of Sanction to Mr. Burke saying he would be
11 granted the facilities. And there is no evidence of it
12 on file.

13 320 Q. Mr. Burke has also told the Tribunal that what he
14 thinks might have happened is that he did draw down the
15 bridging loan facilities in late September 1973 and
16 repaid them on the 12th of October, 1973. Do you think
17 that that's likely?

18 A. I can't comment on that.

19 321 Q. Yes. Do you think if there had been an actual draw
20 down of the bridging loan, in other words, payment out
21 of a cheque on foot of the bridging loan, that that
22 would have been paid to Mr. Conlon?

23 A. It would only have gone to Mr. Conlon.

24 322 Q. Does the absence of any correspondence on the file of
25 the paying out of such a cheque to Mr. Conlon affirm
26 your view that there probably was, and I put it no
27 higher than that, Mr. Delany, probably no draw down of
28 the loan?

29 A. My opinion would be that there was no draw down of the
30 loan, based on the evidence that I've seen. And I've

1 gone through the file, and unless someone tampered with
2 the file, and I am sure they didn't. It would suggest
3 to me, but it's only my personal opinion, that there
4 was not a draw down of the bridging loan.

5 323 Q. Now, subsequent to this letter of the 20th of August
6 you wrote a further to whom it may concern letter on
7 the 22nd of August, 1974. 5375.

8 .

9 Can you read that there?

10 A. Yes, I can.

11 324 Q. And I think you are familiar with this also.

12 A. I am, indeed, yes familiar with it, in that I saw it
13 recently.

14 325 Q. Now, do you recollect anything at all about the
15 circumstances in which this letter was written?

16 A. No more than the first letter, no.

17 326 Q. Okay. It would appear on an initial reading of the
18 letter, to be a letter of clarification of the earlier
19 letter?

20 A. Yes.

21 327 Q. Because it refers to your earlier letter of the 20th:

22 "Further to my letter of the 20th inst"?

23 A. Yes.

24 328 Q. So that, presumably - it's addressed to the same person
25 or being given to the same person who had sought the
26 letter of the 20th of August?

27 A. It would appear so.

28 329 Q. Okay. And can you explain what you are making clear in
29 the letter?

30 A. Yes. As I said to you before, my explanation is that -

1 the words "client account", I think that would refer to
2 the company account, PJ Burke (Sales) Limited.

3 330 Q. In fact I think - can you confirm that the figures
4 there, that is a figure of ú15,000?

5 A. That is.

6 331 Q. So that what you are clarifying here, for whoever you
7 are clarifying it, is that the ú15,000 that had been
8 transferred out of the joint deposit account were
9 personal funds --

10 A. As against company funds, yes.

11 332 Q. And they weren't company funds of PJ Burke (Sales)?

12 A. That appears to be, yes.

13 333 Q. Do you have any recollection to whom this letter may
14 have been given?

15 A. As I stated, no more than the first one.

16 334 Q. Do you think it's likely in connection with both of
17 these letters that you may have given a copy to
18 Mr. Burke?

19 A. I can't comment on that, because I don't recall.

20 335 Q. Mr. Burke said he may have had a copy --

21 A. That's Mr. Burke's opinion. I can't recall the letter,
22 or giving copies of it, or to whom they went at any
23 stage.

24 336 Q. If the purpose, Mr. Delany, of the writing of this
25 correspondence was to do with the payment of ú15,000 to
26 Oakpark, if that was the purpose of it, and I am only
27 saying "if" now, that was the purpose of these pieces
28 of correspondence, the letters never deal with that at
29 all, do they?

30 A. No.

1 337 Q. No. And if the purpose of writing this correspondence
2 was to satisfy a third party that Mr. Burke had paid
3 for his house, the letters don't do that either?

4 A. No, they don't.

5 .

6 MS. DILLON: I have nothing further for Mr. Delany.

7 .

8 Mr. Walsh may have some questions.

9 .

10 CHAIRMAN: Mr. Walsh?

11 .

12 MR. WALSH: Yes, I have some questions. I was
13 wondering if we could have a short break?

14 .

15 CHAIRMAN: Certainly. Say ten minutes. Is that
16 enough?

17 .

18 MR. WALSH: Yes.

19 .

20 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND
21 RESUMED AGAIN AS FOLLOWS:

22 .

23 CHAIRMAN: Mr. Walsh, at your convenience.

24 .

25 MR. WALSH: Thank you very much for that facility, Sir.

26 .

27 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. WALSH AS
28 FOLLOWS:

29 .

30 338 Q. MR. WALSH: Now, Mr. Delany, I am representing

1 Mr. Burke, as you may have gathered, and I just want to
2 ask you a couple of questions arising out of the
3 evidence he gave, the statement he made to the
4 Tribunal.

5 .
6 I think you've indicated already, in answer to
7 Ms. Dillon, that most of these events took place 29 or
8 30 years ago, and it's very difficult to recall with
9 accuracy at this point in time. Is that correct?

10 A. That's right.

11 339 Q. I suppose these matters came to you out of the blue
12 when you were asked to come to the Tribunal and make a
13 statement?

14 A. Well, I read the file when I was told I was going to be
15 before the tribunal.

16 340 Q. But your summons to the Tribunal came out of the blue?

17 A. Oh, absolutely.

18 341 Q. Am I correct in thinking that you called to the
19 Tribunal by appointment to make a statement on the 19th
20 of November of this year?

21 A. Yes.

22 342 Q. Mr. Burke had finished giving evidence on the 15th of
23 November, a couple of days beforehand. And before the
24 interview were you given the file of papers,
25 so-to-speak, or were you just given the interview --

26 A. No, what happened was that I was told that - I was
27 asked to present voluntarily at a preliminary meeting
28 with Ms. Dillon and Mr. Gallagher. And subsequent to
29 that I went into the bank in College Green and I was
30 give an opportunity to refresh my memory by reading the

1 file, which I did.

2 343 Q. Meanwhile, of course, with that background knowledge

3 you would have been aware of the media reports on the

4 television, and on the radio, and in the newspapers?

5 A. Yes.

6 344 Q. And so what you would hear in the media or read in the

7 media would sort of help jog your memory?

8 A. It would.

9 345 Q. So that it would jog your memory, or help your memory,

10 or even influence your memory, what you would be

11 hearing?

12 A. Not necessarily influence it. I will give you one

13 example.

14 .

15 It was suggested at the Tribunal earlier on that - I

16 read in the paper - that Mr. Burke did not have a

17 mortgage to pay for his house, and I immediately said

18 to myself, "That's wrong". I remember he got a

19 mortgage from the Property Loan and Investment Company

20 forum. I can't recall a draw down, but I do remember

21 the first part.

22 346 Q. So it did jog you, to that sense?

23 A. Yes.

24 347 Q. And - now, obviously the records or the files that you

25 received, they are the same papers and files that the

26 Tribunal have?

27 A. I presume so.

28 348 Q. Yes. Now, obviously, as well, the bank statements for

29 the various accounts are not complete, they do not go

30 back to 1970, 1971 and 1972 in their entirety?

1 A. I can't recall what their retention period is for
2 different records. I know it was different at years
3 for different items.

4 349 Q. Yes. But you see, it would appear that both the
5 Tribunal and Mr. Burke got some records from the Bank
6 of Ireland only last May or June, and then got more
7 records in November, meanwhile both Mr. Burke and Mr. -
8 and the Tribunal were told there were no other records
9 available, so they keep appearing in dribs and drabs,
10 so-to-speak.

11 A. I can't comment on that.

12 350 Q. That's not your responsibility.

13 .
14 I mean, for example, a letter was sent to Mr. Burke by
15 the Bank of Ireland in Whitehall saying that on the 7th
16 of June, 2001, that they held no additional information
17 other than that which has been provided to the
18 Tribunal, and they can be of no assistance in relation
19 to the 1972/1973 period. And even after that letter,
20 documentation, some documentation became available.

21 .
22 So you see, the difficulty is that we are all working
23 under the lapse of time?

24 A. Yes.

25 351 Q. Now, the statement that was furnished to us through the
26 Tribunal has a typewritten date, the 26th of November,
27 and then at the back you've signed it on the second
28 page, and you have dated it the 28th of November. I
29 was just wondering. It's only a small point.

30 A. I did it initially, and then I changed it to make it

1 more accurate and more readable, I suppose, and that
2 was two days later, I think.

3 352 Q. And was the interview the first day or the - or was it
4 after the interview you made the statement?

5 A. After the interview, when I got a chance to read the
6 transcript.

7 353 Q. Yes. So then you read all the transcripts of the
8 evidence?

9 A. I did, and then the letter was written by me.

10 354 Q. Yes. I see.

11 A. I read the transcript of my meeting with Ms. Dillon and
12 Mr. Gallagher.

13 355 Q. Yes. Did you read the transcripts of the evidence?

14 A. No.

15 356 Q. No. So your only idea of the evidence that might have
16 been given would have been gleaned from the media
17 reports?

18 A. Absolutely, yes.

19 357 Q. And - but even before you were asked about the Tribunal
20 or - and even if you had not been listening or
21 observing media reports, would your memory have
22 informed you, your pure memory have informed you that,
23 in fact, there had been a Garda investigation of
24 Mr. Burke's accounts --

25 A. I certainly recall that vividly.

26 358 Q. I mean, again you couldn't put a day or a month or a
27 year on it, but you knew it was sometime in the 1970s.
28 Would that be an accurate position?

29 A. I knew it was sometime - shortly before I was
30 transferred, maybe within a year before that, that's

1 what I would have guessed.

2 359 Q. So you would have been able to put, within a year or

3 two --

4 A. About a year, 18 months, roughly that time, yes.

5 360 Q. So you could be quite accurate on the year, maybe not

6 on the --

7 A. I couldn't be quite accurate on the year. I might have

8 thought it was '73.

9 361 Q. I see. And again your pure memory of matters would be

10 that you recall, as you stated in evidence, that your

11 knowledge, your understanding and your impression of

12 all these matters was there was nothing untoward in

13 Mr. Burke's accounts --

14 A. I say that quite clearly, I had no knowledge of

15 anything untoward.

16 362 Q. And that would have been your memory and knowledge of

17 matters?

18 A. It would, yes.

19 363 Q. Yes.

20 A. And in his dealings with us now.

21 364 Q. And then you very helpfully suggested to the guards

22 that you would contact Mr. Burke and suggested he sign

23 the appropriate form --

24 A. For that very reason, yes.

25 365 Q. You did indeed contact Mr. Burke and he wrote the

26 letter which is at page 5441. If we could have page

27 5441 on the screen for a minute, please. That's the

28 letter of the 12th of August 1974. It's the

29 handwritten letter of authority from Mr. Burke. You

30 can see there that: "I give my authority to" - there

1 is a crossed out word which seems to be "show"?

2 A. Yes.

3 366 Q. Then that's deleted, and above that is put in "provide

4 any information to the Gardai." On foot of that

5 formula of an authority, you were entitled by the

6 customer as a matter of law to let the Gardai have

7 complete and unfettered access --

8 A. That is as I recollect it.

9 367 Q. That's what in fact occurred, as you stated in

10 evidence, isn't that right?

11 A. That's correct, yes.

12 368 Q. And the reason for changing the word "show" to

13 "provide" meant that you didn't just want to let them

14 have a quick look, you wanted to be able to give them

15 custody of the records so they could examine them?

16 A. No, I couldn't comment on that.

17 369 Q. Yes. I see. I think in your statement you stated that

18 you asked Mr. Burke to - let him have his authority to

19 enable you to show the guards any document you had on

20 file and also to give them any information that they

21 wanted?

22 A. That's correct, yes.

23 370 Q. That's the effect of your - that's what happened?

24 A. It is. That's what happened.

25 371 Q. Now, you know that the letter that was referred to, the

26 20th of August 1974, I am just wondering if we could

27 have that letter on the screen. I am not sure of the

28 page number, Ms. Dillon. Yes, it's page 5376. Thank

29 you.

30 .

1 I think your position can be summarised, it was stated
2 very forcefully by you in evidence and stated by you
3 here in - in your statement as well, two things, you
4 have absolutely no recollection of the fact that you
5 even wrote this letter?

6 A. That's correct.

7 372 Q. And - or of the fact that this letter existed?

8 A. That's absolutely true.

9 373 Q. And you accept it's your signature and therefore it
10 must mean that you wrote the letter?

11 A. Well, I can't comment on that because, I mean, I have
12 initialed it at the bottom, but I can't recall the
13 letter. So I can't swear that I wrote it.

14 374 Q. Now, the facts, as Ms. Dillon has dealt with, with you
15 in detail, that the information, the facts set out in
16 the letter, some of it is very factual, very precise
17 and numerical. Isn't that right?

18 A. Yes.

19 375 Q. And for example, if you go down to the very last
20 paragraph of the letter, I think it's shown there on
21 the screen now, it starts off, "The balance of the
22 joint account which stands in the name of Raphael and
23 Patrick Burke," who is his father, and you give a
24 specific date and a specific amount, ú17,559.50. Isn't
25 that right?

26 A. Yes.

27 376 Q. Now, obviously there had to be a cross-referencing
28 statement or deposit book or something available to you
29 at that time to ensure that that figure was accurate?

30 A. Yes. It would have been a ledger sheet.

1 377 Q. Or the ledger?

2 A. The paper ledger sheet, yes.

3 378 Q. And then the paragraph goes on to say: "From which" -

4 that's out of the 17,000 odd - "Mr. Burke withdrew

5 ú15,000."

6 .

7 And again there would be a withdrawal of that money,

8 obvious on the ledger from that particular joint

9 deposit account. And then that ú15,000 is lodged to

10 his bridging loan account.

11 A. That's what this letter states, yes.

12 379 Q. Now, the bridging loan account, the deposit account, if

13 I deal with that firstly, there was a statement, the

14 first statement we can find in relation to that

15 particular deposit account starts in December of 1974,

16 and it showed a deposit at that time of ú15,347. I

17 know it's a little over a year later, but it nearly

18 tallies in correctly with it having had a deposit

19 credit of 17 and a half thousand at one stage in 1973

20 and then a year later it's a little over ú2,000.

21 .

22 Now, it doesn't correspond absolutely numerically and

23 mathematically, but it's a close match.

24 A. That there was ú15,000 removed from the account, yes.

25 380 Q. Yes. Now, what could account for it being less than,

26 say, ú2,559.50 being left in the deposit account would

27 be if there was an interest charged on the bridging

28 loan for a month. Can you recall what the minimum

29 period was for a bridging loan finance?

30 A. Bridging loan could be a day, if necessary.

1 381 Q. Yes. But - and sometimes - I mean, would it be the
2 case, from your experience, that sometimes banks would
3 have facility fees, the customer would pay a facility
4 fee?

5 A. Not in ordinary branch banking.

6 382 Q. Yes. I see. That's more for the corporate loans?

7 A. Yes.

8 383 Q. I see. But could it be that some bridging finance is
9 granted - that the interest was payable on a monthly
10 basis even if the loan was only taken out for two
11 weeks?

12 A. Very seldom I saw that happening.

13 384 Q. Yes. So it would usually be on a daily basis?

14 A. No, it would only be repaid at the end, when the
15 undertaking was --

16 385 Q. Or when the money was repaid?

17 A. When the money was repaid, yes.

18 386 Q. Then the interest would be calculated on the daily
19 basis for the number of days --

20 A. Absolutely, yes.

21 387 Q. I see. But again we are not sure exactly when the
22 bridging was drawn down. If you take for the moment
23 that the transfer into the bridging loan account of
24 ú15,000 took place on the 12th of October of 1973, and
25 that the - and just for the moment you will recall that
26 the earlier paragraph of the letter, the first
27 paragraph, if we could just scroll up to that, please,
28 the first paragraph of the letter says: "The above
29 gentleman was granted bridging loan accommodation at
30 this office on the 24th September 1973." That means on

1 that date, the 24th of September 1973, he was
2 effectively given sanction to avail of a facility by
3 way of bridging loan.

4 A. Yes, it appears from that paragraph, yeah.

5 388 Q. That doesn't mean he is on interest from that moment?

6 A. No.

7 389 Q. You only pay interest from the date of draw down?

8 A. That's right.

9 390 Q. It doesn't mean the bank have paid out the money
10 because you hadn't got security at that stage?

11 A. That's right.

12 391 Q. We know from - Mr. Conlon sent in a Letter of
13 Undertaking, and the Letter of Undertaking is dated the
14 28th of September 1973.

15 .

16 So the date of the letter of the undertaking would be
17 the very first day that the bridging finance could have
18 been drawn down with the bank security in place?

19 A. It could be, but it's not, no.

20 392 Q. Yes. And if it was sent by post, it would probably be
21 a day later, the 29th of October?

22 A. Yes.

23 393 Q. Of September. And again, even when that security is in
24 place, it doesn't necessarily mean that the money was
25 drawn down immediately?

26 A. It doesn't, no.

27 394 Q. No. I mean, you can again have a delay of a couple of
28 days or whatever?

29 A. You can.

30 395 Q. Yes. And if we go back to the final paragraph, it

1 talks about the €17,500.

2 .

3 If there was an interest rate chargeable of 13 percent,

4 I just worked out a rough calculation, 13 percent on

5 15,000 for a month on a simple interest basis would be

6 about €162.50. If it was 9 percent, it would be about

7 €112. And obviously if it was 4 percent, it would be

8 about €40, €50 interest for a month. Doesn't that --

9 A. Yes.

10 396 Q. -- sound about right?

11 .

12 And what you say in your statement is that - what you

13 said in evidence, is you don't actually recall this

14 transaction at all?

15 A. No, I have no recall whatsoever.

16 397 Q. No recall whatsoever. And you did say earlier on, on

17 overview of this letter, that your interpretation or

18 opinion of it would mean that if you take the first

19 paragraph, the second paragraph, and then you go to the

20 last paragraph, it means that the loan was drawn down,

21 sometime after the undertaking came in it was repaid by

22 money out of the deposit account, and then the facility

23 was still there for Mr. Burke if he wished to use it in

24 the future?

25 A. That's what it appears to state, yes.

26 398 Q. Yes. And Mr. Burke has said that he recalls his own

27 money from a deposit account being used in the purchase

28 of the house, either directly or indirectly. He is not

29 sure whether he took it out of the deposit account.

30 That's when he was working from his memory, before this

1 letter came to light, or whether it was paid to the
2 bank, or the bank then gave him a cheque or a bank
3 draft. In general terms, in a bridging loan situation,
4 if the bank got the letter of undertaking from the
5 solicitor, you stated that the bank draft would then be
6 given to the solicitor. Isn't that right?

7 A. Yes.

8 399 Q. And the bank draft would be similar to a cheque?

9 A. Yes.

10 400 Q. And - but even more --

11 A. It's guaranteed.

12 401 Q. It's guaranteed. Again the solicitor could endorse it
13 over to his client?

14 A. He could, yes.

15 402 Q. That would be a frequent enough occurrence?

16 A. It would be, yeah.

17 403 Q. Or if he was - it was being paid to a builder or
18 somebody, it could be endorsed over to a builder or to
19 another solicitor?

20 A. I think probably in those days, yes, but I can't say -

21 I can't see that happening today.

22 404 Q. I know, in those days. Yes. Times have changed.

23 .

24 Now, you see, we do have some other precise dates, and
25 that is that Mr. Burke has given very clear evidence
26 that on a specific day, that's the 10th of October of
27 1973, that's the day he actually moved into his house.

28 .

29 Now, he knows that for certain and has given positive
30 testimony of that. I think that's Day 324 at question

1 84. Just for the record. The specific date he
2 remembers for a particular reason.

3 .

4 And his memory is that he probably paid for the house
5 before he moved in or as he moved in or around the time
6 he moved in.

7 .

8 Now, that tallies in, give or take, a day or two with
9 the transfer of the ú15,000 on the 12th of October. I
10 mean, it's all happening around the end of September
11 and early October of 1973?

12 A. Yeah.

13 405 Q. Isn't that right?

14 A. Yes, appears to be.

15 .

16 MS. DILLON: I honestly don't see - I am sorry to
17 interrupt Mr. Walsh - how this witness is in a position
18 to agree or disagree with any of the matters that Mr.
19 Burke said in connection with that. Probably if each
20 of the specific items were put one by one to the
21 witness, that might be acceptable. I don't wish to
22 interrupt Mr. Walsh in relation to the matter, but it's
23 hard to see how this witness could give evidence in
24 relation to when Mr. Burke paid a cheque to Oakpark.

25 .

26 406 Q. MR. WALSH: Sorry, Sir, I was just referring to the
27 evidence that has already been given point by point.

28 .

29 But you, of your own memory, like you indicated very
30 early on, you remembered that through the bank a

1 mortgage facility had been obtained from the Property
2 Loan and Investment Company?

3 A. Yes, I remember that.

4 407 Q. Now, that facility has a time limit on it, and - in the
5 ordinary way, isn't that right?

6 A. It does, yes.

7 408 Q. Now, the money is never paid down until certain
8 conditions are met?

9 A. Yes.

10 409 Q. And I mean the conditions here were set out on the - in
11 the letter of sanction. For example, in the second
12 paragraph - I mean, it was headed "the security for the
13 proposed advanced will be", and then it went on to deal
14 with the house being of a satisfactory standard to the
15 surveyor, fire insurance, mortgage protection and so
16 on.

17 .
18 So it was very much an enabling facility that would be
19 there, provided you wanted it, and provided you fulfil
20 our conditions?

21 A. That was a matter directly between the Property Loan
22 and Investment Company and Mr. Burke.

23 410 Q. Yes. That's right.

24 .
25 I know it's different now to the way it was then, but
26 people before they buy houses or complete transactions,
27 if they require bank facilities, they go to the bank
28 seeking facilities or an approval first.

29 A. That's correct.

30 411 Q. I mean, for example, if somebody is going to an

1 auction, thinking of buying a house, and they wanted to
2 know how much money they could get, they go to the bank
3 manager and an application would be made and then they
4 would be granted a facility up to a certain level.

5 Isn't that right?

6 A. That's correct, yes.

7 412 Q. Once they know that, they know how far they can go in
8 either the auction or the private negotiation stage?

9 A. Yes.

10 413 Q. Just because they held that facility doesn't
11 necessarily mean the bank will actually grant it
12 because the property mightn't be up to the appropriate
13 standard or value for the bank ultimately?

14 A. Well, the terms and conditions.

15 414 Q. I see. And you, in your own mind or your own memory,
16 without reference to any media reports whatever, could
17 you recall whether or not the Property Loan Investment
18 Company Limited mortgage was ever availed of here?

19 A. I can't recall that. In fact, I presumably had, but
20 when I saw the file recently, and at the time I had
21 left Whitehall, it would appear that he hadn't availed
22 of it.

23 415 Q. I see. Yes. But again, I was just asking you what
24 your pure recall was, and in relation to the bridging
25 financing, you couldn't recall whether or not, just
26 dealing independently with what you remember?

27 A. No, you can't. I mean, you said it yourself, 30 years
28 ago, you know.

29 416 Q. Yes. And again bridging finance in the 1970s was a
30 very common feature of house sales and purchases,

1 because there were delays --

2 A. Yes.

3 417 Q. And many customers of yours would have been granted

4 bridging finance over the years at that time?

5 A. Yes.

6 418 Q. Now, if we could go back to your letter of page 5 -

7 that's on page 5376. The last paragraph again you say

8 that the money of ú15,000 was withdrawn and then lodged

9 to the bridging loan account.

10 .

11 Now, that speaks for itself, to the extent that the

12 ú15,000 which was to Mr. Burke's joint credit was then

13 spent by Mr. Burke by his lodging it into the bridging

14 loan account?

15 A. That's what that appears to state, yes.

16 419 Q. Yes. And then I think the - in that connection, the

17 second letter was page 5375, if we could just turn to

18 that for a moment, please. That's the 22nd of August

19 of 1974. And again it's addressed "To Whom It May

20 Concern".

21 .

22 Now, I think, first of all, there were at least two

23 Gardai who met you, is that correct?

24 A. That's right.

25 420 Q. And they were carrying out an investigation on behalf

26 of the Commissioner of the Gardai?

27 A. Yes.

28 421 Q. Whoever he was at the time. And maybe he had delegated

29 it to one or other superintendents below him. And then

30 the chain of command above that was the Attorney

1 General at the time?

2 A. I am not aware of that.

3 422 Q. But in that context, and this was the letter that was
4 going to a number of - it could have been going to a
5 number of different Gardai of different rank and then
6 on to the Attorney General?

7 A. The letter --

8 423 Q. The letter written, yes.

9 A. By Ray Burke?

10 424 Q. No, your letter "To Whom It May Concern"?

11 A. Sorry, I beg your pardon. As I say, I have no recall.

12 425 Q. I am just putting that forward as a possible
13 explanation, because it was going to so many people.

14 A. I can't comment on it.

15 426 Q. In that letter at page 5375 you say, it's about Mr.
16 Burke and his address, "Further to my letter of the
17 20th inst", that's the previous letter, "I wish to make
18 it clear that the ú15,000 mentioned therein was
19 transferred from a joint personal account by Mr. Burke
20 to his bridging loan account and had nothing whatsoever
21 to do with monies held in the client's account at the
22 office."

23 .

24 You have explained the client's account in the office,
25 that's because he is an estate agent and an auctioneer,
26 he's like a solicitor --

27 A. That's the only reason I can take out of that, because
28 we had a company account.

29 427 Q. Client's monies had to be dealt with absolutely
30 strictly --

1 A. Yes.

2 428 Q. And the - the part I want to draw your attention to is

3 "transferred from a joint personal account to the

4 bridging loan account".

5 .

6 Now, just a bridging loan account; to have a creature

7 known as a "bridging loan account", must mean that

8 there is a bank account and it's in debit. Would you

9 agree with that general proposition?

10 A. In normal circumstances.

11 429 Q. Yes.

12 A. Yes.

13 430 Q. And then in normal circumstances it would have a

14 number, be it a permanent number or a temporary number

15 --

16 A. Not in my time, no.

17 431 Q. And normally bridging loans are deemed to be short-term

18 finance?

19 A. They are.

20 432 Q. Just to tide you over?

21 A. That's correct.

22 433 Q. And whilst it's tiding the person over, the borrower,

23 the customer, it would be shown on bank records as a

24 bridging account and it will be a debit balancing; in

25 this case it would be ú15,000 DR?

26 A. Yes.

27 434 Q. And then at the end of the month there might be

28 interest added on to it or whatever, and ú15,270 DR,

29 isn't that right?

30 A. That's right, yes.

1 435 Q. And then - but for you to say in that letter that it's
2 a bridging loan account, I must suggest to you, it
3 means that that ú15,000 must have been drawn down at
4 the time?

5 A. Well, I am sorry, I can't comment on that.

6 436 Q. Yes. I see. And that, of course, the first stage of
7 any bridging loan, like you said yourself, there must
8 be the sanction of the facility of a bridging loan?

9 A. That's correct.

10 437 Q. And I think the first paragraph would be - of the other
11 letter clearly states that that was granted as of the
12 24th of September?

13 A. Yes. Against that there is no evidence of one being
14 granted by Head Office or nothing on the file.

15 438 Q. I know. But you see, you don't recall it at the time?

16 A. I don't, no.

17 439 Q. And - now, there are other people in the bank,
18 including the manager, isn't that right?

19 A. Yes.

20 440 Q. At the time. The records, such as they are, are
21 incomplete, so it could be that they did exist at one
22 stage but they no longer exist, for whatever reason.

23 .

24 MS. DILLON: If Mr. Walsh could just lay the foundation
25 for his assertion that the records are incomplete. The
26 Bank of Ireland have deposed to, that this is the
27 complete correspondence file relating to Mr. Ray
28 Burke's personal file, and I'd just like Mr. Burke to
29 lay the factual foundation for his assertion and
30 statement that the file is incomplete.

1 .
2 MR. WALSH: Mr. Burke has already done that. When he
3 was in evidence he outlined precisely the difficulty he
4 had with both major bank groups in obtaining documents
5 and the piecemeal basis they were made available, and
6 the fact they were incomplete because they do not go
7 back to when his account started. And we have this
8 letter --

9 .
10 MS. DILLON: That is not the assertion that Mr. Walsh
11 made. Mr. Walsh is now suggesting that correspondence
12 might have existed which now no longer exists which
13 should be on this file. And it's in respect of that
14 submission that Mr. Walsh should lay the factual
15 foundation. An assertion that documents were handed
16 out on a piecemeal basis is not a factual basis for
17 putting a suggestion to the witness that there may have
18 been documents on this file that are no longer on the
19 file.

20 .
21 MR. WALSH: That letter I handed in, Sir, is addressed
22 to Mr. Burke, the 7th of June 2001, where he was
23 looking for more and more information from the bank.
24 And that's the result of that inquiry.

25 .
26 That's around the time he received, through the
27 Tribunal, some additional bank records, but they were
28 incomplete at the time; even in the very file you could
29 see that there were only some letters and not all
30 letters, only some accounts and not all accounts, and

1 only pieces of other accounts. And that is the factual
2 basis.

3 .

4 Then subsequent to that letter, in November of 2001,
5 more information became available on a piecemeal basis,
6 but it still does not complete the entire jigsaw of
7 what records would have been available in the bank.

8 .

9 Now, I know it's 30 years ago, Sir, so I am not
10 leveling any wholesale and whole scale criticism at
11 anybody. I am just saying as a matter of fact, as a
12 matter of fact, the position we are now in, in December
13 of 2001, is we do not have the complete files on all
14 aspects of Mr. Burke's records or bank accounts or
15 correspondence file or whatever.

16 .

17 We've tried to get the documentation, for example, from
18 the Property Loan and Investment Company Limited, and
19 it no longer exists. That's just to take one example.
20 It's only through the Bank of Ireland that we managed
21 to get the sanction letter, but the forms that went in
22 from the Bank of Ireland to the Property Loan and
23 Investment Company which they considered at their board
24 meeting before granting the sanction, they are no
25 longer available. Just to give you an example.

26 .

27 441 Q. Now, if I just move on, please, Mr. Delany. And
28 bridging loans, accounts as such, they terminate and
29 disappear once the loan amount, the capital amount of
30 the loan has - and any interest or fees due have been

1 discharged?

2 A. That's right.

3 442 Q. And so in an instance like this, if we are trying to

4 look back 29 or 30 years, if the facility was a short

5 term facility in the bank and it had no specific

6 account number, it would be very hard to trace it?

7 A. There would be an old ledger sheet and that would have

8 been filed on record.

9 443 Q. We've looked for ledger sheets, and we haven't even got

10 ledger sheets for the known bank accounts, you see.

11 And we've got some duplicate statements, but not for

12 complete amounts. For example, even the very deposit

13 account we are speaking of from which the \$15,000 was

14 taken, the earliest stage we can get is December of

15 1974?

16 A. All I can say is you asked the bank what the retention

17 periods were at that time.

18 444 Q. I think that this goes beyond the retention --

19 .

20 CHAIRMAN: Mr. Walsh, would you please ask the witness

21 questions and get evidence from the witness. You have

22 been giving more evidence today than usual.

23 .

24 MR. WALSH: Sir, I'll try not to give evidence myself.

25 .

26 CHAIRMAN: I know, it's difficult.

27 .

28 MR. WALSH: I don't think that's a nice comment to

29 make. It's not - it's neither fair nor nice.

30 Specifically, any time I object to counsel for the

1 tribunal giving evidence, I am not given much sus at
2 all.

3 .

4 On the question of the house, you see, Mr. Delany, the
5 evidence from Mr. Burke was that he paid the directors
6 of Oakpark, the builders for the building of the house,
7 and the evidence from the directors of the company is
8 that they were paid for the house, the ú15,000. You
9 don't know that --

10 A. No.

11 445 Q. And on the question of the site for the house on which
12 the house was built, the evidence of Mr. Burke was that
13 he paid for that by working it off on professional
14 fees, and I think the directors of the various
15 companies agreed that that was the position.

16 .

17 You don't know anything about that?

18 A. Not at all. Nothing.

19 446 Q. There was a document, 4479. If I could have that,
20 please.

21 .

22 If you could just scroll down. 11 (a). You see there,
23 11 (a), note 2:

24 .

25 "The area involved is approximately one acre and the
26 plot of land was given by the directors in lieu of sums
27 due by them in respect of professional services."

28 .

29 These were accounts of Oakpark, the registered owners
30 of the land before Mr. Burke, and these were the

1 official accounts prepared by the accountant and
2 submitted to the Revenue Commissioners. Their
3 explanation of that statement is that that's the land
4 that - on which Mr. Burke's house was given, and the
5 professional services were the estate agency,
6 auctioneering fees, and that too was Mr. Burke's
7 evidence.

8 .
9 And I think for the record that could be found at Day
10 324, question 133 and question 361, and also Day 325 at
11 question 153.

12 .
13 On the question of the deposit account in Manchester,
14 again you were saying that the bank wasn't computerised
15 at the time?

16 A. That's correct.

17 447 Q. And the bank book was held at the bank. Mr. Burke
18 wouldn't have any record of the account as such; that
19 it rests with the bank?

20 A. It has been suggested that the book was kept at the
21 branch in Whitehall, but I couldn't confirm that.

22 448 Q. But it could well have been?

23 A. I think the Tribunal have - know that it was.

24 449 Q. Yes. I think it was, because it turned up in the bank
25 files, the original. The original bank book turned up
26 at the bank?

27 A. Yes.

28 450 Q. Wouldn't that suggest that that's where the bank book
29 was always kept, if after the account was closed it was
30 still with the bank, it would suggest that the bank

1 deposit book was kept by the bank in the branch?

2 A. Well, that's your opinion. I can't comment on that.

3 451 Q. But as a bank manager having looked at the files, do

4 the files not show, am I correct in this, do the files

5 show that the transactions were affected by and large

6 by staff at the Bank of Ireland, Whitehall, getting in

7 the money, writing up the book and sending the money by

8 one route or other to Manchester --

9 A. That's correct.

10 452 Q. So all transactions were effected through the medium of

11 Whitehall?

12 A. Oh, yes.

13 453 Q. Yes. And if they were able to do that, it would

14 suggest that they had ready access to the actual bank

15 book?

16 A. But they didn't need to have access to the bank book.

17 454 Q. I see. But they did write it up on a contemporaneous

18 basis?

19 A. Obviously.

20 455 Q. I would think accurate to date they were written up,

21 the bank book was written up, every entry was written

22 up on the specific date it occurred?

23 A. Well, I mean, being factual about it, Mr. Burke might

24 have had the book with him every time he made a

25 lodgement or it could have been kept at the branch.

26 456 Q. In a general way, if a person had an account like this,

27 and he closed it, and he always held the book, he would

28 keep the book himself?

29 A. He should do, yeah.

30 457 Q. The fact it was kept on the files would suggest it

1 might have been with the bank branch all the time, or
2 could suggest that, is that right? Isn't that right,
3 the fact it was at all times on the file, it would
4 suggest that more likely than not --

5 A. That's your opinion.

6 458 Q. Again, due to lapse of time, you have absolutely no
7 recollection of the Foster Finance situation?

8 A. None whatsoever.

9 459 Q. Again we are not criticising you for that. I mean,
10 that's just the way life is, because you have many
11 transactions to go through, isn't that right?

12 A. That's very true.

13 460 Q. Just bear with me for one minute. There is one topic I
14 wanted to touch on, and I had lost my note of it.

15 .

16 Now, in the final statement, which was furnished to us
17 on - it's only a small point, Mr. Delany; on the
18 question of the bank deposit book you said that his
19 book was held at the Whitehall branch. That's what you
20 said in your statement?

21 A. It probably was.

22 461 Q. Yes. Also in your statement, I think you've said it
23 here in evidence, on the question of the transfer of
24 the ú15,000, what you said in your statement, I think
25 what you are saying here in evidence orally is that you
26 don't remember it at all?

27 A. I don't remember it, no.

28 462 Q. Thank you very much.

29 .

30 THE WITNESS WAS THEN RE-EXAMINED BY MS. DILLON:

1

2 463 Q. MS. DILLON: Just two very short matters arising from
3 that.

4 .

5 The first thing I should draw to your attention, Mr.
6 Delany, is that Mr. Burke's solicitor has given
7 evidence to the Tribunal; and on Day 267 Mr. Conlon
8 told the Tribunal that he never received any money in
9 connection with the purchase of the house, and he never
10 paid out any money in connection with the purchase of
11 the house. And your evidence, as I understand it,
12 would have been that if there had been a draw down of
13 the bridging, you would have sent it to Mr. Conlon on
14 foot of his letter of undertaking?

15 A. Yes.

16 464 Q. Just to draw Mr. Conlon's attention in - evidence in
17 relation to that to you.

18 .

19 And also to draw very briefly to your attention Mr.
20 Burke's evidence in relation to the sequence of
21 attendances of the Gardai, and his giving of the letter
22 of authority to the Bank of Ireland in Whitehall for
23 the Gardai to investigate the files.

24 .

25 I understood your evidence to be that the Gardai came
26 to you, and you said, "I can't discuss anything with
27 you." You telephoned Mr. Burke and you asked him to
28 provide an authority. The authority was provided, and
29 the guards then came back?

30 A. That's correct.

1 465 Q. It's just to draw to you that Mr. Burke, at page 5, Day
2 324, said: "In 1974 there was a controversy resulting
3 from a media report in relation to the portion of land
4 in Montgorey in Swords. As part of that investigation,
5 Inspector Casey of the Gardai enquired from me in
6 relation to the house. I gave Inspector Casey
7 authority to go to the bank to provide any information,
8 getting a letter saying 'I give my authority to give
9 any information required to Mr. Casey', that was
10 addressed to the bank in Whitehall."

11 .

12 The bank then, in August '74, 20th of August '74,
13 outlined the letter that we went through in detail
14 yesterday about the ú15,000, Mr. Chairman.

15 .

16 So Mr. Burke is saying in his evidence that, in fact,
17 he gave the Letter of Authority to Mr. Casey --

18 A. That's incorrect.

19 466 Q. Because I understood your evidence to be, in fact, that
20 you had gone to Mr. Burke after an approach by the
21 Gardai?

22 A. That's correct.

23 467 Q. And following on from that, Mr. Burke sent in a letter
24 of authority to the bank, and following on that, the
25 bank invited the Gardai to come back and look at the
26 material?

27 A. Yes.

28 468 Q. So that your recollection of the sequence of events
29 does not accord with that of Mr. Burke?

30 A. No.

1 469 Q. No. But it is, as said in your statement, you have a
2 very clear recollection of those events?

3 A. I have because the Gardai were involved in a major
4 investigation at the time, and I was not that
5 experienced in banking and this took all of my mind --
6 .

7 MS. DILLON: Thank you very much, Mr. Delany. The
8 Tribunal is obliged for your attendance.

9 .
10 CHAIRMAN: Thank you, Mr. Delany.

11 .
12 All right, I adjourn the Tribunal to the 29th --

13 .
14 MS. DILLON: The written submissions in the Brennan and
15 McGowan Module, Sir, are to be with the Tribunal on the
16 17th, and it is proposed to have a public sitting for
17 those parties who wish to supplement their submissions
18 by short oral submissions on the 20th of December. I
19 understood the 20th - Mr. Kavanagh is looking at me.
20 The 19th, of course. Mr. Kavanagh is correct. On the
21 19th of December at 10:30.

22 .
23 CHAIRMAN: Very good.

24 .
25 MS. DILLON: I am obliged, Sir.

26 .
27 CHAIRMAN: Thank you.

28
29 THE TRIBUNAL ADJOURNED TO DECEMBER 19TH, 2001, AT 10:30
30 AM.

