

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY

28TH JULY 2004 AT 10.30 AM:

CHAIRMAN: Good morning Mr. O'Neill.

MR. O'NEILL: Morning Mr. Chairman. Members of the Tribunal.

Today's hearing is convened to take the evidence of Mr. Frank Sheedy.

Mr. Sheedy please, could you come forward to the witness box.

MR. BUTLER: Morning judge, I appear on behalf of Mr. Sheedy, I was here on the last occasion, I think in January with Mr. Tom Mallon, Mr. Tom Mallon is unable to attend this morning and offers his apologies. I would like to mention two things to the Tribunal before Mr. Sheedy takes the witness box.

One is that if we could reserve our position in relation to cross-examination, in relation to any issues that arise this morning, so that Mr. Mallon could have an opportunity of bringing them, clarification if necessary, before the Tribunal, maybe on Thursday or Friday of this week? That is one aspect I don't know whether the Tribunal could assist us on that.

CHAIRMAN: Well that obviously has the potential to create practical problems for the Tribunal in that it was anticipated that this witness would be, would start and conclude the evidence, but if -- I mean if it was one or two particular issues that, then it would be you would have to write to the Tribunal and set out a case for -- the witness.

MR. BUTLER: We could do that, I don't believe anything will arise, but it's just to reserve our position on that if we could.

10:46:44 1 And the second thing is, on the last occasion we did not make any application
2 in respect of representation and this morning I would normally ask for limited
3 representation. And where the Tribunal stands on that
4

10:46:57 5 CHAIRMAN: That's fine. We'll grant that.
6

7 MR. BUTLER: I'm obliged.
8

9 MR. O'NEILL: Mr. Butler has in fact written to us some time ago indicating
10 the Counsel's difficulties and the Tribunal is aware of this and we'll
11 endeavour to facilitate him if possible.
12

13 **FRANK SHEEDY, HAVING BEEN SWORN WAS EXAMINED AS**

14 **FOLLOWS BY MR. O'NEILL:**

10:47:20 15
16 CHAIRMAN: Morning Mr. Sheedy

17 Q. 1 Morning Mr. Sheedy. Mr. Sheedy, you are a member of the firm of BDO Simpson
18 Xavier, is that correct?

19 A. That's correct.

10:47:41 20 Q. 2 Are you a partner in that firm?

21 A. I am yes.

22 Q. 3 And the evidence that will be taken from you today will concern the involvement
23 of that firm in advising parties in relation to certain ultimately Irish lands
24 at Carrickmines in County Dublin.

10:48:01 25
26 If I could deal firstly with the relationship of the firm BDO Simpsons, Xavier
27 with the Howart International Group, what was that connection in 1993?

28 A. Well in 1993 we weren't BDO Simpson Xavier, we were simply Simpson Xavier, at a
29 later stage we became the representative for BDO Network. In 1993 we
10:48:34 30 represented the Howart Network of whom, Stoy Hayward were the UK members we

- 10:48:42 1 were the Irish members.
- 2 Q. 4 What was the overall umbrella body the Howart International Group?
- 3 A. It was, it was a grouping of independent firms who would help each other in
- 4 terms of international business.
- 10:49:01 5 Q. 5 Of course much of the business of accountants is now concerned with
- 6 international transactions, is that right?
- 7 A. A part of it. It would depend on the clientele of the firm, you could possibly
- 8 distinguish the Howart Network from some of the other networks we have, which
- 9 would be colloquially now the figure four. Big four would have more
- 10:49:27 10 international business than other networks would have, but we wouldn't be
- 11 members of the big four.
- 12 Q. 6 I see. In 1993 did you have a particular speciality or area of involvement in
- 13 the firm that was dealt with by you or headed by you?
- 14 A. I would, I dealt with any international tax issues that came up, but it
- 10:49:49 15 wouldn't be the only thing I was doing, I was also involved in advising
- 16 clients, mainly entrepreneurial Irish clients in terms of their tax affairs.
- 17 Q. 7 Your involvement insofar as you had an involvement with Stoy Hayward was, that
- 18 you were the Irish representative of Howart international and they were the
- 19 English member of that group seeking advices, or liaising with you on behalf of
- 10:50:19 20 clients for advices, is that correct?
- 21 A. That's correct.
- 22 Q. 8 And in the contact which the Tribunal had with you initially they were seeking
- 23 from you a voluntary narrative statement setting out your involvement in the
- 24 dealings with Stoy Hayward and Mr. Holland and Jackson Way and companies
- 10:50:42 25 associated with the Carrickmines land, isn't that right?
- 26 A. Yeah, they asked me for a voluntary narrative statement, which I have given the
- 27 Tribunal.
- 28 Q. 9 Sure. And you note in the course of the voluntary statement that you were
- 29 providing to the Tribunal, that did you not have the original paperwork that
- 10:51:07 30 was generated in relation to this transaction, given that it was one which had

- 10:51:08 1 occurred some years before but you had made efforts to acquire whatever
2 documentation there was, and that limited documentation comprised a letter
3 seeking the recovery of your professional fees, and also a notification in
4 September of 1993 to Stoy Hayward of certain changes in the Irish legislation
10:51:32 5 which had taken place since the initial advices which were given by your firm
6 to them, isn't that so?
7 A. That's correct.
8 Q. 10 In advance of your examination before the Tribunal today, I think the Tribunal
9 has furnished to you a copy, copies of relevant documents from a general brief
10:51:53 10 of documents, which has been circulated to all affected parties. I think you
11 have had time to consider that documentation, is that right?
12 A. Yes, I have read through it.
13 Q. 11 Yes. And that documentation includes amongst other matters, documents which
14 were originally copied to you, by your English associated Stoy Hayward, isn't
10:52:17 15 that so?
16 A. That's correct.
17 Q. 12 In addition of course it contains documents which never would have found
18 themselves with you in the first instance, but which touch upon the areas which
19 are referred to in the Stoy Hayward communications to you, isn't that right?
10:52:33 20 A. Yeah, they are documents which I would have never seen before the Tribunal
21 actually gave them to me.
22 Q. 13 Yes. Have they been of assistance to you in understanding the system network
23 or arrangement that was intended to be put in place, to deal with the trustee
24 position of Mr. Holland or companies to be formed by him?
10:53:00 25 A. There are some interesting background information.
26 Q. 14 Yes. Do they assist you in understanding the system that was to be put in
27 place using Mr. Holland or companies associated with him?
28 A. Oh, yes. They would certainly have refreshed my memory of the events that
29 happened in 1993.
10:53:24 30 Q. 15 Yes, well perhaps we'll go through this documentation then and we'll establish

10:53:29 1 exactly what you understand the system to have been in the light of that
2 documentation.

3
4 We'll be referring, Mr. Sheedy, to letters by page reference, the page
10:53:45 5 reference which would have been on the hard copy of the documents circulated to
6 you, but the document itself will appear on screen before you, do you
7 understand that?

8 A. Yes.

9 Q. 16 So, the first document we'll look at is document 1258 and this is a faxed
10:54:05 10 communication as we see, from the Channel Islands and International Law Trust
11 Company Limited. I think you subsequently became aware from your
12 communications with Stoy Hayward that, that firm and in particular Mr. Nicholas
13 Morgan of that firm, was in communication with Stoy Hayward and advising them
14 as to what the requirement would be of Mr. Holland, is that so?

10:54:40 15 A. Yes.

16 Q. 17 The letter or the fax as we see, is one to be delivered to Alan Holland, it was
17 from Francine Webster and the message was:

18
19 "Nick has been asked by substantial Irish clients to arrange for the
10:54:58 20 formation/acquisition of a UK company, which is empowered to hold property and
21 also act as trustee and nominee. Ideally the company needs to be set up by a
22 "UK property man" and beneficially owned by him and he should also appear as a
23 director and arrange for an appropriate secretary to be provided.

24
10:55:20 25 It is intended that certain land in Ireland presently held by a company in
26 liquidation will be transferred to the company by way of distribution in specie
27 and the UK company will hold as trustee 50/50 for two offshore companies. The
28 UK company owners will then render an invoice for provision of this trustee
29 service which will also include the usual set up cost of the company. There
10:55:46 30 should be no specific taxation problems but we are arranging for a UK firm of

10:55:51 1 accountants of tax counsel to confirm this. Would it be possible for you to
2 assist us in this respect?

3
4 Please contact Nick or myself as soon as possible, to discuss as we need to get
10:56:03 5 the vehicle in place before the 31st March 1993".

6
7 There is a P S in manuscript to that "Perhaps your friend David at Stoy's could
8 arrange to acquire or set up the company which should include properties in the
9 name, Stoy's may also wish to vet the scheme". Then in another hand is a note

10:56:27 10
11 "David/Stoys, as accountant set up company, vets scheme and registered office,
12 director and secretary supplied by us. Paisley Park Investments Limited Isle
13 of Man. Land transferred to new company 50 per cent on trust for Pertland
14 Irish company, 50 per cent for Panamanian company".

10:56:54 15
16 We may take it, I think that the last manuscript was probably added by the
17 recipient of this document in Mr. Holland's office, the preceding manuscript
18 was Ms. Webster's and she also was the person who had typed the message.

19
10:57:08 20 Now, in that document it is apparent that the instructions which were coming to
21 Channel Islands and International Law Trust company were coming from
22 substantial Irish clients. Did you ever learn from Mr. Holland or from
23 Mr. Morgan that the parties behind the intended setting up of company which
24 would involve Mr. Holland were Irish?

10:57:39 25 A. No, I never communicated with anybody other than Rodney Taylor of Stoy Hayward
26 in London, so I did not have any other information about the substantial
27 people.

28 Q. 18 Right whether they are substantial or otherwise I suppose is irrelevant from
29 the point of view of the advices that you would ultimately be giving, but I
10:58:04 30 take it it would be crucial to know whether they were Irish?

10:58:08 1 A. Yes, but I wasn't informed as to whether they were Irish or not Irish. As I
2 said in my statement, if I just refer to it. Is that okay?

3 Q. 19 You needn't refer to it, I will ask you any questions, or indeed your counsel
4 will at any point in time. If it is to clarify a question that I am putting to
10:58:32 5 you, otherwise the statement is before the Tribunal and any aspect of it will
6 be opened in due course. But I am asking you specifically at the moment in
7 connection with the Irish involvement of the parties who are behind Mr. Holland
8 and the company, which was intended in March 1993, to be set up with the name
9 properties contained within it, to be a property company in the UK.

10:59:02 10

11 You have I think responded to me to indicate that you did not know that the
12 parties who were behind this were Irish clients, isn't that so

13 A. No, I did not know.

14 Q. 20 And do I understand your response to be, that if they were Irish clients it is
10:59:21 15 a matter upon which your tax advice to the parties, including Mr. Holland would
16 be dictated or tailored to take into account of that fact?

17 A. Yeah, it would be very relevant if they were Irish.

18 Q. 21 Yes. Now we'll see from the next document, which is at page 1259 that the
19 request which was made by Mr. Morgan through Ms. Webster to Mr. Holland, was
10:59:51 20 one which was acceptable to Mr. Holland. He is writing to your, to Mr. Morgan
21 here at David Morgan Whitehead & Company, which is a firm of solicitors in
22 Jersey, which is associated with CI Law Trust Group and he says that:
23

24 "Thank you for your fax and subsequent conversation. Subject to clearance from
11:00:20 25 my accountant, David Secombe of Stoy Hayward, I should of course be pleased to
26 assist you and your client, thank you for thinking of me in this context.
27

28 I have spoken briefly to David and he would be more than happy to assist but
29 clearly he will need certain assurances with regard to his fees and the nature
11:00:38 30 of his involvement. He will be in touch with you independently today and I

11:00:42 1 shall be contactable should you need me."
2
3 So that Mr. Holland at this point was indicating that there should be
4 independent contact between Stoy Hayward and Mr. Morgan of CI Law Trust, with
11:00:58 5 regard to implementing the intended scheme, but as regards Mr. Holland he was
6 happy to go along with it, subject to receiving Stoy Hayward's advice, would
7 you agree that that is the import of that note?
8 A. Yes, it is.
9 Q. 22 The first involvement then of the personnel of Stoy Hayward which is recorded,
11:01:21 10 appears at page 1260, where Mr. Rodney Taylor of that firm is preparing a
11 memorandum, which is an internal memorandum in the firm.
12
13 You might just confirm to me that Mr. Taylor is an international tax expert
14 within the firm, or was certainly at that time?
11:01:48 15 A. Yeah he was. He was a manager in the international tax grouping in London.
16 Q. 23 And under the heading subject: Trustee company for Irish property. He records
17 "I spoke to Nick Morgan (NM) of Channel Island and International Law Trust
18 Company Limited, as requested by Gary Taggart.
19
11:02:11 20 NM told me that his clients were the owners of some potentially valuable land
21 in Ireland which was at present owned by an Isle of Man company. The Isle of
22 Man company was currently in liquidation in order to take out the interest of
23 one of the current shareholders.
24
11:02:25 25 It is being proposed that the legal interest in the land be transferred to a
26 new UK trustee company, which would hold the property on trust for two non UK
27 resident companies.
28
29 NM was acting for principals of the offshore companies. He had suggested Alan
11:02:46 30 Holland (a client of the Birmingham office) to be director (and probably also

11:02:49 1 beneficial owner) of the trust company. I understood that Alan Holland was not
2 one of the principals but had been approached by NM because of his involvement
3 with property generally.
4

11:02:59 5 The trust company (or maybe Alan Holland) estate agencies business would
6 receive an annual fee for acting as trustee.
7

8 NM said that Alan Holland would need advice as to whether there was any risk to
9 himself. I said that clearly there would be obligations from Trust Law &
11:03:18 10 Company Law on which he would need legal advice.
11

12 I said that we would need to consider whether the UK revenue would have the
13 right to see the Declaration of Trust on the property in favour of the offshore
14 companies".
15

11:03:32 16 Page 1261 "If we were to act we would need an engagement letter. NM indicated
17 that in his view we would need two letters, namely one from Alan Holland for
18 the establishing of the UK company and also one from NM himself for the
19 subsequent vetting of the overall scheme.
20

11:03:52 21 I also indicated that if it were to be decided to go ahead the company would
22 probably be established by our Birmingham office of which Alan Holland was a
23 client. My own involvement would probably be limited to commenting on the
24 international tax aspects of the arrangements, in this respect I indicated that
11:04:11 25 I myself could not advise on Irish tax, but would need to take advice from our
26 local associates in Ireland.
27

28 NM is to meet the Irish lawyers next Wednesday/Thursday, 31 March/1 April. He
29 indicated that he would be in contact again following the meeting. I said that
11:04:29 30 I would be speaking to Gary Taggart and passing this on to him and that we

- 11:04:34 1 would speak to Alan Holland to let him know what the current position was.
2
3 I later spoke to Gary Taggart and passed this on to him. Gary expressed some
4 concern about Alan Holland's involvement in this, from the point of view of the
11:04:47 5 possibility that this would lead to an investigation of his own interests. He
6 indicated that he would speak to Alan Holland himself.
7
8 I said, I did not propose sending an engagement letter at this stage, although
9 clearly one would be necessary if NM gave instructions following this meeting
11:05:04 10 with the Irish lawyers next week".
11
12 Now, the references in that letter Mr. Sheedy, to an engagement letter, perhaps
13 you could explain from the point of view of a firm of accountants carrying out
14 international tax advice, why they require an engagement letter and what you
11:05:24 15 expect, or what is intended or directed to be within an engagement letter from
16 the point of view of the client?
17 A. Within an engagement letter you would normally set out what services you will
18 provide and you would limit what you were doing to those particular services,
19 and you would get your client's agreement that that was what he required. That
11:05:54 20 would be the normal.
21 Q. 24 And what obligations are imposed on the client which are reflected in the
22 engagement letter?
23 A. Well the obligations would be normally that the client would confirm that the
24 information upon which the services or the advice was based would be complete
11:06:11 25 and correct and would also be an agreement regarding fees, possibly in advance
26 of the work being carried out.
27 Q. 25 Would the engagement letter contain the details or reflect the details which
28 had been given by the client to the accountant upon which the client, the
29 accountant's advice would be sought?
11:06:33 30 A. Well it would set out the background understanding that the accountant had of

- 11:06:39 1 the proposed services. So presumably then, if the actuality was different it
2 wouldn't be covered by the terms of the engagement.
- 3 Q. 26 Of course. It would be necessary for the accountants to protect themselves
4 amongst other things, to ensure that they had proper instructions from their
11:06:58 5 client on the issues in respect of which they were being asked to advise or
6 implement, isn't that right?
- 7 A. Mm-hmm, yes.
- 8 Q. 27 And what was envisaged it seems at this point in time, by Mr. Taylor was that
9 if he was advising Mr. Holland he would require an engagement letter in, I'm
11:07:21 10 not saying in a standard form, but an engagement letter of the type that we
11 have just discussed, isn't that so?
- 12 A. I would have thought so, yes.
- 13 Q. 28 And equally, Mr. Morgan says that if there were to be advices given to him
14 independent of the advices given to Mr. Holland, that there also would have to
11:07:47 15 be an engagement letter between Mr. Morgan's company CI Law Trust, and it's
16 principals perhaps, and the firm as well as the letter of engagement which
17 would be given in relation to Mr. Holland and the new company, isn't that so?
- 18 A. I'm not exactly sure what you're getting at there.
- 19 Q. 29 Well if we go through the letter again, where it says at the top of page 1261,
11:08:13 20 "Nicholas Morgan indicated that in his view, we would need two letters namely
21 one from Alan Holland for the establishment of the UK company and also one from
22 Nick Morgan himself for the subsequent vetting of the overall scheme".
23
24 That envisages there being two letters of engagement, do you understand that?
- 11:08:35 25 A. So it appears that Nick Morgan and his firm were going to engage Stoy Hayward
26 for the vetting of the overall scheme.
- 27 Q. 30 Yes, in addition to Mr. Holland engaging the same firm for the perhaps more
28 limited purpose of advising on the trustee relation, the trustee company which
29 would hold the Irish lands?
- 11:09:00 30 A. Yes, it appears so.

11:09:06 1 Q. 31 Yes. And Mr. Taylor was equally indicating that whilst he could of course
2 advise on the UK tax implications of this, he would effectively be deferring to
3 the expertise of the Irish associates, in this instance yourself, as to the
4 Irish tax implications of what was involved, isn't that so?

11:09:28 5 A. Yeah, he would be asking me for my view on the Irish tax implications.

6 Q. 32 Yes. The understanding apparently of Mr. Holland as to what this scheme was
7 about, is reflected in the next letter which is at 1265, which is a letter to
8 Stoy Hayward, for the attention of David Secombe from Mr. Holland which reads
9 as follows:

11:10:04 10
11 "Thank you for your fax with copy internal memo from Rodney Taylor. If your
12 London people are happy with the scheme and it's entirely legal, then I do not
13 perceive a problem, save in the event that the revenue would choose to
14 challenge it. However, my understanding is that it is intended as a scheme to
15 avoid Irish taxes not UK taxes.

11:10:23 16
17 I hardly think therefore that the UK authorities would be over concerned
18 assuming that the company was properly established, audited and paid it's
19 taxes. Am I being over simplistic?"

11:10:42 20
21 So, that was Mr. Holland's opinion or view at the time of what he was being
22 invited to participate in, isn't that so?

23 A. Yes.

24 Q. 33 Mr. Nicholas Morgan was to follow up with a more detailed account of what was
11:11:05 25 intended to be carried out which he did by fax of the 28th April of 1993 and we
26 see that at page 1282. I think this is a letter which ultimately came to you
27 for your consideration in due course, isn't that right?

28 A. If the documents indicate that I was copied on it, then it would seem to be
29 correct, but I haven't actually, as you know, I haven't seen, been able to
11:11:49 30 retrieve my file therefore --

11:11:51 1 Q. 34 I appreciate that Mr --
2 A. I am trying to recollect what happened 11 years ago.
3 Q. 35 Yes but you have had since January of this year to consider this particular
4 document, are you saying that you are still of the view that you don't know
11:12:04 5 whether in fact you ever received this document, or do you now acknowledge --
6 A. I would assume that I did receive it.
7 Q. 36 Well it's only an assumption is it, or can you say that you did receive it?
8 A. I cannot say that I did receive it. If I had my file I would be able to say
9 that I did receive it but I don't have my file.
11:12:27 10 Q. 37 I see. So the position is that without your file you cannot say whether you
11 did or didn't receive it, is that the position?
12 A. I think so, yes.
13 Q. 38 The intention is set out in this letter as follows.
14
11:12:47 15 "1. It is proposed that a United Kingdom company should be established by
16 Mr. Holland, with an appropriate property name which would be empowered to act
17 as a trustee and nominee and to hold and develop property as trustee. It is
18 further proposed that the company should have it's registered office at the
19 offices of Stoy Hayward, and that Mr. Holland should be appointed sole director
11:13:07 20 and that the company secretary should be provided by Stoy Hayward, who would
21 also act as auditors for the company. The company should have a minimum share
22 capital and there is no specific requirement for special articles.
23
24 2. It is proposed that 108 acres of land at Carrickmines County Dublin will be
11:13:27 25 transferred to the UK company by the liquidator of Paisley Park Investments
26 Limited. This Isle of Man company is presently in solvent liquidation and
27 there would be a distribution in specie in order to minimise Irish stamp duty.
28 It is then proposed that the UK company will execute a Declaration of Trust in
29 relation to this land in favour of two existing offshore companies and the UK
11:13:51 30 company will also enter into a co-ownership agreement with the two offshore

11:13:56 1 companies. Drafts of the Declaration of Trust and co-ownership agreement will
2 accompany the hard copy of this letter. I will also need to agree separately
3 with Mr. Holland by way of side letter, details about remuneration for the
4 provision of this facility, the receipt of instructions generally and success
11:14:16 5 or arrangement in the event of anything happening to him."
6

7 At 4 "I am advised by our underlying clients that there will be no requirement
8 to file any tax returns in Ireland. The situation would only change if at some
9 future point rental income arose, in which case tax agents would be appointed
11:14:37 10 to account for the 27 percent Irish withholding tax on rents paid to non Irish
11 companies. In any event, our client companies will indemnify the UK company
12 and Mr. Holland against all taxes, expenses and other liabilities that may
13 arise from providing this trustee/nominee facility.
14

11:14:57 15 5. With regard to the two offshore companies that will be the beneficial
16 owners of the land at Carrickmines via the Declaration of Trust, these
17 companies have each advanced the sum of 417,855.47 pounds to Paisley Park
18 Investments in relation to the purchase of the land and subsequent expenses. I
19 attach a schedule showing the break down of these figures, and it is my
11:15:23 20 understanding that the burden of these loans will be assigned to the new UK
21 company at the time of the distribution in specie. There will be loan
22 agreements in force between the offshore company and the UK company whereby
23 interest will accrue at 3 percent over base rate, with a minimum interest rate
24 of 10 or 11 percent.

11:15:43 25
26 6. Locally it will be made known that a UK company has acquired the land and
27 any communication received by the UK company should be referred to ourselves
28 who would liaise with Mr. Holland and/or the company's Irish solicitors with
29 regard to the wording of any reply that is considered necessary. It is likely
11:16:03 30 that this arrangement will continue for a number of years and we will reimburse

11:16:10 1 to Mr. Holland all direct expenses and disbursements incurred in respect of the
2 company and separately agree a fee with him, which will effectively cover the
3 provision of the facility and such costs and disbursements. It may well be
4 that this fee should be paid to one of Mr. Holland's other companies, but I
11:16:29 5 will discuss this directly with him.

6
7 From Mr. Holland's point of view, I should be grateful if you would confirm
8 that there would be no United Kingdom or Irish tax liability arising to him as
9 a result of such trusteeship other than in respect of any fee paid to him
11:16:46 10 personally for this service. With regard to the UK company, I should be
11 grateful if you would confirm that in the light of the proposed ownership
12 structure that there will be no UK taxes payable by the company in relation to
13 it's initial acquisition and subsequent holding of the land, and in the event
14 that the land is subsequently disposed at a significant capital gain.

11:17:09 15 Presumably because of the existence of a Declaration of Trust in favour of the
16 two offshore companies there are no inheritance tax implications that could
17 arise from the transaction. It is my understanding that the ultimate owners of
18 the two offshore companies are non-resident trusts established some years ago
19 for non UK residents.

11:17:30 20
21 Should you require any further information please do not hesitate to contact
22 me".

23
24 So it would appear from that letter, that Mr. Morgan's inquiries of Stoy
11:17:44 25 Hayward were made both in respect of any potential liabilities to tax or
26 involvement of tax on Mr. Holland, and his company's point of view and also in
27 respect of the other entities for whom he was acting. Is that the position?

28 A. Well my view of what was subsequently asked of me, was purely to look at
29 Mr. Holland's position.

11:18:11 30 Q. 39 Yes.

11:18:11 1 A. It wasn't to look at the position of the beneficial underlying beneficial owner
2 companies, which are referred to in that document.

3 Q. 40 What I was asking you Mr. Sheedy was whether or not, having considered this
4 letter, you would agree that the involvement of Stoy Hayward which arose from
11:18:33 5 this letter written to them by Mr. Morgan, was in respect of two aspects. I
6 appreciate that you will deal at a later stage with the particular aspect that
7 you offered your advices on?

8 A. Well I really don't know. Because that would depend on what the engagement
9 letter was. This is a document which preceded the engagement letter, so I
11:18:54 10 don't know.

11 Q. 41 You know that an engagement letter was executed?

12 A. I know because it's been referred to in the documentation, but I have never
13 seen it.

14 Q. 42 Yes. You have never seen the engagement letter?

11:19:08 15 A. No.

16 Q. 43 It was not forwarded to you with the documentation from Stoy Hayward?

17 A. Not that I am aware of, or that I can recollect.

18 Q. 44 And we'll get to that as we go through the documentation. Amongst the people
19 made aware of the content of the letter that we have just considered was
11:19:41 20 Mr. Holland, and we'll see at page 1289 that he contacts David Morgan Whitehead
21 & Company in Jersey indicating as follows:
22
23 "Many thanks for your letter of the 28 April, which I have carefully
24 considered. I do not anticipate a problem here and would set my gross fee
11:20:04 25 level for this function at 2,000 plus VAT per annum reviewable annually.
26
27 In addition, I shall invoice for what work I carry out through my office, my
28 charge out rate is 120 pound per hour, plus disbursements, plus expenses.
29
11:20:20 30 I look forward to hearing from you with regard to the next stage of this

11:20:24 1 matter".
2
3 A week later we see at page 1293, that Mr. Holland writes to Mr. Morgan,
4 copying that letter to Stoy Hayward as follows:
11:20:56 5
6 Dear Nick, Irish trust. I am obliged for your recent fax and with it the draft
7 letter which appears satisfactory.
8
9 Before finally confirming my involvement in this affair, I have as you know
11:21:07 10 asked my accountants Stoy Hayward to satisfy themselves that I would be in no
11 way prejudiced and to that end, Rodney Taylor of their London office has my
12 instructions to direct whatever questions he may feel to be relevant to
13 yourselves, in confident expectation that frank and satisfactory answers will
14 be forthcoming.
11:21:29 15
16 On that basis, and given that they were satisfied, I shall spring into action.
17 I am marking my diary to show that if possible I will get to London on the
18 evening of the 14th May 1993".
19
11:21:45 20 We see then at page 1294, a letter to Mr. Morgan from Stoy Hayward regarding
21 the formation of a new, sorry of a UK company (Newco).
22
23 "Thank you for forwarding to me by fax, the signed engagement letter dated 5th
24 May". So we may take it that Mr. Morgan did in fact complete an engagement
11:22:21 25 letter which was furnished to Stoy Hayward.
26 A. Yes.
27 Q. 45 "I have now had the opportunity of considering your letter and of reading the
28 attached documents. We also discussed last Friday a number of points
29 concerning the existing and future financial arrangements. These superseded
11:22:41 30 paragraph 5 of your letter.

11:22:43 1
2 My understanding is that Mr. Holland's involvement in this transaction is
3 required for wholly commercial reasons, in that the principals wish to
4 associate with the project, a person who is well established in the UK property
11:22:56 5 market.
6
7 I am of course only considering the UK tax position of Newco and Alan Holland
8 and not the principals referred to as company A, company B and their
9 shareholders. I am copying this to our Irish associates, Simpson Xavier for
11:23:16 10 their comments on the Irish tax position of Newco and Alan Holland.
11
12 My understanding concerning the residence and ownership of company A and
13 company B, are as contained in the engagement letter."
14
11:23:32 15 So we may take it that amongst the information which was contained within the
16 engagement letter provided to Stoy Hayward by Mr. Morgan, were details
17 concerning the registration and ownership of company A and company B, is that
18 right?
19 A. No, the residence of ownership of company A and company B, not the
11:24:01 20 registration.
21 Q. 46 I didn't say registration?
22 A. So I heard you say.
23 Q. 47 Sorry if you did. It's the residence and ownership of companies A and company
24 B were dealt with in the letter of engagement of the 5th of May 1993 provided
11:24:19 25 by Mr. Morgan?
26 A. Indeed yes.
27 Q. 48 And it follows that if you had that letter of engagement, you also had the
28 information contained within it, namely the information regarding the residence
29 and ownership of company A and company B?
11:24:37 30 A. That would be correct.

11:24:39 1 Q. 49 Yes. We see in the body of this letter at page 1296, paragraph 2.3, Mr. Taylor
2 is setting out his understanding here of company A and company B:
3
4 "I understand that company A and company B are both 50 percent shareholders in
11:25:10 5 Paisley Park Investments Limited (in liquidation). Accordingly in the normal
6 course of events, the title to the property (both legal and beneficial) would
7 be transferred to those companies." We see on the next page 1297, 2.4:
8
9 "In this case the legal title to the property is to be transferred to Newco.
11:25:36 10 Therefore as discussed, I presume there will be some form of instruction from
11 company A and company B to the liquidator authorising him to transfer the legal
12 title to the property to Newco. I would be grateful if you could confirm
13 this".
14
11:25:56 15 So this gives us some understanding of what Newco, it's role was to be. It was
16 to be the legal owner on the title of property in Ireland which would be owned
17 in effect by others, isn't that so?
18 A. That's correct.
19 Q. 50 Yes. We see at page 1298 that a copy of this letter was furnished to you?
11:26:24 20 A. Indeed.
21 Q. 51 And we make take it, that since this letter is making commentary on an earlier
22 letter of Mr. Morgan's to Mr. Taylor and takes up the points to that letter,
23 that equally you received that letter also, that is the earlier letter that we
24 have just read out, which is being responded to by Mr. Morgan in this letter,
11:26:50 25 sorry by Mr. Taylor in this letter?
26 A. I wouldn't be absolutely sure of that but -- it's likely I did is all I can say
27 on it.
28 Q. 52 It's likely? You will see at page 1300 an internal memorandum -- perhaps not
29 internal, but a fax memorandum of Stoy Hayward's to you, being the associated
11:27:26 30 firm in Ireland under the Howart International arrangement. It's a fax

11:27:33 1 memorandum to you, dated 11th May 1993, copied to the Birmingham office as
2 well, is that right?

3 A. Yes.

4 Q. 53 Subject Alan Holland Newco. "Following our telephone conversation today I am
11:27:49 5 attaching a copy of a letter that I have sent to Nicholas Morgan concerning the
6 UK implications of the proposed transaction.
7
8 You will see that I have mentioned Irish tax in a number of places and would be
9 grateful if you would comment as necessary.

11:28:03 10
11 I would emphasise that our instructions are to act only for Newco and for Alan
12 Holland. Nevertheless, I would be grateful if you would consider the wider
13 implications, at least in outline, for the principal companies, company A and
14 company B. I have been informed that company A and company B are not UK
11:28:24 15 resident and that they are owned by non UK resident trusts. The settlors and
16 beneficiaries of which are not domiciled, not resident and not ordinarily
17 resident in the UK. However, I do not know if any of the settlors or
18 beneficiaries of the trusts are Irish residents. Please let me know if we need
19 to inquire further into this.

11:28:47 20
21 I enclose a number of other papers which should be of use to you, namely: 1.
22 Nicholas Morgan's letter of 28th April with enclosures."
23 Firstly, that is the letter I have just asked you about.

24 A. Yes.

11:29:02 25 Q. 54 So you may take it that letter was received by you. "2. The draft Declaration
26 of Trust." That was a draft declaration which is intended to be executed by
27 whatever company was set up as Newco. "3. A copy of our engagement letter of
28 5 May". So that you received the engagement letter of the 5th May also?

29 A. Right, I see that.

11:29:32 30 Q. 55 "As discussed today, I would be grateful if you would consider the enclosed and

- 11:29:41 1 discuss this with me tomorrow by telephone".
- 2
- 3 So may we take it from this Mr. Sheedy, that you had a telephone conversation
- 4 as of the 11th May 1993, at which Mr. Taylor advised you of the dealings which
- 11:29:58 5 he had been having to that point in connection with the intended arrangement of
- 6 Mr. Holland and his company becoming involved in the ownership of the
- 7 Carrickmines land?
- 8 A. Yes, subsequent to that fax I would have talked with Rodney Taylor on the
- 9 telephone. I also talked to him before then generally about Irish tax, he
- 11:30:24 10 would have made some inquiries of me before then.
- 11 Q. 56 I am quite sure there would be a fair amount of, fair interchange between
- 12 English accountants and Irish accountants on tax matters?
- 13 A. Yeah, but it was specifically in relation to this issue.
- 14 Q. 57 To this issue, I see. So when do you think it was that you commenced to have
- 11:30:46 15 contact with Mr. Taylor in connection with this matter?
- 16 A. Sometime in May, early May I would have thought. Very shortly before this fax.
- 17 Q. 58 Right. And probably in other words after the letter of the 28th of April of
- 18 Mr. Morgan's, where he was setting out in a general way what he had in mind and
- 19 which was subsequently to be reduced to a letter of engagement of the 5th May?
- 11:31:16 20 A. Yes.
- 21 Q. 59 And it seems in this letter that whilst Mr. Taylor was directing your mind
- 22 specifically to Alan Holland/the Newco's position and saying that the
- 23 instructions are to act only for him, that is Mr. Holland and that company. He
- 24 also asked you to consider the wider implications for company A and company B?
- 11:31:45 25 A. Yes he did.
- 26 Q. 60 And I assume that you did so?
- 27 A. I did.
- 28 Q. 61 Yes. The next letter I would ask you to look at is at page 1303 and 1304, it
- 29 is a point by point response of Mr. Nicholas Morgan to the letter of the 11th
- 11:32:18 30 May, which had been copied to you by Mr. Taylor. That was Mr. Taylor's letter

11:32:28 1 to Mr. Morgan, this is a response to it confirming and drawing attention to the
2 specific points throughout it. One of the points specifically on page 1304,
3 was that Mr. Morgan confirmed Mr. Taylor's beliefs as set out in his letter at
4 paragraphs 2.7, 2.8 and 2.9 and states that companies A and presumably B,
11:33:03 5 should take advice from their own Irish tax advisor?

6 A. Indeed.

7 Q. 62 So that it was envisaged, that there would be two matters taking place here.
8 That separate advice would be sought by companies A and B, that is separate
9 from Mr. Holland's, isn't that right?

11:33:21 10 A. Indeed, yes.

11 Q. 63 Now, I think with the information that you had to that point in time and that
12 is as we see, the telephone conversations which you had with Mr. Taylor, the
13 letter of engagement, Mr. Nicholas Morgan's letter of the 28th April, and the
14 enclosures which accompanied that, which included a schedule of loans, that
11:33:58 15 upon this documentation you were being asked to address the possible
16 implications from a revenue, Irish revenue point of view of Mr. Alan Holland
17 and of any company that might be formed by him to fulfil the role that was
18 envisaged in this correspondence, isn't that so?

19 A. Yes.

11:34:21 20 Q. 64 We see at page 1327, a letter from Mr. Taylor to Mr. Morgan which encompasses
21 the advices which you had given to Mr. Taylor and which are transmitted onwards
22 in this correspondence to Mr. Morgan.

23

24 "I refer to your letter of the 12th May and our subsequent telephone
11:34:53 25 conversations.

26

27 I have now had comments from Frank Sheedy of Simpson Xavier, our Irish
28 associates.

29

11:34:59 30 He informs us that there are extensive provisions in Irish law relating to

11:35:04 1 persons who receive profits or gains belonging to any other person who is
2 chargeable to Irish tax in respect of them. Such persons may be required to
3 make a return to the Irish tax authorities, showing the profits or gains and
4 the names and addresses of the persons to whom the income belongs.

11:35:24 5
6 In Simpson Xavier's opinion, it would be unwise for Mr. Holland to proceed with
7 the current proposals without first obtaining an opinion from Irish counsel.
8 Among the main questions on which counsel's view would be required would be the
9 following:

- 11:35:40 10
- 11 1. To what extent under Irish law would Newco or Mr. Holland be required to
12 disclose to the Irish tax authorities the identity of the beneficial owners of
13 the income. Would it be sufficient for him to refer to the names of the two
14 non Irish registered companies, or should the names of the ultimate
11:36:02 15 beneficiaries of the trusts which own these companies be ascertained also.
16
17 2. Bearing in mind the answer to one above, to what extent should Newco and
18 Mr. Holland make enquiries into the trusts which own company A and company B,
19 and the identities of the settlors and beneficiaries of those trusts? For
11:36:25 20 example, would it be sufficient for Newco to obtain written confirmation from
21 the Channel Islands companies that no Irish resident are beneficially
22 interested in the company.
23
24 3. Whether Newco as legal owner, needs to report to the Irish revenue under
11:36:41 25 the CTG clearance procedures that it has acquired legal title to the land by
26 distribution in specie.
27
28 4. Whether Newco could possibly have a secondary liability to Irish tax on the
29 assumption that a substantial fee is received by a related company in
11:36:57 30 connection with it's involvement.

11:36:59 1
2 5. Whether the draft documentation is appropriate to ensure that no Irish tax
3 liability will arise on Newco or Alan Holland personally.
4

11:37:10 5 In order to obtain counsel's upon the facts of the matter would need to be set
6 out in detail. We think it would be appropriate for you to instruct counsel in
7 conjunction with Simpson Xavier, since both a clear up accounting of the facts
8 and a knowledge of the Irish legislation would be required."
9

11:37:28 10 It then goes on to deal with indemnity "In your letter of the 28th April
11 paragraph 4, you indicated that your client companies, company A and company B
12 would indemnify Newco and Mr. Holland against all taxes, expenses and other
13 liabilities that may arise and providing the trustee/Nominee facility. Could
14 you please provide a draft of the indemnity where appropriate? In view of the
11:37:52 15 difficulty which Mr. Holland might encounter in enforcing the indemnity from
16 offshore companies, we would recommend him to consider some form of additional
17 security for example a bank guarantee.
18
19 Should you wish to discuss this I would of course be pleased to do so".

11:38:07 20
21 This letter also is one copied to you, isn't that right?

22 A. Yes.

23 Q. 65 Can we take it Mr. Sheedy, that your views as of the 27th May 1993, were that
24 Mr. Holland or any company set up by him could not be properly advised on their
11:38:30 25 potential liabilities to Irish revenue implications on the basis of the
26 information which had been furnished to you to that date?

27 A. Yes.

28 Q. 66 One of the matters which you address is the question of the Irish ownership or
29 Irish ultimate beneficial ownership of these lands or the proceeds of the
11:38:55 30 lands, isn't that so?

- 11:38:56 1 A. Yes.
- 2 Q. 67 In the event that there was such an interest being held by an Irish person it
3 is one which would radically affect the advice that you would give to Mr.
4 Holland as regards his involvement in this transaction, isn't that right?
- 11:39:15 5 A. No, it wouldn't. It would be a question that Mr. Holland would have to
6 consider that, in terms of his reporting obligations to the Irish revenue. So
7 he would need to know who he was acting for, so that he could then report that
8 to the Irish revenue if he was required to do so.
- 9 Q. 68 He would have to be in a position to do so?
- 11:39:38 10 A. He would.
- 11 Q. 69 Yes.
- 12 A. But it really had nothing to do with Mr. Holland's tax position, the actual
13 liability to taxation, it was a reporting requirement.
- 14 Q. 70 Right. But there is a reporting requirement?
- 11:39:55 15 A. There is.
- 16 Q. 71 And a breach of that reporting requirement has consequences, isn't that so?
- 17 A. It does.
- 18 Q. 72 What are those consequences?
- 19 A. I cannot say without looking up the legislation.
- 11:40:08 20 Q. 73 Right. The legislation I think has changed from time to time, the income tax
21 Act in 1967 probably the base, the code and then it modifies over time, but
22 there was a particular statute passed in 1993, which was the subject matter of
23 your further advices to Mr. Holland which we'll see later in the brief. It's
24 colloquially called the amnesty provision, but it's actual title is the Waiver
11:40:42 25 of Certain Interest, Certain Tax Interests and Penalties Act 1993, isn't that
26 so?
- 27 A. I think that's a separate issue. It's not related to this particularly, there
28 would be penalties set out in respect of this reporting requirement which is
29 now section 8.90 of the Tax Consolidation Act, and also section 8.94 introduced
11:41:13 30 a mandatory reporting requirement. Section 8.90 said, that if the revenue

- 11:41:18 1 wrote to you, you would give them the details under that section. However,
2 8.94 brought in an automatic reporting requirement, so that persons who receive
3 income on behalf of other persons would automatically report that on an annual
4 basis to the Irish revenue. So that's separate and distinct from the amnesty.
- 11:41:48 5 Q. 74 The position of course of any advisor or any tax advisor is similarly
6 controlled by that legislation, isn't it, accountants are equally bound by
7 information such as that, are they? If they have information in hand that an
8 Irish entity has a liability to tax, if they are called upon to account to the
9 revenue they must disclose that, isn't that so?
- 11:42:20 10 A. If an accountant received a letter from the Irish revenue requesting specific
11 information which the accountant had, he would respond and give the
12 information.
- 13 Q. 75 And equally I take it, if you were made aware of the fact that Irish persons
14 were the owners of this land in Carrickmines, I am not saying necessarily they
11:42:41 15 are, but if it was the case as is suggested in the initial instruction given to
16 Mr. Holland by Francine Webster, that substantial Irish clients require this to
17 be done. If one is to infer from that, that substantial Irish clients own
18 these lands, if you were aware of that as an accountant and if an inquiry was
19 made of you, would you be obliged to provide that information to the revenue?
- 11:43:08 20 A. I would if I --
- 21 Q. 76 If you were aware?
- 22 A. If I was aware of it.
- 23 Q. 77 Of course if you are not made aware of it you can't tell people that
24 information, isn't that right?
- 11:43:18 25 A. Indeed. But it would normally be after there had been a disposal of such lands
26 that it would be an inquiry about.
- 27 Q. 78 Depending --
- 28 A. Not directly the ownership causes --
- 29 Q. 79 If it was producing substantial income for example, it would be another
11:43:39 30 instance where the revenue might be interested?

11:43:40 1 A. Indeed.

2 Q. 80 Or if the revenue was conducting another trawl into the assets of an individual
3 and they had reason to believe that individual was in some way connected with
4 this particular property, they could equally make that call of you?

11:43:53 5 A. They could make an inquiry.

6 Q. 81 Right. Not only could they make the inquiry of you, but if you were aware of
7 the fact that these were Irish persons involved, you were obliged in law to
8 disclose that fact?

9 A. Yes.

11:44:06 10 Q. 82 Yes. The scheme then that was envisaged involving Mr. Holland was one that you
11 identified as having the potential for an exposure to him, which he should not
12 readily engage in until such time as Irish counsel's opinion had been sought as
13 to whether or not he should make the inquiries along the lines addressed in
14 this advice given to Mr. Morgan, isn't that right?

11:44:41 15 A. Yes.

16 Q. 83 We see at page 1329 the response of Mr. Morgan to Mr. Holland to the
17 information which had been passed on to him in this letter, there is a letter
18 of the 28th May 1993, to AG Holland esquire.

19

11:45:07 20 "I am disappointed that Simpson Xavier have provided no direct advice other
21 than we should refer the matter to Irish counsel and bearing in mind that I
22 have already received a bill for in excess of 5,000 pounds from Stoy Hayward, I
23 find it surprising that these people do not seem to have the immediate
24 knowledge to provide preliminary advice themselves. I now set out below my
11:45:27 25 comments on the questions upon which they suggest that counsel's views should
26 be obtained.

27

28 1. With regard to disclosure to Irish tax authorities under Irish law, I
29 consider that this is a matter that can properly be dealt with as or when any
11:45:43 30 enquiry is directed to the UK company from such authorities. As far as I am

11:45:50 1 concerned, it is sufficient that you have been approached by my firm, acting on
2 behalf of two non-resident companies to provide a simple nominee service and I
3 do not propose to trouble you with the details of what structure lies behind
4 these two companies. You can rest assured that the best advice will be
11:46:09 5 available to guide all parties on how to deal with such enquiries."
6

7 As a response to the query that you had raised or the concern that you had
8 raised, have you any comment as to whether or not Mr. Holland could be
9 reassured by what is stated here, that if a question was raised in time by the
11:46:34 10 Irish authorities it can simply be answered by saying, that a firm of Jersey
11 lawyers had appointed him on behalf of two offshore companies

12 A. I wouldn't have thought that is the position that would be covered by that, he
13 would have to, he should know the persons for whom he was acting. He should
14 know them.

11:46:59 15 Q. 84 The second point then and he goes on to say "As referred to in one above, it is
16 best that you make no enquiries into the ownership of either company A or
17 company B in relation to their beneficial ownership. I would be prepared to
18 provide written confirmation that the two offshore companies are not
19 beneficially owned by an Irish resident, as the ultimate ownership of these
11:47:23 20 companies is vested in further offshore vehicles".
21

22 In this response at 2, we can gather from Mr. Morgan that not only is there to
23 be a company interposed called Newco, which ultimately is Jackson Way
24 Properties, between the beneficial ownership of the lands, which to this point
11:47:48 25 is said to be in company A and company B, but that behind company A and company
26 B there are further trust vehicles, isn't that so?

27 A. Yes. They are -- my understanding of that was that they were already in
28 existence.

29 Q. 85 Yes. Can you identify any immediate reason as to why there should be more than
11:48:14 30 one trustee and beneficiary arrangement in any transaction?

- 11:48:24 1 A. Well normally you have a trustee involved where the beneficiary, beneficial
2 owner wishes to maintain confidentiality.
- 3 Q. 86 Yes.
- 4 A. That's the first thing.
- 11:48:34 5 Q. 87 I can see that, it's readily identifiable and understood that there can be a
6 trustee and the trust, in effect holds the asset that beneficially has the
7 benefit of confidential but to have a trustee then behind the trustee, can you
8 see the purpose of that?
- 9 A. Well my understanding is that it would be some type of offshore trust.
- 11:48:59 10 Q. 88 Yes. Offshore to a particular jurisdiction?
- 11 A. Yes.
- 12 Q. 89 So one envisages here, there is Irish land that's jurisdiction number one.
13 There is an Isle of Man company which owns that land, that's jurisdiction two.
14 There is Mr. Nicholas Morgan acting on behalf of non UK companies or interests,
11:49:29 15 that's jurisdiction number three at least, and possibly number four. We are
16 told that Maskani Limited is one of those companies, that's an Isle of Man
17 company. We are told that Renzenbrinck is another of those companies, that's a
18 Panamanian company, so that's now four jurisdictions. And the UK jurisdiction
19 would become the fifth jurisdiction to be involved, isn't that right?
- 11:49:59 20 A. I don't really see any significance to the number of jurisdictions.
- 21 Q. 90 Right. Does it not allow --
- 22 A. It just makes it very complicated.
- 23 Q. 91 Does it not allow the professional advisers in each jurisdiction to say that
24 the limit of their instruction is what they have received from another offshore
11:50:18 25 jurisdiction?
- 26 A. That's something I have never considered.
- 27 Q. 92 You have never considered that?
- 28 A. No. Not in my professional experience have I involved myself in such
29 arrangements, so I wouldn't be able to offer a comment.
- 11:50:36 30 Q. 93 So your position as the international tax advisor in the firm, is that material

11:50:43 1 comes to you, you advise on the basis of that material and only that material,
2 and that is the end of your involvement as regards that particular entity,
3 isn't that so?

4 A. Well normally I would be dealing with on shore jurisdictions, I wouldn't deal
11:51:01 5 with offshore.

6 Q. 94 We are dealing now with offshore and the role you play with offshore
7 jurisdictions. We can confine ourselves to that for the purpose of this
8 examination?

9 A. Could you repeat that please.

11:51:14 10 Q. 95 We are confining the current questioning to what you would do in circumstances
11 involving your dealings with professionals in offshore jurisdiction. We are
12 examining the situation where perhaps five offshore jurisdictions are involved
13 in the ownership --

14 A. Well I have no experience of that.

11:51:35 15 Q. 96 Of Irish land.

16 A. I cannot make any comment.

17 Q. 97 You have experience in this particular instance, Mr. Sheedy?

18 A. I don't, I don't.

19 Q. 98 You know that there are Irish lands in Carrickmines comprising 108 acres which
11:51:47 20 are owned by an Isle of Man company in liquidation. This is information which
21 was provided to Stoy Hayward's, who instructed you and provided the information
22 that contained that statement in it?

23 A. I was advising Stoy Hayward about their involvement and their client, who was
24 Alan Holland, who was setting up a company which would have the legal interest
11:52:12 25 in the lands. I wasn't advising regarding company A and company B and their
26 relationships and what was going on with the trusts and I didn't concern myself
27 with them.

28 Q. 99 Well you were specifically asked to concern yourself with them in the letter
29 from Mr. Taylor, it may well be that the specific instructions that you were to
11:52:35 30 respond to were those on behalf of Mr. Holland, and Newco. You were still

11:52:41 1 nonetheless asked to address the other issues, what I am asking you to indicate
2 to the Tribunal is, what the core situation was as between, and the basic tax
3 reasons or confidentiality reasons or other reasons, that you as an
4 international tax expert can identify in the circumstances which has been
11:53:10 5 established through the correspondence and through the instructions given to
6 you. You were in a position to know in 1993, that Irish lands at Carrickmines
7 which were developing lands were owned by Paisley Park Investments, an Isle of
8 Man company which was in the process of being liquidated. That, that company
9 in turn was owned by company A and company B, details of which were contained
11:53:40 10 in a letter of engagement of the 5th May 1993.

11
12 You knew that those companies were non UK jurisdiction companies and that it
13 was intended to introduce another element, that is a UK company to be the legal
14 owner of these lands. You knew all of those details, now what was the scheme
11:54:04 15 that you identified there, what was it's purpose from a tax point of view?

16 A. Well, I was asked by Rodney Taylor to consider the position of company A and
17 company B. I spoke to him about it and said that I wasn't in a position to
18 consider company A and company B because I had no information about the
19 ownership and I said -- I told him that in my view, once you were dealing with
11:54:33 20 Irish lands we are, our taxation provisions will mean that there is a liability
21 to Irish tax and I confined myself to that.

22 Q. 100 And that liability to Irish tax was one which is ultimately the liability of
23 the beneficial owner?

24 A. Of the beneficial owners.

11:54:53 25 Q. 101 Yes. But the involvement of your client, specifically Mr. Holland and Newco,
26 could be that they have the reporting requirement which carries with it the
27 penal or criminal sanction if not complied with, and that was one that you had
28 to be able to advise your client Mr. Holland on, isn't that so?

29 A. Indeed yes.

11:55:13 30 Q. 102 Yes. And to do that you had to, insofar as you could, to be in a position to

11:55:19 1 understand what was going on here?

2 A. But I never got that information.

3 Q. 103 Right.

4

11:55:41 5 JUDGE FAHERTY: Mr. Sheedy, sorry you knew there was an Isle of Man company

6 Paisley Park, is that correct?

7 A. Yes.

8

9 JUDGE FAHERTY: And you knew as I understand, that the shareholders in Paisley

11:55:50 10 Park was a further Isle of Man company and a Panamanian company?

11 A. Yes.

12

13 JUDGE FAHERTY: You had that knowledge in 1993.

14 A. I did.

11:55:58 15

16 JUDGE FAHERTY: So you had knowledge that there was a number of jurisdictions

17 involved?

18 A. Yes.

19

11:56:02 20 JUDGE FAHERTY: I just want to be clear about what your state of knowledge was.

21 That was in the letter of engagement, as I understand it, from Mr. Morgan to

22 Stoy Hayward, there was reference to the ownership and residence of company A

23 and B, which letter of engagement you got?

24 A. But which I have no recollection of now, unfortunately. My file isn't

11:56:22 25 available to me.

26

27 JUDGE FAHERTY: Where is your file as a matter of interest?

28 A. We were trying to identify the file as to which, because this was a very short

29 involvement between the 11th of May and to the ultimate advice on the 27th May,

11:56:39 30 that was the substantial period of any involvement, we thought it was part of a

11:56:46 1 file with all our dealings with Stoy Hayward back in 1993, so we found that
2 file in archives which had pre 1994 information on it from Stoy Hayward,
3 however, the archive box could not be found, that particular archive box, so
4 then we did an electronic search of our word documentation, which found these,
11:57:13 5 the documents which we gave to the Tribunal.

6
7 JUDGE FAHERTY: I see

8 A. We also initiated a search, because we moved offices, we initiated a search
9 within our office of the areas, or the office where the box could be located,
11:57:30 10 but we couldn't find it.

11
12 JUDGE FAHERTY: But you have an actual archive, a paper archive, you maintain a
13 paper archive?

14 A. We do maintain a paper archive.

11:57:41 15
16 JUDGE FAHERTY: Obviously for accountants, well for lots of people but, to
17 retain archives is an important part of your business in terms of the, sort of
18 obligations clients would have and indeed accountants would have to the tax
19 authorities.

11:57:53 20 A. You would retain permanent information on a permanent notes file, but other
21 information which you wouldn't have permanent use, would be destroyed after a
22 period of years.

23
24 JUDGE FAHERTY: How many years would that be?

11:58:08 25 A. Normally you destroy documents after 8 years, but in this case it wasn't
26 destroyed.

27
28 JUDGE FAHERTY: You are saying that you still can't locate the particular
29 archive box that might have the letter of engagement?

11:58:21 30 A. Yeah. We did search for it quite extensively but couldn't find it.

11:58:28 1
2 JUDGE FAHERTY: I see. Thanks. Sorry Mr. O'Neill.
3
4 Q. 104 MR. O'NEILL: All the work you were doing of course Mr. Sheedy, at this point
11:58:36 5 in time was in conjunction with Stoy Hayward, isn't that right?
6 A. Yes.
7 Q. 105 And I take it that they equally would have similar obligations to yourself as
8 regards the maintenance of documents and in their instance perhaps they would
9 have a greater obligation or perhaps a greater opportunity to retain
11:59:00 10 documentation if Mr. Holland remained their client, isn't that so, it would be
11 an ongoing file?
12 A. Well I suppose -- I mean if you want the detail of it, the Stoy Hayward office
13 in, at the time, there were two different firms. The London firm and the
14 Birmingham firm. The Birmingham firm would retain information, would have --
11:59:25 15 for tax purposes, for compliance purpose, etcetera. But the London firm, it
16 was a one off advice, which was not going to have any you know, further follow
17 up. They have my understanding is, that Stoy Hayward would shred files after 8
18 years, which we made inquiries of them and that's what they told us.
19 Q. 106 They informed you that they had shredded the file?
11:59:50 20 A. No, they informed us that they shred, they shred files after 8 years and they
21 were of the view that this particular file had been shredded.
22 Q. 107 Did they confirm to you whether or not they had in fact carried out a search to
23 see?
24 A. They did, first of all they carried out a search, yes.
12:00:09 25 Q. 108 They indicated to you they carried out a search, they didn't find anything and
26 the explanation for that was, that they had shredded it as a matter of course?
27 A. Yes.
28 Q. 109 Is that both offices London and Birmingham or did you only contact one?
29 A. I contacted both offices but it was the London office which would have, which
12:00:28 30 was where Rodney Taylor was located, so that was it's the office that have

- 12:00:33 1 would the information.
- 2 Q. 110 Well they would undoubtedly copy all the information to the Birmingham office
- 3 also, that was the one that was dealing directly with their client?
- 4 A. Yes.
- 12:00:43 5 Q. 111 So did you --
- 6 A. We did contact Birmingham office as well.
- 7 Q. 112 Sure, did they tell you the same thing, that they had carried out a search?
- 8 A. I think what happened there was that David Secombe who was the partner involved
- 9 with Alan Holland, actually left the firm and he would have taken files
- 12:01:02 10 concerning Alan Holland with him.
- 11 Q. 113 Is that what they told you in Stoy Hayward, or is that an assumption?
- 12 A. That's what they told me from Birmingham office of Stoy Hayward, yes.
- 13 Q. 114 Did you ask Mr. Secombe whether or not he could assist you in reconstructing
- 14 the documentation which had been on your file, but was no longer available to
- 12:01:22 15 you because it had in some way, couldn't be archived, did you ask him whether
- 16 he was prepared to provide this documentation to you?
- 17 A. No, I just made inquiries within Stoy Hayward, I didn't go outside Stoy
- 18 Hayward.
- 19 Q. 115 But as much as Stoy Hayward could tell you in relation to Mr. Holland's files,
- 12:01:41 20 was that they were now with a person who was his new accountant, and no longer
- 21 at Stoy Hayward, did that not lead you to conclude that if you made the inquiry
- 22 of him, you could in fact obtain documents, copies of the documents which had
- 23 been given to you originally?
- 24 A. I did actually speak with Gary Taggart, who is the person who was copied on
- 12:02:03 25 these documents.
- 26 Q. 116 He is still with Stoy Hayward?
- 27 A. He is still with Stoy Hayward.
- 28 Q. 117 He tells you, I don't have the documents because Mr. Holland is no longer a
- 29 client of the firm nor is the accountant who was handling his affairs directly
- 12:02:17 30 in this office that is David Secombe, I have given -- David Secombe left and

- 12:02:23 1 has the files of Mr. Holland, is that what he told you?
- 2 A. Yes.
- 3 Q. 118 Right is there any reason then why you can't contact Mr. Secombe and ask him to
- 4 send you copies of the documentation, which is on the file, which is sent to be
- 12:02:38 5 originally and no longer available to you because your own archive has been
- 6 destroyed or is not accessible?
- 7 A. That isn't something that occurred to me at the time. I was of the view that
- 8 the inquiry was made in respect of our firm and that was what I was trying to
- 9 respond to.
- 12:03:07 10 Q. 119 Well the inquiry is made of you in your firm and this is a means of obtaining
- 11 through a secondary rather than direct way, the documentation which would have
- 12 been on your file and would have been considered by you at the time, in which
- 13 the Tribunal does not have because it has not been made available to the
- 14 Tribunal from other sources.
- 12:03:27 15 The documentation as you will see which the Tribunal has is a limited amount of
- 16 documentation which specifically excludes amongst other things the letter of
- 17 engagement details of the loan schedule, which is referred to in the
- 18 documentation. Now that documentation was provided to you apparently as we'll
- 19 see from the correspondence here, it seems that the probability is that it was
- 12:03:55 20 equally copied to Mr. Taggart, we can see the ccs to him, and therefore that
- 21 documentation is likely to be, to have been on the file, that is believed now
- 22 to be with Mr. Secombe. Are you --
- 23 A. If you wish me to inquire, I will do so.
- 24 Q. 120 Yes. We would appreciate if you would. Now we were dealing Mr. Sheedy, with
- 12:04:23 25 the response of Mr. Holland to the concerns which you had articulated in your
- 26 letter and you conclude that his response certainly wouldn't be sufficient as
- 27 far as you were concerned to protect Mr. Holland from possible revenue
- 28 implications depending on what the underlying facts were, isn't that so?
- 29 A. Yes, Mr. Holland should ascertain the facts is what my advice was to him.
- 12:04:57 30 Q. 121 Now, we'll see how Mr. Holland dealt with this at page 1339, which is a

12:05:10 1 communication again from Mr. Morgan to Mr. Holland and in paragraph 3 he says:
2
3 "I have copied to you Stoy Hayward's letter of the 27th May 1993". That was
4 the letter which expressed your concerns as to what should be done.

12:05:30 5 "And you have agreed that at this stage Irish counsel's opinion is not
6 necessary. I have advised you that our underlying client is minded that such
7 opinion should be taken and in the event that this is the case, I will copy
8 such opinion to you in due course."
9

12:05:50 10 So what appears to be the case here is that Mr. Holland has decided that he is
11 not going to seek Irish counsel's advice. Mr. Morgan acting on behalf of the
12 underlying client is going to obtain counsel's opinion as to what the situation
13 is, and when that opinion is obtained, he then would contact Mr. Holland. That
14 leaves Mr. Holland in the position where the extent of his knowledge is
15 dependent upon what Mr. Morgan tells him, as to what Irish counsel's advices
16 are, but he is not going to take up Irish counsel's advices himself?

17 A. Yes.

18 Q. 122 So accordingly, there will be no record in the deals between for example
19 himself and yourself that he had ever got Irish counsel's advice that advised
12:06:47 20 him against embarking on the project, by way of example?

21 A. Yes.

22 Q. 123 In the meantime Mr. Morgan says "I confirm that in the event that yourself or
23 the company are contacted direct by the Irish revenue or other relevant
24 authorities, you will refer such communications immediately to our firm and we
12:07:12 25 will ensure that appropriate professional advice is taken in both the UK and
26 Ireland, as to what response should be made to such communication and as to
27 what extent you or the company are required by law to disclose information".
28
29 So here again Mr. Morgan was taking it upon himself to receive any information
12:07:35 30 which was sent by any Irish revenue authorities to Mr. Holland and he,

- 12:07:42 1 Mr. Morgan, would deal with those through the advisers that he consulted rather
2 than Mr. Holland dealing with them himself, isn't that so?
- 3 A. Right.
- 4 Q. 124 "It has been agreed generally between ourselves that I should disclose to you
12:08:00 5 the identities of the two offshore companies for whom Jackson Way Properties is
6 holding the land on trust, and that I will ensure that such companies are
7 maintained in good standing. But it has further been agreed that I should not
8 disclose to you details of the ownership or ultimate ownership of the shares of
9 these companies."
- 12:08:24 10
11 Now you can see, whilst I read that, I read "should" and you will see that that
12 has been struck out and replaced in manuscript by "need" so the sentence with
13 the amendment would read "It has been further agreed that I need not disclose
14 to you details of the ownership or ultimate ownership of the shares of these
12:08:45 15 companies".
16
17 The explanation for the change between "need" and "should" appearing here, is
18 that whilst Mr. Morgan indicated in this letter that it was agreed between
19 himself and Mr. Holland that he should not disclose the ultimate details of the
12:09:02 20 ownership and ultimate ownership of the shares of the companies to Mr. Holland,
21 Mr. Holland wrote back to him and asked him to change that to read need, so
22 that he "need" not, but not that he should not disclose it. In any event, it
23 is evident that there was an agreement between Mr. Holland and Mr. Morgan where
24 Mr. Holland voluntarily assumed that he was not going to inquire further, isn't
12:09:33 25 that so?
26 A. Yes.
- 27 Q. 125 And that of course is something which was against your professional advices in
28 the knowledge you had at that particular time, isn't that right?
- 29 A. Yes.
- 12:09:43 30 Q. 126 The extent to which Mr. Holland was conscious of the implications of this

12:10:06 1 knowledge, we can see at page 1356, where in his letter of response to
2 Mr. Holland, sorry to Mr. Morgan Mr. Holland says at point 5:
3
4 "I confirm that having discussed with you those items faxed over from your
12:10:26 5 office on 23rd June, my only misgivings relate to your paragraph 3, third line
6 up from the bottom where it states 'it has been further agreed that I should
7 not disclose to you' on the basis of our discussions I would welcome your
8 confirmation that "should", might be amended to the word "need". Quite
9 obviously I have to rely upon your expert advice with regard to the extent of
12:10:56 10 any disclosure, insofar as my capacity as a director of Jackson Way Properties
11 is concern and as I have pointed out to you my advice is that it is sufficient
12 that I am acting for two legally constituted companies in a nominee capacity".
13
14 Again confirmation of the fact that Mr. Holland feels that he need not know any
12:11:19 15 more than he is given, namely that there are two non UK companies involved and
16 he need inquire no further in order to act, isn't that so?
17 A. Yes.
18 Q. 127 I think none of this of course has been communicated to you, there is no direct
19 communication from Mr. Holland at any time to you, isn't that right?
12:11:49 20 A. No, no.
21 Q. 128 Your communications would come through Stoy Hayward either London or Birmingham
22 depending on what issue might arise?
23 A. Well in this particular situation, it's all through London.
24 Q. 129 Yes. I think that as of the 30th June in the absence of there being any
12:12:13 25 further information received by you, you assumed that your role was at an end
26 at that point because you send a fee note to Stoy Hayward looking for payment
27 for your advices?
28 A. I didn't assume it was at an end, there was a position of actually getting the
29 advice from counsel and I hadn't seen this document, so I was under the
12:12:35 30 impression that we were going ahead with getting the advice from counsel and I

- 12:12:42 1 was -- I would have followed up on that at some point.
- 2 Q. 130 So your letter of the 30th June was merely one seeking interim payment for
3 works to date, is that right?
- 4 A. Yes, yes.
- 12:13:09 5 Q. 131 We know that your bill and the bill of Stoy Hayward in the UK for their advices
6 caused some dissension or dissatisfaction with Mr. Morgan who felt that the
7 amounts charged were too great, isn't that right?
- 8 A. It seems so from this -- I wouldn't have been aware of that at the time until
9 later on.
- 12:13:33 10 Q. 132 Sure. And in the body of the correspondence which passed on this dispute,
11 there was an analysis to some extent of the work which had been done which, for
12 which the fee notes had been submitted and in respect of which, Mr. Morgan was
13 making complaint that they were excessive, both as regards the time involved
14 etcetera, isn't that right?
- 12:13:59 15 A. Yes -- I think his problem was the liaison between Birmingham and London and
16 the time, communication that was going on there, time spent on that.
- 17 Q. 133 Your own involvement to May, sorry to June when you sent the bill, but in
18 respect of the work which had been done in May, was 12 and a half hours of your
19 work had been spent in this, isn't that right?
- 12:14:33 20 A. That's correct.
- 21 Q. 134 We see at page 1393 an analysis of the work which was set out by Stoy Hayward
22 for Channel Island and International Law Trust Company and the details are set
23 out here as, are the times involved and this formed the basis of charge for the
24 work done on their behalf, and many of the items here are matters that we can
12:15:14 25 identify immediately from the letters, which we have opened in this morning's
26 session. There is the review of Nicholas Morgan's fax of the 28th April
27 outlining the proposed transactions, which took two hours. The subsequent
28 telephone conversation with him on the 7th May discussing in particular, the
29 existing and future financing arrangement which superseded paragraph 5 of his
12:15:40 30 letter, one and a half hours. Then preparing a letter sent out by fax and post

12:15:47 1 on 11th May setting out the UK tax consequences of the transactions which was
2 10 hours. Then liaising with Gary Taggart of Birmingham and yourself of Dublin
3 by telephone and sending them further details of the proposed transactions.
4

12:16:08 5 Further conversation and telephone on the 12th May considering his response on
6 12 May, meeting David Secombe on 19th May to discuss matters, further telephone
7 discussions with yourself concerning the Irish disclosure requirements for land
8 transactions by non Irish residents, preparing a letter to Nicholas Morgan,
9 telephone conversation with Nicholas Morgan on 23rd June and making a note of
12:16:40 10 that discussion and sending it to you and Mr. Taggart, discussing the matter
11 with them and then a review by Alan Cinnamon. So 34 hours of work in London
12 was done which was going to be attributed to CI Law Trust group, this is in
13 addition to the work of yours, isn't that right?

14 A. Yes.

12:17:11 15 Q. 135 As you say, notwithstanding that the fee note had been raised, it was an
16 interim fee note and Mr. Holland's interests were still being represented by
17 Stoy Hayward and you ultimately would have further involvement as we see,
18 albeit to a limited extent, but if we look to 2nd August 1993 at page 1394,
19 we'll see again Mr. Morgan is writing to Mr. Holland, he says at paragraph two:

12:17:44 20
21 "It has now been decided that Jackson Way should enter into the company
22 ownership agreement which was originally envisaged and a final version should
23 be forwarded to me shortly, which I shall go through with you. Basically this
24 agreement provides for Jackson Way to be the managing co-owner and to hold the
12:18:03 25 middle ground between the two offshore companies, subject always to my firm's
26 direction."
27

28 If we stop at that point, Mr. Morgan sees himself here as being the director of
29 Jackson Way through Mr. Holland, isn't that so?

12:18:28 30

12:18:28 1 "It has been decided that Jackson Way should enter into a company ownership
2 agreement, that was originally envisaged and a final version should be
3 forwarded to you shortly, wish I will go through with you. Basically this
4 agreement provides for Jackson Way to be the managing co-owner and to hold the
12:18:47 5 middle ground between the two offshore companies subject always to my firm's
6 direction". Whatever Jackson Way was to do here, is subject to his firm's
7 direction?
8 A. Yeah his firm's direction, yes. That's what it says.
9 Q. 136 Exactly. What that means that whilst Jackson Way was to hold the middle ground
12:19:08 10 between the two offshore companies in this arrangement, in doing so it was to
11 act at his direction, not at it's own direction. In other words whilst it is
12 there as a company with it's own directors, it is to act upon the direction of
13 Mr. Morgan?
14 A. And his firm's direction.
12:19:30 15 Q. 137 His firm's direction. But certainly not it's own direction. Jackson Way was
16 not to hold the middle ground between these two companies, it was to hold the
17 middle ground as between these two companies subject to his direction or his
18 company's direction?
19 A. Yes, but this co-ownership agreement never went ahead.
12:19:50 20 Q. 138 I appreciate that that is so, but this is what was envisaged as a role for your
21 client, Mr. Holland or his company Newco, this was one of the roles envisaged?
22 A. Well I wasn't aware of this.
23 Q. 139 You are aware now that it didn't take place?
24 A. It didn't take place.
12:20:08 25 Q. 140 And it was as a result of the advices which was given by Stoy Hayward at the
26 time?
27 A. It didn't take place, yes.
28 Q. 141 If what had taken place here, did take place it would have resulted in
29 Mr. Nicholas Morgan's company being the company which would hold the middle
12:20:33 30 ground in relation to the affairs of the two companies that own the

12:20:39 1 Carrickmines lands. He would be the person who would be giving the directions,
2 isn't that so?

3 A. Yes, himself or his firm. Whoever would represent the firm would give it's the
4 direction.

12:20:52 5 Q. 142 Right and presumably you know from your experiences, as an accountant, that it
6 says the firm it would in turn be acting on behalf of a client, it wouldn't be
7 acting on it's own behalf in that matter, isn't that right?

8 A. We are talking here about Channel Island and International Law Trust Company.

9 Q. 143 Yes.

12:21:14 10 A. So, normally they would take direction from people who they represent, that's
11 my understanding.

12 Q. 144 So behind Mr. Mother again there would be somebody else giving directions to
13 him, he would give the directions to Jackson Way, Jackson Way would be in the
14 position between two companies described as the offshore company?

12:21:36 15 A. Indeed.

16 Q. 145 Now in the body of that letter at the conclusion at page 1395, reference is
17 made to the fact that "In the meantime Mr. Morgan is arranging to pay Stoy
18 Hayward their fees to date, and have also obtained authority to proceed with
19 obtaining Irish counsel's opinion, which I will discuss with you once this is
12:22:03 20 obtained."
21
22 Now, your involvement we can see is still extant on the 5th August 1993, where
23 at page 1405 Rodney Taylor faxes a memo to Nicholas Morgan thanking him for a
24 letter of the 2nd August and saying "I have passed on your letter with
12:22:46 25 enclosures to Frank Sheedy and Gary Taggart of our Dublin and Birmingham
26 offices. I have asked Frank to consider the estimates of counsel's and his own
27 fees for obtaining an opinion.
28
29 Assuming the estimates are acceptable to your client, I think we should aim to
12:23:02 30 get an opinion about by the middle of September. This is because there are

12:23:06 1 certain disclosure requirements which need to be satisfied within 3 month after
2 the date of acquisition, which I believe was about the end of June.
3 Accordingly the counsel's opinion on this point would need to be received
4 before the end of September" and a further fee note is there raised.

12:23:28 5
6 That letter and it's enclosures Mr. Sheedy, is not one of the documents which
7 has been furnished to the Tribunal from the source which provided the other
8 documentation to the Tribunal and I take it that in accordance with your
9 earlier evidence, you are not in a position to record or recall any particular
12:23:48 10 detail of documents which may have been furnished to you in 1993, save those
11 which appear in the body of documentation which has been furnished to you by
12 the Tribunal, is that right?

13 A. Yes, indeed yes.

14 Q. 146 So you can't help us as to what was in that letter or what enclosures were with
15 it?

16 A. No, I can't.

17 Q. 147 On the 1st September we'll see that lengthy letter was written by Mr. Taylor to
18 Mr. Morgan, which was copied to you and which sought to address the concerns
19 which had been raised by Mr. Morgan about the extent of the fees which were
12:24:40 20 being charged to him, can we see page 2007. Mr. Taylor advises Mr. Morgan as
21 follows.

22
23 "Firstly, it's worth remembering that we are dealing with a substantial piece
24 of land in Ireland, which has considerable development potential and which your
12:25:06 25 clients contemplate will in the course of time, be sold for a very substantial
26 profit.

27
28 You will be aware that taxation matters of this nature are extremely sensitive
29 and that penalties can in some circumstances be exacted by revenue authorities.

12:25:22 30 In a few cases criminal proceedings may be brought. Accordingly very

12:25:27 1 considerable care needs to be taken to ensure that any action can be fully
2 justified in terms of the current law.

3
4 You are also aware of Mr. Holland's instructions referred to in his letter to
12:25:39 5 you of 7th May that we should satisfy ourselves that he would "Be in no way
6 prejudiced" by this transaction. This involves considering not only the
7 transaction in isolation, but also the possible effects that this transaction
8 might have (both in Ireland and the UK) in relation to his other interests.
9 You will no doubt appreciate the costs and disruption to Mr. Holland's other
12:26:04 10 business interests if the UK Inland Revenue were to use this as a reason to
11 carry out a full indepth inquiry into his business affairs. Accordingly this
12 transaction cannot be considered in isolation.

13
14 Bearing this in mind our three offices London, Dublin and Birmingham have spent
12:26:22 15 such time as we considered reasonable and necessary to ensure that Mr. Holland
16 an his new company were acting on the basis of sound advice.

17
18 As far as the London office is concerned up to and including the 31st of July
19 the total of 34 hour has been spent by myself and Alan 6 sin Monday, you are
12:26:42 20 aware from our engagement letter that our charge out rate as of 5th May 1993,
21 was 220 pounds sterling per hour. This was increased to 231 pounds sterling
22 from the 1st July, which is our annual review date. I enclose an approx
23 analysis of these hours.

24
12:27:02 25 I enclose a copy of the fee received from our Birmingham office for total 13.3
26 hours you will note that expenses of 209 were incurred as disbursement in
27 relation to company formation. I am sure that Mr. Holland is aware of the time
28 which both Gary Taggart and David Secombe spent ensuring that he was made aware
29 of progress and implications to himself in meeting and by telephone.

12:27:27 30

12:27:27 1 Our Dublin office have sent me a bill of IR1,595 or approximately 1,490
2 sterling at current rate of exchanges. This represented 12 and a half hours
3 work a significant proportion of this time was taken in reading the
4 documentation and discussing the factual position with ourselves since a clear
12:27:46 5 understanding of this is crucial in assessing the taxation implications.
6

7 The reporting requirements of land transactions are extremely complex and there
8 is little reported case law on the subject in relation to non-resident
9 trustees. The reporting requirement were amended substantially in 1992 with
12:28:03 10 the responsibility being placed upon a person making the return, rather than
11 being dependent upon a request for information from the Irish revenue. Whether
12 they apply to non Irish re resident in the absence of a request is unclear and
13 as yet up tested. Accordingly, they concluded that the only prudent course of
14 action was to take counsel's opinion given the substantial nature of the
12:28:25 15 proposed transaction.
16

17 I trust that you now have a better understanding of the basis of our charges.
18 Please contact me if you wish to discuss this further.
19

12:28:37 20 With regard to your request for an estimate of Irish counsel's fees, Frank
21 Sheedy has tried to contact a suitable counsel. However his preferred choices
22 a have not been available lately owing to the legal vacation. He will
23 endeavour to obtain an estimate as soon as possible. In any event he would
24 also need a copy of the co-ownership agreement referred to in your letter of
12:28:56 25 the 2nd August and amendments if any, to the mandatory agreement and
26 Declaration of Trust. Please could you let me know the status of the
27 co-ownership agreement and let me have a copy as soon as it is available".
28

29 It would appear, well firstly in this letter it accurately as far as you are
12:29:15 30 concerned, set outs the basis of charge, the amount of charge, the reasons why

12:29:21 1 the work necessary was carried out, isn't that so?

2 A. It does but I think this was probably more time spent in looking at the overall
3 implications for Mr. Holland and his company rather than looking at the
4 documentation, the implication there was that a lot of time spent looking at
12:29:40 5 documentation, it was more the big picture for Mr. Holland, as to what his
6 position would be.

7 Q. 148 Yes.

8 A. So, and I suppose we would, although we hadn't been asked we would, I certainly
9 detected that there was a lack of legal advice, Irish legal advice in respect
12:30:02 10 of what he was contemplating to do. That was one of the reasons why we would
11 look for counsel's opinion, we wanted to add some request in respect of legal
12 advice.

13 Q. 149 And certainly you would require sight of the further information, that
14 specifically identified at the end of the agreement, and that is the
12:30:22 15 co-ownership agreement which was envisaged in the letter of the 2nd August and
16 any amendments to the mandatory agreement and Declaration of Trust, which had
17 already been furnished earlier, isn't that right?

18 A. Yeah, obviously if there had been any changes to what the drafts had been, it
19 would be important to see what they were.

12:30:44 20 Q. 150 Right. You specifically identified an Irish legislative change in your letter
21 of the 15th September 1993 which is sent to Stoy Hayward in London, it's page
22 2138. You write.
23
24 "Dear Rodney, I wonder whether there has been any further information received
12:31:12 25 from Nicholas Morgan concerning the agreement?
26 Another matter which has just come to my attention which may of relevance to
27 Alan Holland's Irish tax position, with effect from May this year, the Irish
28 government introduced an amnesty in respect of tax liabilities up to the 5th
29 April 5, 1991. In tandem with the amnesty they also introduced increased
12:31:36 30 penalties together with mandatory jail sentences for persons evading tax. And

12:31:41 1 also for persons who knowingly or wilfully aid, abet, assist or insight or
2 induces another person to do so. Whether it appears in this case would depend
3 on the facts and also the extent of Alan Holland's knowledge concerning the
4 liability to Irish taxation of the beneficial owners. The legislation was
12:32:01 5 passed by Parliament on July 6th 1993, and therefore was not incorporated in
6 your original letter to Nicholas Morgan of May 27th. I am attaching a copy of
7 the relevant section for your perusal.

8
9 I look forward to hearing from you when you have had a chance to consider this
12:32:21 10 matter."

11
12 You referred a little earlier to various tax legislation Mr. Sheedy, but I take
13 it that what you were referring to here is the amnesty legislation?

14 A. Yes well it had, it also introduced provisions in respect of the type of
12:32:43 15 situation I am talking about there.

16 Q. 151 Yes.

17 A. Which is, which were separate to the amnesty.

18 Q. 152 Separate to the amnesty but contained within the Waiver of Certain Tax Interest
19 and Penalty Act 1993?

12:32:56 20 A. Yes.

21 Q. 153 What it did was to amend the Income Tax Act 1967 by the substitution of a new
22 Section 5.16 and that I will read it to you, reads as follows "Section 11 of
23 the 1993 Act says that: In relation to offences committed on or after the
24 passing of this Act, the Income Tax Act 1967, is hereby amended by the
12:33:22 25 substitution of the following for Section 5.16.

26
27 1. A person shall without prejudicial to any other personality to which he may
28 be libel be guilty of an offence under this section, if A in relation to his
29 liability for tax in the year of assessment he knowingly makes any false
12:33:42 30 statement or representation.

12:33:50 1 1. In any statement or declaration made with reference to tax or;
2 2. For the purpose of obtaining any allowance, reduction, rebate or repayment
3 of tax, or B, in relation to liability to tax of any other person for a year
4 assessment, he knowingly and wilfully aids, abets, assists, insights or induces
12:34:05 5 that person; 1 to make or deliver a false or fraudulent account, return, list,
6 declaration or statement with reference to property, profits or gains or to tax
7 or 2, unlawfully to avoid liability to tax by failing to disclose the full
8 amount of his income from all sources".
9

12:34:30 10 So if we can stop at that point there, I think you had that section before you
11 at the time that you were in fact you were sending a copy of that section on to
12 London, isn't that right?

13 A. Yes.

14 Q. 154 And in doing so if we refer back to the letter you saw as a potential area of
12:34:45 15 involvement a potential area only, the fact that in relation to liability to
16 tax of any other person, that is not Mr. Holland himself but any other person,
17 he that is Mr. Holland, if he knowingly or wilfully aided, abetted, assisted
18 incited or induced that other person to make or deliver a false or fraudulent
19 account, return, list, declaration or statement with reference to property he
12:35:15 20 could be committing an offence, isn't that so?

21 A. Yes.

22 Q. 155 So in a property related transaction this section was now imposing an
23 obligation subject to criminal sanction upon that party to report if required,
24 on the land transaction which might involve another in a liability to tax?

12:35:42 25 A. Well it was imposing a mandatory jail sentence for persons who assisted,
26 wilfully assisted, aided or abetted, in those circumstances.

27 Q. 156 Yes. Abetted in others not complying?

28 A. Others, yeah others yeah.

29 Q. 157 The person who didn't comply in the first instance always had the criminal
12:36:04 30 sanction and liability. This act imposed on persons who knowingly assisted

- 12:36:10 1 them?
- 2 A. Yes.
- 3 Q. 158 An equal or certainly identifiable independent criminal sanction, isn't that
- 4 right?
- 12:36:17 5 A. Yes.
- 6 Q. 159 I'd like to turn now just to page 2022, which is a letter where Mr. Morgan was
- 7 joining issue with Mr. Taylor about the level of fees charged but my interest
- 8 in it, is at paragraph 6 where Mr. Morgan is identifying here the documentation
- 9 which had been provided by him and which was considered by Stoy Hayward?
- 12:37:00 10 A. Right.
- 11 Q. 160 Just to confirm that the documentation which was in Stoy Hayward's position
- 12 comprising the following: A Declaration of trust relating to the holding of
- 13 the land which was one page long and in standard terms. The draft co-ownership
- 14 agreement which was 29 pages long, but which was scarcely commented upon.
- 12:37:22 15 Mr. Morgan says:
- 16
- 17 "I myself was able to carefully read and vet the document with the Irish
- 18 lawyers and with my client in no more than one hour on each occasion".
- 19
- 12:37:34 20 "My letter of the 28th April, 3 pages". We have considered that earlier. "My
- 21 letter of the 12th May, 2 pages. Schedule of loan break down 1 page." This is
- 22 the documentation which required initial consideration.
- 23
- 24 Of those documents the Tribunal does not have the schedule of loan break down
- 12:38:01 25 which was a document which was apparently considered by Stoy Hayward and it
- 26 would appear to have been one of the enclosures with Mr. Morgan's letter which
- 27 was forwarded to you, you don't have a recollection of seeing that document, do
- 28 you?
- 29 A. No.
- 12:38:17 30 Q. 161 No. The question of the exact type of relationship which would exist between

12:38:37 1 Mr. Morgan, or Mr. Morgan's companies and Mr. Holland and his company was one
2 which was under review throughout that period and until October there had been
3 draft agreements considered, we'll see on the 12th October 1993, page 2028 an
4 internal memorandum of Stoy Hayward is sent to you, which is updating you on
12:39:13 5 the position which had pertained up to that date between Mr. Taylor and
6 Mr. Morgan. He says that he met Nicholas Morgan at 8 Baker Street on 8th
7 October.

8
9 "He told me that he was not unhappy with the time which the London office had
12:39:30 10 spent on advising Jackson Way Properties and Alan Holland. However he was
11 concerned at the amount of liaison time, especially between Birmingham and
12 London.

13
14 I said that the Birmingham office were involved because Alan Holland was their
12:39:47 15 client and they were in the best position to coordinate matters with him.

16
17 Nicholas Morgan suggested that he was himself in close contact with Alan
18 Holland, in order to reduce this in future, that I deal with Alan Holland. I
19 would need to discuss this with our Birmingham office.

12:40:04 20
21 We discussed the overall level of the fee. I suggested that instead of an
22 additional 5,650 suggested by me in my fax in early August, we bill a further
23 4,500. Nicholas Morgan accept this proposal.

12:40:15 25
26 We discussed the way forward. It was provisionally agreed that we would ask
27 our Dublin office to draft instructions to counsel which were specifically to
28 concentrate on the position of Jackson Way Properties Limited and Alan Holland
29 himself. We'll ask for a fee estimate from Dublin office and that they obtain
one from counsel prior to formally instructing him.

12:40:35 30

12:40:35 1 Nicholas Morgan gave me a copy of -- sorry of a late draft of the agreement of
2 ownership. I said that I would pass a copy of this on to our Dublin office".

3
4 Now I take it in the normal course you would have got that agreement?

12:40:57 5 A. Yes.

6 Q. 162 And it would form part of the brief of documentation which you were going to be
7 asked to prepare in the event that your fee structure was acceptable to them,
8 and in the event that the level of fees to be charged by counsel was
9 acceptable. Isn't that right?

12:41:13 10 A. Yes.

11 Q. 163 That I take it would involve you in reviewing the matter and preparing in
12 effect a brief to counsel which would be sent?

13 A. Yes.

14 Q. 164 Mr. Taylor apparently considered the draft agreement which was the draft
12:41:43 15 co-ownership agreement sent to him by Mr. Morgan, and on the 18th October 1993
16 he was in a position to say that his client should not sign that document,
17 we'll see that at page 2029. Again this was copied to you. It reads:

18
19 "I am writing to confirm our telephone conversation of 12th October.

12:42:09 20 As discussed Jackson Way Properties Limited should not in my view, be a party
21 to the co-ownership agreement, since this may enable the revenue to question
22 whether it is acting simply as a bare trustee.

23
24 You indicated that you would consider whether another company could act as
12:42:26 25 managing agent, a term preferred to managing co-owner as used in the current
26 draft. Clearly a number of consequential amendments would arise, in particular
27 clause 10, registration of co-ownership property. I have not been through the
28 agreement to identify all of the consequential amendments but would be pleased
29 to do so if instructed".

12:42:47 30

12:42:47 1 So that, certainly from Stoy Hayward's point of view at that time what was
2 proposed by Mr. Morgan by way of co-ownership agreement was again a matter
3 which was not satisfactory from Mr. Holland's point of view, and that was
4 because of the potential that it might involve him in revenue dealings, isn't
12:43:09 5 that so?

6 A. Yes.

7 Q. 165 Mr. Holland and Mr. Morgan apparently were prepared to accept this advice
8 because we see at page 2024 a letter, sorry 2040 I beg your pardon. Mr. Morgan
9 writes to Mr. Holland on the 28th October 1993, where he thanks him for the
12:43:56 10 letter of the 25th October:

11
12 "I have already discussed with you the problems relates to the fee accounts and
13 just for your records, I enclose a letter I sent to Rodney Taylor prior to my
14 meeting with him".

12:44:09 15 I go onto the bottom of the page last paragraph "With regard to the
16 co-ownership agreement I have also advised you that having discussed the draft
17 agreement with Rodney Taylor and following subsequent conversations with my
18 clients, I have agreed that Jackson Way Properties should not be a party to the
19 agreement, but should merely hold the land in the nominee capacity envisaged.

12:44:32 20
21 A further company will be established to act as the managing agent which the
22 clients have agreed can be directly under the control of my firm."
23 So that this then seems to envisage yet another company coming into the
24 relationship of these lands, where there would be ownership in a legal sense in
12:45:01 25 Jackson Way, that Jackson Way would hold as merely in a nominee capacity and
26 that as regards the co-ownership of the various parties who owned Jackson Way,
27 a further company would be established which would be under the control of
28 Nicholas Morgan's firm, isn't that right?

29 A. Yeah the two companies which were the beneficial owners of the land.

12:45:32 30 Q. 166 Yes.

- 12:45:33 1 A. Yeah, would --
- 2 Q. 167 That their affairs would be kept separate and distinct from the legal ownership
3 which would vest in the Holland company?
- 4 A. Yes.
- 12:45:44 5 Q. 168 But which would only vest in it in a trustee capacity, it would have no role in
6 the co-ownership arrangement?
- 7 A. Yes.
- 8 Q. 169 Now, there was then as of that date an intention as we see from correspondence
9 that BDO Simpson Xavier, sorry at that point Simpsons Xavier would engage Irish
10 counsel to advise on the situation, isn't that right?
- 11 A. Yes.
- 12 Q. 170 Did that ever happen?
- 13 A. No.
- 14 Q. 171 Do you know why that was?
- 12:46:20 15 A. I got a phone call from Rodney Taylor who said to me that the Irish lawyers
16 would do so, would go through the lawyers rather than ourselves, that had been
17 decided, that was to happen.
- 18 Q. 172 Do you know when that was received that information?
- 19 A. I can't recollect exactly.
- 12:46:42 20 Q. 173 Do you know whether it was before or after you had prepared the documentation
21 which would have gone to counsel?
- 22 A. I never prepared any documentation to go to counsel.
- 23 Q. 174 So all that you ever had at the end of the day was your file with the
24 enclosures that had been sent to you with Mr. Nicholas Morgan's letters and
12:47:04 25 Stoy Hayward's letters?
- 26 A. That's right.
- 27 Q. 175 Right. The information which was provided to Mr. Holland for not obtaining
28 opinions of counsel, is recorded a year after these events, the 9th September
29 1994 at page 1514, where Mr. Nicholas Morgan was in contact with Mr. Holland in
12:47:49 30 relation to certain queries which had been raised by Mr. Frank Friel, who was a

12:47:55 1 solicitor in Ireland who was acting in relation to the Carrickmines lands.

2

3 "With regard to the letter from Frank Friel perhaps you will confirm that the

4 company is not carrying on business in Ireland and that the company has

12:48:08 5 acquired the land for purpose of investment".

6

7 This is an instruction in order being given by Mr. Holland to Jackson Way's

8 director as to how he should respond to the Mr. Frank Friel, who was seeking

9 this information to provide it to the Irish authorities.

12:48:34 10

11 "Clearly the question of trading or dealing in the property is a matter that we

12 are going to have to address nearer the time when the first sales of land take

13 place and it was touched on briefly in the advice obtained from Stoy Hayward's

14 and their Irish office. We never reverted to Stoy Hayward's Irish office, I

12:48:56 15 assume, section I should say, to obtain the additional opinion because we were

16 conscious that their Irish office had breached confidentiality by apparently

17 touting the land to other clients without any prior authority from ourselves".

18

19 Then here you see another account of how this relationship concluded, other

12:49:21 20 than your own. Do you have any, was there any substance in this, were you

21 addressed that you had in some way disclosed information to others in relation

22 to this transaction?

23 A. No.

24 Q. 176 But you can assume from this that Mr. Morgan felt that other Irish interests

12:49:38 25 had somehow learned of what their proposals were and they were attributing it

26 to a leak from you, but that isn't the case?

27 A. No.

28 Q. 177 Now the relationship of CI Law Trust Group and Stoy Hayward didn't progress

29 much further in relation to the Jackson Way interests because we'll see that in

12:50:08 30 December Jackson Way, the registered office changed from Stoy Hayward's and new

- 12:50:17 1 accountants were engaged, you mightn't be aware of that?
- 2 A. No. It may be David, was it David Secombe moving on, I don't know.
- 3 Q. 178 6. Starbuck's page 2066. Firstly the registered office of the company of
- 4 Jackson Way changes to Starbuck Stone Accountants and then we know that Stoy
- 12:50:50 5 Hayward cease to act because they had been auditors, and they issue an auditors
- 6 statement saying that there was nothing causing them to cease to be auditors
- 7 which was untoward, I think it's a standard form. It's page 2065 a statement
- 8 under section 394 of the Company's Act.
- 9
- 12:51:18 10 Stoy Hayward here is saying that "There are no circumstances connected with our
- 11 ceasing to hold office as auditors of Jackson Way Properties which we consider
- 12 should be brought to the attention of members and/or creditors of the company"
- 13 signed Stoy Hayward.
- 14 This is a document which is signed upon them ceasing to act, isn't that right?
- 12:51:41 15 A. Yes.
- 16 Q. 179 So, as of that date in 1993, they ceased to be the accountants or rather the
- 17 auditors for Jackson Way Properties. We'll see however that Mr. David Secombe
- 18 was still in contact with Mr. Morgan as late as 1997, although from what you
- 19 say now it may well be that Mr. Secombe was acting in the capacity of being a
- 12:52:21 20 sole practitioner or a member of a firm other than Stoy Hayward in doing so?
- 21 A. Yes.
- 22 Q. 180 But certainly he seemed to be in a position as he will see, to be able to
- 23 provide information in 1997 regarding the affairs of Jackson Way and from that
- 24 one can assume that as of that date, he had their files. We'll see at page
- 12:52:53 25 1594, this is a letter from a firm Kingston Smith, chartered accountants
- 26 St. Albans, Hertfordshire, Mr. Raj Patel, is the signatory to their letter.
- 27 It's on the subject of Jackson Way Properties Limited and it's addressed to
- 28 Nicholas St. Clair Morgan at Westaway Trust Company Limited, Westaway Chambers,
- 29 Done Street, St. Hellier, Jersey Channel Islands.
- 12:53:23 30

12:53:23 1 "Dear Nick, I have now had the opportunity of reviewing the papers on Jackson
2 Way and have made contact with David Secombe who has kindly sent me a copy of
3 the account to 30th April 1996 and related taxation computations. I have the
4 following comments:

12:53:41 5
6 1. In the agreement between the mandators and the mandatories, it would appear
7 that whilst the agreement provides for the mandatories to be beneficial owners
8 of Jackson Properties Limited, it also provide under Clause 4 for a transfer of
9 the ownership of the share capital to take place at the request of the
10 mandators. It would seem to indicate that whilst the mandators appear to be
11 the beneficial owners of the shares of Jackson Way Properties Limited, there is
12 some restriction on them as to the manner in which they are able to deal with
13 the share capital of the company which amount to the shares being held on trust
14 apart from the income which may arise.

12:54:20 15
16 The above would seem to indicate that the mandators have effective control of
17 Jackson Way and can at any time procure the ownership of the share capital for
18 little or no consideration, and that as far as Mr. Holland is concerned he
19 could be at the option of the mandators, be relieved of the shares almost as if
12:54:38 20 he were a mere nominee. Such a strong control over Jackson Way can if
21 necessary be used to show that the owners of the land had full control of the
22 company, and this should add strength to the nominee arrangement and it's
23 commercial purpose.

12:54:55 25 I notice that there is a minimum fee of 2,000 per annum provide for in the
26 agreement with a possibility of additional fees, I am not sure if the stamp
27 duty position but I believe that the Declaration of Trust a nominal 50p stamp
28 should have been paid.

12:55:12 30
3. Apart from the above two points, it would appear that the documentation is

12:55:16 1 add yet for the purpose. But given the nature of the transaction I would
2 suggest that as part of the disposal process, as soon as the transactions for
3 the disposal of the land has been completed the ownership of the share capital
4 of Jackson Way be switched to the offshore beneficial owner companies, and that
12:55:34 5 the cash be removed offshore. So that when the final accounts of Jackson Way
6 are filed after payment of the fee to Mr. Holland, there are no assets or
7 liabilities left in the company.

8
9 Also Mr. Holland should then resign as company director and one of the
12:55:51 10 beneficial owners be appointed as company director and the other as company
11 secretary. Once all the funds have been transferred to the beneficial owners
12 and that there are no assets left in the company and all liabilities including
13 Corporation tax has been settled an application can be made to the register of
14 companies to have it struck off. Obviously this had need to be done carefully
12:56:16 15 and in a coordinated manner to avoid the Inland Revenue raising objections
16 unnecessarily.

17
18 4. On the basis that the above is coordinated and executed quickly and
19 efficiently the beneficial owners will be in quite a strong position to argue
12:56:32 20 their case that no UK taxation should arise on the transaction, given that
21 these particular set of circumstances and facts. I can however see there being
22 a danger of the Inland Revenue trying to tax the funds if these remain in the
23 UK for any length of time.

24
12:56:51 25 5. You have also asked whether there is any possibility of the Irish
26 authorities enlisting the assistance of the UK authorities to obtain additional
27 information in relation to the beneficial owners of the offshore companies.
28 Yes, there is indeed a possibility of this but given that Mr. Holland has
29 entered into a bona fide business arrangement for which he/Fishers would have
12:57:17 30 been paid, the revenue would then be in a weak position. Even if they serve

12:57:22 1 section 20 notices the information within his domain would be what he currently
2 has, that is that you are acting as a trustee and coordinator for these two
3 offshore companies. Through your past association he/Fishers had an
4 opportunity of entering into a commercial transaction for which they got
12:57:43 5 remunerated. Whilst he/Fishers would need to provide any information which
6 they hold on file concerning the companies or you/your dealings, the Inland
7 Revenue will not be in a position to obtain information which is not within
8 Mr. Holland's power.
9

12:58:01 10 For this they would have to come to you and again seeing that you are in an
11 offshore jurisdiction it is unlikely that they will be able to make much head
12 way. Also given that there would be no physical assets located by this time in
13 the UK, I would expect the Inland Revenue to quickly loose interest on a futile
14 matter which in any case they would be pursuing not for their own benefit for
12:58:27 15 but for the Irish.
16

17 Perhaps we can have further discussions as to the exact mechanics of organising
18 the above and also preparing a check-list to get the sequence of events given
19 the sums involved.

12:58:39 20 I now specifically refer to the accounts of Jackson Way. The accounts describe
21 the principle activity of the company as being that of property management and
22 it sufficiently describes the activity which it has been undertaking.
23 What however concerns me is the description of the income etcetera as disclosed
24 in the account and the taxation implications both short-term and long term
12:58:58 25 given the objectives.
26

27
28 The turnover is described as rental income received. This quite clearly is
29 incorrect as the rental income has not beneficially belong to Jackson Way, as
12:59:15 30 it does not own the underlying land.

12:59:17 1
2 Other descriptions in the accounts such as cost of sales portrays an image of
3 activities which quite clearly this company is not undertaking. Given this, I
4 would suggest that the detailed profit and loss accounts for 1995 and 1996 be
12:59:35 5 amended as per the enclosed draft and that the 1997 accounts be prepared on a
6 similar basis. As far as the balance sheet is concerned I would suggest that
7 we remove references to stocks and put the figures under debtors. I have
8 written to David Secombe requesting a break down of the figure for debtors and
9 creditors included in the accounts so that I can pursue the matter a little
13:00:01 10 further.
11 Rather than make a big issue of the matter with the Inland Revenue I would
12 suggest that the comparative figures in the 1997 accounts be amended. Apart
13 from this I would suggest that a brief note be put on the 1997 Corporation tax
14 returns, pointing out the changes as briefly and concisely as possible, and
13:00:22 15 submitting the revised 1995 and 1996 detailed profit and loss accounts. From
16 the Inland Revenue's point of view as the taxable profit will remain identical
17 there is unlikely to be undue difficulties in persuading the revenue that the
18 changes merely reflect the current position as it should have been and that it
19 is mainly a presentational matter, rather than a change in the taxable income
13:00:51 20 of the company. I would suggest that the 1997 accounts be prepared and
21 submitted as soon as practical.
22
23 I trust that the above is clear but please do not hesitate to contact me if you
24 require any further clarification."
13:01:05 25
26 I will be returning to that it's now one o'clock, Mr. Sheedy. So we'll resume
27 at 2?
28
29 CHAIRMAN: Well about five past two.

13:01:21 30

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MR. O'NEILL: Five past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2.00 P.M.:

MR. O'NEILL: Mr. Sheedy please?

FRANK SHEEDY RETURNS TO THE WITNESS BOX AND CONTINUES TO BE QUESTIONED BY MR. O'NEILL AS FOLLOWS:

Q. 181 MR. O'NEILL: Mr. Sheedy, the letter that we were considering before lunch was a letter from another firm of accountants, but it was addressing the issues which concerned Mr. Morgan and Jackson Way, a number of the issues are referred to by numbered paragraphs.

In the first paragraph there the author of the letter Mr. Patel was addressing the question of the control of Jackson Way, the company, isn't that right? You remember -- we put the letter on the screen.

A. If we can put the letter up maybe I can --

Q. 182 Yes sure, 1594. In paragraph 194, the author of the letter was considering a Mandators Agreement and I think we know from the documentation which had been provided to Stoy Hayward and in turn onward to yourselves, that there was a Mandator's Agreement which provided for the controlling of Jackson Way by the mandators, do you recollect that?

A. Yes.

Q. 183 And Mr. Patel reaches a conclusion about what that Mandators Agreement achieved, I am wondering whether or not you share the view that he expresses here, that it would indicate that the mandators have the effective control of Jackson Way, that they can at any time procure the ownership of the share capital for little or no consideration, and that as far as Mr. Holland is concerned, he would be at the option of the mandators be relieved of the shares almost as if he was a mere nominee.

It goes on to say "such a strong control over Jackson Way can, if necessary, be

- 14:18:49 1 used to show that the owners of the land had full control of the company".
- 2
- 3 Is that something that you could concur with as an accountant having knowledge
- 4 of the mandators agreement that existed between the parties?
- 14:19:02 5 A. The beneficial owners of the land would be able to provide their instructions
- 6 through this arrangement.
- 7 Q. 184 Yes. But --
- 8 A. To the, to Jackson Way and to the directors of Jackson Way.
- 9 Q. 185 Yes. The control which was exercised over the directors of Jackson Way was
- 14:19:25 10 exercised over them on the basis that they had signed a mandate agreement?
- 11 A. Yes.
- 12 Q. 186 That they personally would exercise their function as directors under the
- 13 direction of the mandators, isn't that so?
- 14 A. Yes, the -- who were the two, they were the two companies who were the
- 14:19:44 15 beneficial owners of the shares.
- 16 Q. 187 Exactly. Who again were acting through, on the terms of the mandate through
- 17 Mr. Nicholas Morgan's company?
- 18 A. Yes.
- 19 Q. 188 Right. So that they were in effect, Jackson Way was in effect a front, when it
- 14:19:59 20 came to the controlling of the company, isn't that so?
- 21 A. Yes.
- 22 Q. 189 Right.
- 23 A. The only issue I would have there is in brackets (apart from the income that
- 24 may arise) I'm not altogether sure where that comment comes from. I would have
- 14:20:26 25 thought that the income arising in the, in the land would also go to the
- 26 beneficial owners.
- 27 Q. 190 It would, Jackson Way was only to be the legal owner for the land for the
- 28 purposes of being the registered legal owner, it's return was not to be the
- 29 income of the land, but rather the 2,000 a year fee, which was to be paid to
- 14:20:52 30 Mr. Jackson's company, in some way?

- 14:20:55 1 A. Yes.
- 2 Q. 191 Sorry, Mr. Holland's company?
- 3 A. Yes. But that comment in brackets, I think isn't, I don't understand that.
- 4 Q. 192 In either event, insofar as this throws some light on the controlling of the
- 14:21:15 5 company and the controlling of the lands which the company was the owner of,
- 6 that was control, which ultimately was vested in the mandators?
- 7 A. Absolutely.
- 8 Q. 193 And that was Mr. Morgan's company. Now obviously a matter upon which your
- 9 services had been engaged, is the question of the Irish taxation implications
- 14:21:39 10 for Jackson Way and you were to consider the Irish tax implications for others,
- 11 or to have regard for them in your views, and at page 1595, Mr. Patel addresses
- 12 the question of what was to happen in the event that the Irish tax authorities
- 13 sought and received the assistance of the UK authorities to obtain further
- 14 information in relation to the beneficial owners of the offshore companies,
- 14:22:08 15 that is at paragraph 5 there.
- 16 A. Yes.
- 17 Q. 194 You identify what firstly the concern was, that Mr. Morgan was asking Mr. Patel
- 18 to advise upon and that was that the Irish tax authorities might seek the
- 19 assistance of their English counterparts and thereby find out who owned the off
- 14:22:37 20 shore company, isn't that right, that's the query which is being addressed
- 21 here?
- 22 A. Yeah.
- 23 Q. 195 Do you share the opinion of Mr. Patel as to what the likelihood was or what the
- 24 possibilities were in the event of that taking place?
- 14:22:45 25 A. Well, I presume under the double tax agreement the Irish revenue could request
- 26 the UK revenue to seek certain information from Jackson Way Properties Limited.
- 27 Q. 196 Sure.
- 28 A. I don't know about his final comment, about the Inland Revenue quickly losing
- 29 interest, I wouldn't be able to express an opinion on that.
- 14:23:08 30 Q. 197 Let's examine what would happen if the Irish authorities did decide that they

- 14:23:13 1 wanted to track the offshore owners of this particular companies. They would
2 firstly go to the UK authorities and they would say Jackson Way is an English,
3 a company on the English register, it's within your revenue jurisdiction, will
4 you please assist us in making inquiries of Jackson Way as to who the
14:23:33 5 beneficial owners would be. You can envisage that?
- 6 A. I can envisage that, yeah.
- 7 Q. 198 How that would happen. Would you agree with Mr. Patel's conclusion that whilst
8 Mr. Holland/Fishers would need to provide any information which they hold on
9 file concerning the companies or dealings with Mr. Morgan, the Inland Revenue
14:23:55 10 would not be in a position to obtain information which is not within
11 Mr. Holland's power. You agree --
- 12 A. I would have thought so, yes.
- 13 Q. 199 So that provided Mr. Holland doesn't have it on his file, it cannot be
14 revealed, isn't that right?
- 14:24:12 15 A. Yes.
- 16 Q. 200 Do you believe or do you not believe, that the purpose of the introduction of
17 an English registered company in the ownership of the Jackson Way Properties
18 was geared towards providing a fire wall behind which inquirers, be they
19 revenue or otherwise, could not get in their pursuit of establishing the
14:24:45 20 ownership of this land?
- 21 A. I don't think so really, no. Mr. Taylor's original letter talks about it being
22 for commercial reasons.
- 23 Q. 201 What do you think the possible commercial reason is that might be involved here
24 given that Jackson Way was not to have any beneficial ownership whatsoever in
14:25:05 25 the land, it was not to be able to control the land in anyway other than at the
26 direction of a solicitor in Jersey, what commercial realities are there in that
27 arrangement?
- 28 A. Well the commercial realities would be that, to the outside world Jackson Way
29 Properties Limited owns the land.
- 14:25:28 30 Q. 202 But that's not a commercial reality in any sense Mr. Sheedy, that is a front?

- 14:25:34 1 A. That's a front yeah, but it does have commercial implications because --
- 2 Q. 203 For who?
- 3 A. For people dealing with, people interested in the land, maybe wanting to buy
- 4 it. I am only speculating here.
- 14:25:48 5 Q. 204 I am only asking you to speculate, but I am asking you to speculate as an
- 6 accountant?
- 7 A. I am not speculating as an accountant.
- 8 Q. 205 You are a person who has knowledge gained from a life time of accountancy and
- 9 as a partner in BDO Simpson Xavier, and that's why you are here as a witness to
- 14:26:07 10 recount how you professionally dealt --
- 11 A. I have never come across such an arrangement in my past experience.
- 12 Q. 206 You never have?
- 13 A. No.
- 14 Q. 207 No. Well then is it the case that you can't identify any immediate commercial
- 14:26:19 15 reality in the structure which was envisaged in this situation?
- 16 A. Yeah, I can speculate as to the commercial benefits, if you want me to.
- 17 Q. 208 Yes, if you would?
- 18 A. Well, you could possibly have a situation where the planning might be at issue,
- 19 in a sense that it would appear that Jackson Way Properties Limited owned the
- 14:26:44 20 land, that might have some implications for planning, I don't know. That may
- 21 be regarded as a very commercial reason, in the sense that the planning would
- 22 increase the plan value of the land.
- 23 Q. 209 But planning in the hands of any owner would increase the value of the land
- 24 there are --
- 14:27:02 25 A. I don't know will the possibilities of two offshore companies looking for
- 26 planning might be viewed differently than a UK company owned by an auctioneer
- 27 looking for planning, I don't know, but that's -- that's where I would see that
- 28 there might be some advantage commercially.
- 29 Q. 210 The reality of the situation as far as can be established is that the land is
- 14:27:34 30 owned by an Isle of Man company called Paisley Park Investments Limited which

14:27:38 1 is put into liquidation, it is put into liquidation if one accepts what is said
2 in the initial communication from Mr. Morgan to Mr. Holland for the purpose of
3 taking out the interests of one of the shareholders. We are told in the, that
4 document, that Mr. Morgan is representing the interests of Irish clients, so we
14:28:14 5 may take it that those interests are not the interests of the shareholder whose
6 interest is being taken out, but the interests of others, who are Irish
7 shareholders.
8
9 Now, those Irish shareholders apparently have gone to the trouble of setting up
14:28:32 10 offshore companies which give them anonymity, isn't that so?
11 A. Yes.
12 Q. 211 And therefore, if their only concern was to ensure that they maintained that
13 anonymity, it wasn't necessary to introduce yet another company into the
14 equation, isn't that right?
14:28:52 15 A. I wouldn't have thought so.
16 Q. 212 No. So there was some other purpose?
17 A. Well I don't know. The other commercial reason may be that Mr. Holland, with
18 his experience as an auctioneer, may have been able to, if planning permission
19 had been received, may have been able to dispose of the land with his contact
14:29:20 20 base in the UK, that could possibly be a commercial reason for having him
21 appear to be owner of the land, his company appear to own the land.
22 Q. 213 Well, in that situation he would be doing himself down as regards professional
23 fees because he was providing -- service he was providing to this company for
24 2,000 pounds a year and 120 pounds an hour, which bears no commercial
14:29:43 25 relationship to the rate of return he could expect to get if he was acting as
26 an auctioneer or valuer selling land worth millions, it would be on a
27 percentage basis?
28 A. It would, yeah.
29 Q. 214 And it would be considerably greater than whatever this arrangement was to
14:30:00 30 provide for?

14:30:00 1 A. Oh yeah, but, you know, you asked me to speculate about --

2 Q. 215 Sure.

3 A. Commercial reasons, and that's what I am speculating.

4 Q. 216 Sure.

14:30:10 5 A. There may be other reward for Mr. Holland, other than his money for being a
6 trustee, I don't know.

7 Q. 217 It might help you to see at page 1410, what Mr. Holland felt that his position
8 in this transaction was. This is a memorandum which was prepared on the 13th
9 August 1993, it was addressed to a partner, what he described as a putative
10 partner in his firm, and concerned the role in Jackson Way which it was
11 intended that both of them would play, Mr. Vuckovic was going to be
12 co-signatory to the mandators agreement, and it says:
13
14 "I have not had a chance to speak to you at length about the matter but will do
14:31:02 15 so.
16
17 Basically, we have been invited to function as directors of a holding company
18 in respect of some land in Ireland. I have made exhaustive enquiries to
19 ascertain that this responsibility in no way conflicts with our moral or
14:31:14 20 ethical duty and can confirm that I have agreed an initial fee of 2,000 plus
21 VAT, plus expenses per annum in respect of this position.
22
23 I must point out that Nick Morgan has expressed concern as to my position as
24 sole director of the company and in consequence has asked that I seek another
14:31:34 25 trustworthy individual to assume a directorship on the basis I may not be
26 present in the event of some emergency.
27
28 As you will see from the correspondence on the file, we hold as mandatories for
29 David Morgan Whitehead and our responsibility is really confined to a letter
30 box.
14:31:52

14:31:52 1 Please carefully consider the file, I am asking David to send through the
2 appropriate papers appointing you as a director of the company and if you are
3 content where indicated on the agreement as a mandatory, whereupon one copy of
4 the agreement will be returned to David Morgan Whitehead".

14:32:10 5
6 So, this seems to indicate that there was indeed a very limited function which
7 was envisaged by Mr. Holland as being the role that they would play as
8 mandatories and directors of this company, isn't that right?

9 A. Yes, that's what it says.

14:32:30 10 Q. 218 In paragraph five it would appear that in the event that the Irish revenue
11 persuaded the English revenue to commence their inquiries in England, they
12 would be met with the limited information, which Mr. Holland had available to
13 him, information which it seems from the paperwork he had chosen not to
14 acquire, isn't that so?

14:32:55 15 A. Yes, yes.

16 Q. 219 But that obviously he would have to disclose to the English revenue the
17 existence of Mr. Morgan and his firm in this situation and the English revenue
18 would then find themselves dealing with Mr. Morgan, who as stated here is a
19 person in an offshore jurisdiction, as regards the UK, isn't that right?

14:33:19 20 A. Yes.

21 Q. 220 And therefore the extent to which they could obtain any information from
22 Mr. Morgan would depend upon his voluntarily providing that information to
23 them, rather than under compulsion, isn't that right?

24 A. Yes.

14:33:44 25 Q. 221 Is that the reason why these offshore entities are set up, so that the asset in
26 one particular jurisdiction can be owned or registered in the names of
27 companies in another jurisdiction, which in turn leave leads to yet another
28 jurisdiction and that in turn perhaps to another jurisdiction. So that any
29 inquiries directed towards establishing ownership are bound to fail unless
14:34:06 30 there is co-operation?

14:34:06 1 A. I have no experience of that.

2 Q. 222 I see. The views of Mr. Patel when dealing with the income generated by the
3 lands there is dealt with at paragraphs 6 and if we turn to page 1596,
4 Mr. Patel says:

14:34:36 5
6 "What concerns him is the description of the income etcetera as disclosed in
7 the accounts and taxation implications both short-term and longer term, given
8 the objectives. The turnover is described as rental income received. This
9 quite clearly is incorrect, as the rental income does not beneficially belong
10 to Jackson Way as it does not own the underlying land."

11
12 Firstly, can we deal with the statement that Jackson Way does in the own the
13 underlying land and is therefore is not beneficially entitled to the income.
14 Would that be your view as an accountant, of the situation?

14:35:13 15 A. Yes.

16 Q. 223 I see. Thank you Mr. Sheedy. There may be some questions.

17
18 MR. BUTLER: I am quite happy with the matter.

19
14:35:29 20 CHAIRMAN: I wasn't aware this morning that arrangements had been made -- so
21 if.
22
23 MR. BUTLER: Subject to my client's instructions in the event of we having
24 any -- I can have a brief word with him. I don't have any questions myself,
14:35:45 25 but in the event of he having any wish to have some clarification, I can come
26 back to you in two minutes once he is out of the witness box.
27
28 CHAIRMAN: All right we'll rise for a few minutes, just five minutes.
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**THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND
RESUMED AGAIN AS FOLLOWS:**

MR. BUTLER: Sorry about that, we are quite happy with the matter and there is absolutely no need for re-examination.

CHAIRMAN: Right, thank you very much. That's fine.

MR. O'NEILL: 12 o'clock tomorrow sir?

CHAIRMAN: Yes, 12 o'clock. Thank you Mr. Sheedy for attending.

**THE TRIBUNAL THEN ADJOURNED TO THE FOLLOWING DAY,
THURSDAY 29TH JULY 2004 AT 12 PM.**