

THE TRIBUNAL RESUMED AS FOLLOWS ON MONDAY, 20TH DECEMBER  
1999, AT 10.30AM:

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CONTINUATION OF RE-EXAMINATION OF ROGER COPSEY BY  
MR. O'NEILL:

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1 Q. MR. O'NEILL: At the close of the affairs on Friday last,  
some documents were given to you, I just want to recap on  
what those documents were. As I indicated to you at that  
time, the Tribunal had received, on the 16th February 1999,  
five volumes of documentation separately bound which were  
indicated as being the Copsey Murray files and the  
Tribunal, having received those files which, I have to say,  
were copies rather than originals in that they were bound  
as you see them now, proceeded to photocopy that  
documentation and to enter it into the record of the  
Tribunal and subsequently this documentation was returned  
to Fitzsimons Redmond, your solicitors.

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Now, I was inquiring from you as to whether or not,  
firstly, those were the files, albeit copies, which you had  
given to the Murphy interests on the 14th August 1990 or  
shortly thereafter.

A. I can't be certain, because they haven't been in my  
possession or ownership for the last eight or nine years.  
I personally didn't even hand across those documents. I  
just gave instructions. I don't believe I was in the  
office that particular week when they were collected.  
Somebody was instructed in my office to gather all the  
files together and make them available for collection by  
the Murphys.

Now, that's the background to it so they weren't in my ownership or possession for eight or nine years. I would have thought that when they were given to the Murphys, at least some of them would have been in manila folders, if you understand manila folder, with a spiral, rather than in lever arch files, because I know that the system in our office is the current correspondence filed are hung in cabinets in the Crystal files in manila folders. I would have expected some of those to have been in manila folders.

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So that's dealing with the handing over of the documents. Now, looking at those documents, I had seen each of those five files before. I had read them in detail. I had checked them in detail over the weekend and they appear to be exactly what I had read previously having been given them by Fitzsimons Redmond. The question is are they the same that left my office? They are not in the same form, that I can tell you. Manila folders, I would have expected, and then the other thing is that they were not in strict date order. Those files, the dates were basically all over the place. That would not have been the case when they left my office. I am most particular on that, because it's terribly difficult to find anything on a file by date unless it's in very strict date order. So obviously they had been rearranged. That's the second point I would make.

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The third point, though, is that having read them in detail, I can see no obvious omissions from what I would have expected to be there. So if I see one piece of correspondence, it seems to complete the subject. It

doesn't seem to miss out when there is a reference to another letter, I was able to follow that through, so they appear to be complete but because of the circumstances where they were not in my control, I obviously couldn't say what had happened to them in between.

2 Q. Fine. Well do I understand from that that, firstly, the documents which you saw were copy documents only and not your original documents. I am talking now not of the documents which were returned by the Tribunal, but the documents which you would have considered as any time with your solicitors were not your original documents?

A. No, they were not original documents.

3 Q. Right. You had given over your original documents?

A. I did.

4 Q. Did you receive any explanation as to why it was that the original documents were not being returned to you for your consideration but that you were receiving copies of documents in a format different to that in which the documents had left your office or control?

A. No.

5 Q. Did it occur to you to inquire as to why somebody had managed to take your documents, take apart the files, reschedule the documents in a sequence which was not in date order and then return to you copies rather than original documents?

A. Well, the thoughts that I had on that subject were number one, there was no particular reason why JMSE, eight/nine years ago, should have kept them in the same form as I delivered them, because if you are going to store them in an archive form, then manila folders are not suitable, I don't find them suitable. We would, in our archives, always transfer them to lever arch files because they are

just that much more handy. So there is no particular reason when I handed across those files all that time ago that JMSE would not have re-sorted them in any case in a slightly different form at that time. So that's one thing that occurred to me.

I have to say that as far as I was concerned, when I looked at the photocopied files, that I had assumed that for some reason the Tribunal or my lawyers or somebody had found the form in which they were filed was more convenient for their purposes. I am not sure it was convenient for me because I had been used to operating in a strict date order, but I had assumed that to be the explanation.

6 Q. So you didn't inquire of your solicitors whether it was they who had formulated the files in that format or whether it was JMSE who had done so or whether or when it was done, whether by the Murphys on receipt of the originals or by the lawyers or somebody else after the Tribunal had commenced, is that right?

A. No, I didn't. And the reason being, whilst it was a little irksome to find them out of date order, I didn't actually find anything missing as such, so it was just a little more troublesome.

7 Q. And can you say when it was that you first saw those documents, now that your memory has been refreshed by physically looking at them over the weekend? I am not talking now when they left your offices in 1990, but when did you next see the five volumes of documents which you have considered over the weekend?

A. It was earlier this year and it was, it is a shame I didn't know that this was something that would be of importance because I know that there was a letter which came with

them, so I could have given the exact date, but March of this year would be a reasonable guess, I think.

8 Q. I see. Does it follow then that when you spoke to Mr. Joseph Murphy Jnr, that he did not bring those five volumes of files to his offices in -- sorry, or to your offices as it was in August 1997 when he set about discussing with you on the last occasion the circumstances surrounding the political donation?

A. Oh no, absolutely not. As I said to you previously, or said to somebody, that it was either just a small piece of correspondence out of Denis McArdle's office or simply a verbal recital of those few facts.

9 Q. I see. In preparing your statement for the Tribunal which was furnished in December, I think on the 16th December of last year, it follows that you had not reviewed your own correspondence before you furnished the statement to the Tribunal?

A. No, I hadn't, no.

10 Q. And is there any reason why you didn't do that with a view perhaps to giving the Tribunal the most accurate recall or account of the events, given that ten years had elapsed, given that you knew that he had kept detailed files and you knew that the detail of those files might well be something that you would be asked about by the Tribunal?

A. Well, in my innocence, I genuinely didn't think that I would be questioned in as much detail and when I gave that statement, it was really in reply to the points which Jim Gogarty was making and so I confined myself to that. Personally, I had no idea that this Tribunal would take such a wide view, which was just my innocence.

11 Q. You didn't understand that a narrative statement of the persons who were involved in this transaction is what was

required by the Tribunal rather than a specific response to an allegation made by Mr. Gogarty, is that the position?

A. Well only in so much that the knowledge that I had on Joseph Murphy things like, for instance, the pension, I mean, my own view on the pension was as I have said before, yes, there were at times acrimonious negotiations with Mr. Gogarty, that was finished, end of story. I didn't even know the subject would come up other than in passing.

12 Q. Finally, in relation to the documents, Mr. Copey, in the normal course where one is acting as an accountant or consultant, financial adviser to a company, you would keep your records of your transactions and dealings on behalf of a particular company long after you had ceased to act for them, isn't that right? You had put them in the archives of your own company rather than return them or deliver them to somebody else, isn't that so?

A. Yes.

13 Q. And I assume that the reason for that really is that they are your own records prepared for your own purposes and at some later stage, somebody might challenge the accuracy or question the action which you had carried out and for that purpose, you'd need to have your own original documents in order to deal with that sort of suggestion, isn't that right?

A. Yes, you are correct. There is a legal definition of the ownership of papers, some of which are not mine and some of which are and where we cease acting for a client, which is the normal course of business, that those papers which are legally theirs by ownership, we would always offer to the client, they normally don't take them because storage always being a problem. Thereafter, I keep them for the reasons you said and a variety of other reasons, tax

reasons and whatever, but as I have already said, it is a policy within our firm simply because of space, that we have a contractor come in each year to our archives and he shreds papers at about six or seven years.

14 Q. But I am somewhat unclear as to why it was that instead of keeping your own papers, and I take it that you accept that the files which have been given to the Tribunal contain not only clients' papers by also your own papers, isn't that right?

A. No, no. In fact, my understanding of the legal definition and the recommendations from our Institute is that all of the type of work that I did for the Murphys, those documents were their papers.

15 Q. By way of example, document 190, which is the cashflow statement prepared by one of your people who have working on the secondment in JMSE, that would be your own documents?

A. Not under law, as I understand it.

16 Q. Is that not a working paper of the firm for which you charge a service to JMSE?

A. No. I mean subject to correction, my understanding of what lawfully is mine and lawfully is the ownership of the client is that if it's an accountancy-type working paper or correspondence with the Revenue, those papers are the ownership of the client. The only papers which are in fact our own are audit working papers because we are acting as auditors which in law has a definition and a statutory duty which is peculiar to our firm so to repeat, that's an accountancy working paper and therefore I would take it that that was the Institute's -- under the Institute lawful -- and there is particular case on which their recommendations are based, that that is in fact the

ownership of the client. I acted on that basis.

17 Q. And all the letters and scribes then that you wrote to Mr. Joseph Murphy, for example, or to others as you say, they would all be the property of the Murphys and not of yourself?

A. That's my understanding, yes.

18 Q. I see. I take it that you would have no objection to the Tribunal seeking the originals of these documents which it has in fact sought for quite sometime from your own personal point of view, or your firm's point of view?

A. From my own firm's point of view, I wouldn't but my understanding is in law, it's nothing to do with me.

19 Q. I am just asking you to establish whether or not you have a personal objection.

A. Absolutely none whatsoever.

20 Q. I see. Fine. Now, if I might just return to deal with the correspondence or rather the documentation which was prepared by Mr. Denis McArdle in 1989 at the time of this transaction. You have been invited to agree with the suggestion that he, firstly, is a person who everybody has high regard for, that he was a man of integrity and by implication, that he was a man who was accurate in each of his records, isn't that right? You agreed with that in cross-examination by Mr. Cush, who is your counsel, on Friday.

A. Yes, I mean the only thing I would say is nobody is perfect, but in general, yes.

21 Q. And if we just review for a moment in tab 8, if you still have that tab or that book of documents with you. I am now handing it to you, Mr. Copsey. (Documents handed to witness.) If you turn to tab 8, the first of those documents which is document 152 there --

A. Yes.

22 Q. -- is a document which, as we know, Mr. McArdle prepared following a conversation with you, isn't that right?

A. That's correct.

23 Q. And whilst you have no specific memory of the detail of this conversation until you saw this memorandum, it operated as an aide memoir for you, is that a fair analysis?

A. That's fair, yes.

24 Q. Now, in this document you would accept that there is no mention whatsoever by Mr. McArdle of Jim or Jim Gogarty or Mr. Gogarty having any involvement at all with the transaction whereby £30,000 was wanted that day, isn't that so?

A. I would agree.

25 Q. In the normal course, Mr. McArdle was a man who noted in his attendances the involvement of persons other than the individual with whom he was communicating directly. In other words, we will see in a number of his attendances such as this, Jim wants something or JM agrees to do this or whatever, even though the communicator to him might be yourself or somebody else, isn't that right?

A. Yes, but I also note in Mr. McArdle's own affidavit of evidence that he does of course state there that he knew that Jim was involved.

26 Q. Of course. And for completeness, we will deal with that, Mr. Copsey, but I want to deal at the moment with the accuracy or otherwise of the contemporaneous documents prepared in 1989 rather than explanations for them which may have been given 10 years later. This document, insofar as it was intended to accurately recall the conversation which you had with Mr. McArdle, was silent as

regards any involvement of Mr. Gogarty, isn't that so?

A. That is correct, but personally I wouldn't accept a handwritten document like this as verbatim. So therefore the omission of certain facts in it, personally I wouldn't take as being an absolute fact that it wasn't said.

27 Q. The significant fact in your conversation with Mr. McArdle was that it was Jim Gogarty who required this money and not yourself, isn't that right?

A. Absolutely, yes.

28 Q. But I think you'd accept that to somebody coming to this document without the subsequent qualification by Mr. McArdle, the impression would go given that it was R. Copsy who wanted £30,000 today, isn't that right? I am talking now about the face of the document itself rather than explanations which might have been provided subsequently.

A. Yes. I mean I am afraid there, as an argument I accept that. Quite clear at the top it says R. Copsy, there is a conversation. He is actually silent. It does not say RJC wants £30,000 today. It's just headed that it's a conversation with me. It's actually silent on who wants the 30,000. If one wants to pick it in its niceties.

29 Q. On its face as a document, it makes reference to no other person other than yourself, isn't that correct?

A. But it makes it as a heading at the top which is indented from the left hand margin. That just makes it a heading to say that's a conversation he was having with me. But look, maybe the niceties of it are something which I shouldn't debate.

30 Q. It's just that you were invited to draw a certain conclusion. I am going to invite you perhaps to draw a separate conclusion, having analysed this documentation.

The next document is a document which is a letter written by Mr. McArdle and it says "We'd be obliged if you would give the bearer of this letter a cheque for £30,000 out of our above numbered account." Do you see that?

A. I do.

31 Q. And the very next document to that is a record of an attendance by his secretary on you which says "Roger Copsey said to forget call of this morning and "at his reasonable leisure" draw up cheque from client account for £30,000 payable to JMSE." Do you see that?

A. That is correct.

32 Q. It would appear that Mr. McArdle did not follow that instruction because he did not draw a cheque payable to JMSE. He drew a cheque payable to McArdle & Company and endorsed that cheque himself in favour of JMSE, isn't that so?

A. That is correct.

33 Q. So that he didn't follow the instruction that he had been given for whatever reason it was but he didn't do so, isn't that right?

A. That is correct. My assumption for the reason would be that he had already given instructions to the bank and didn't change them, but that is guessology.

34 Q. He then, if we move to document 156, writes a letter to yourself on the 12th June 1989, Grafton Construction Company Limited, land at Swords. "I refer to our telephone conversation on Thursday last." Now that of course is accurate because there was a telephone conversation with you on the previous Thursday, isn't that right?

A. Yes. Just as a matter of interest, when was the Thursday?

35 Q. It was the 6th. Sorry, the 8th --

A. It was the 8th --

36 Q. Thursday the 8th.

A. So that telephone conversation refers back to the same date as his original file note.

37 Q. Correct.

A. That we were discussing earlier. Okay. Actually I had never checked back on that basis. Thank you.

38 Q. And he refers to our telephone conversation on Thursday last. Now, he made no reference in that to the fact that there had been two telephone calls from you on that date, one with you directly and one which you had with his secretary, isn't that right?

A. Absolutely.

39 Q. And that the instructions had changed between those two telephone calls. On the first, he had gone to act in a certain way vis-a-vis the ICC and the subsequent instruction was later and varied the original request, isn't that right?

A. That is correct.

40 Q. But he never referred to that in his letter to you of the 12th, though there had been a significant intervening fact, isn't that so?

A. He didn't, nor would I have expected him to either.

41 Q. Sorry?

A. He didn't and nor would I necessarily have expected him to.

42 Q. So that you wouldn't have expected him to bring himself up to date with the communications passing from you before he wrote back to you?

A. This letter is clearly a letter enclosing 30,000 and as I quite rightly say, it doesn't go into the background detail.

43 Q. He says "And confirm I am sending a cheque for £30,000 payable to JMSE directly to Jim", isn't that so?

A. That is correct.

44 Q. And here we see the first reference to Mr. Gogarty.

A. Correct.

45 Q. In this letter he does not say that he is sending the cheque of £30,000 payable to JMSE directly to Jim as agreed or as suggested by you or as requested by him, isn't that right?

A. No. He is saying it is in reference to our telephone conversation of the 8th June.

46 Q. He refers to the telephone conversation. He tells you that he is sending a cheque for £30,000. He tells you it's payable to JMSE and he says it's being sent directly to Jim.

A. I think the only reasonable, but not necessarily the only, the only reasonable conclusion that I could draw from that is that he is sending it directly to Jim because of something which I have said to him in our telephone conversation on Thursday last.

47 Q. He doesn't, for example, record that he is sending it directly to Jim to be applied for reimbursement of a political contribution or any other explanation or any reference to Jim having sought this, isn't that so?

A. That is correct.

48 Q. And in the next document, which is page 1557, there is the letter of the following day, "Further to my letter of the 12th, the sum of £30,000 requisitioned from Industrial Credit Corporation has now come to hand. I telephoned Jim whether I should post it to him or if he would prefer to have it collected, but he tells me he does not need it and I should send it to you. What am I to do?"

A. Correct.

49 Q. Now, it would appear from that that Mr. Gogarty had either changed his mind as regards receiving these monies or did not know anything about the receipt of these monies, isn't that right?

A. They are two possibilities. However, it's very difficult to read that, for me to read this letter on the second of those explanations, because I think if somebody had rung you -- if Denis had rung Jim Gogarty and said, Roger said here is £30,000 for you, had he known nothing about it, personally I would have thought that Jim would have said, "What on earth are you talking about? I have no idea -- what's all this about? What £30,000?" And I would have then thought that Denis would have had to have written to me and said, "I tried to give the £30,000 to Jim, but he says he knows absolutely nothing about it." Now, that's not what Denis McArdle has written so, personally, I couldn't draw the conclusion which you suggested just then. It just says that Jim does not need it.

50 Q. Yes, it is open to certainly two interpretations. I wasn't putting one specific one to you. I was merely asking to you agree whether or not these two possibilities were there?

A. And as I would say, there are two possibilities. One, if you are asking me, I would discount down to a 5 percent possibility and the other one, yes, I would say is a 95 percent possibility.

51 Q. Mr. McArdle, for example, didn't say that he was surprised to note that Jim had not taken the money. He merely followed up on the instruction given, namely that because he did not need it, he should send it to you.

A. Correct. Which again to me would add weight to my 95 percent argument.

52 Q. So as regards this correspondence which passed at the time in 1989, there is nothing to indicate on the face of this documentation an acknowledgment that Jim Gogarty had asked for the £30,000 to be paid by way of a political donation and that was recorded by Mr. McArdle, isn't that so?

A. You are correct.

53 Q. Now, if we turn for completeness to the statement then of Mr. McArdle. This is a statement firstly which was prepared in 1999 by Mr. McArdle and furnished to the Tribunal, it was the 26th February of 1999 and unfortunately Mr. McArdle, as you know, has deceased since the preparation of this document and he deals with the statement at page 9 of his statement as follows. Of the. Under the heading "£30,000...

A. Excuse me, have I got it in this book of tabs here?

54 Q. I am not sure that you do, Mr. Copsey. I will get it for you now. You may take it I will read it as clear and you can have a copy of it for comment if necessary.

A. That's grand.

55 Q. It's at page 9 of the statement. Paragraph 30 under the heading "£30,000 -- 8th June 1989.

On the 8th June 1989, I received a telephone call from Mr. Copsey. He stated that he required £30,000 that day. If possible, he required a cheque for £10,000 and £20,000 in cash.

"Mr. Copsey said that the money was required in connection with the forthcoming general election on the 15th June 1989 and the form of words I used to note this was "June 15th -- election -- contribution?" I told Mr. Copsey I could not

get cash but that the money would be in the form of a bank draft. I recall the conversation.

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"Mr. Copsey said he wanted £30,000 that day. A cheque for £10,000 and £20,000 in cash. There was a general election taking place at the time. I noted this conversation as stated above. Mr. Copsey said "I think Jim (Gogarty) wants to make a political contribution." Because he used the words "I think", I put down question mark. If Mr. Copsey had said "Jim wants to make a political contribution", I would not have done so.

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"Mr. Copsey did not expand further or volunteer any information, where the money was going and I did not ask him. I assumed it was a donation to one of the political parties. I told Mr. Copsey I could not get cash but would obtain a bank draft. The funds which belonged to the client were on deposit with Industrial Credit Corporation as it was then known and I was not prepared to put a member of my staff, probably a young lady, to the risk of going to the offices of ICC in Harcourt Street and obtaining as large a sum as £20,000 in cash."

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Now, that is Mr. McArdle's recall of the events and it follows from the date that I have given you, Mr. Copsey, that is it a record prepared some nine years and nine months or so after the events of which he is seeking to recall the telephone conversation with you, isn't that right?

A. That's correct.

56 Q. Mr. McArdle, and I don't think anybody has suggested that he is not endeavouring to recall as best he could the

circumstances of this transaction, would have had as an aide memoir only the documents that we have considered already, isn't that right? There would not appear to have been any further documents over and above those which were considered this morning, isn't that correct?

A. That would appear to be the case, yes.

57 Q. Now, as regards his accuracy and other matters, you agreed with Mr. Cush, the counsel, that you have been following the events of this Tribunal. You have had the benefit of considering the evidence as it is recorded in the transcripts in daily transcript form, isn't that right?

A. That is correct.

58 Q. And you were specifically drawn by Mr. Cush on Friday last to the events that are covered in Mr. McArdle's statement at page 6 and that was Mr. McArdle's comments on the evidence which has been given by James Gogarty in relation to the Forest Road negotiations and the question as to whether or not there was a deal concluded and shaken upon or not in Smith Foy's office. You might remember dealing with that?

A. I do, yes.

59 Q. And if you turn to page number 6 of the statement of Mr. McArdle which is before you, you will see what his comment in relation to that is, starting at the top of page 6.

A. I will have to count the pages because they are not numbered.

60 Q. Are they not --

A. Could you give me the paragraph reference?

61 Q. It would be 16, I think. If you have the paginated format now, it would be on page 6.

A. Yes, I have it now.

62 Q. At the very start of the page there, on page 22 thereof, he says that and he is now referring to the testimony of Mr. Gogarty which had been given prior to Mr. McArdle commenting on it as he did in his statement here.

"He and I understood from Senior that we have authority to sell the lands, to sell Forest Road. Mr. Gogarty is mistaken in this. At no stage did I ever have authority from Mr. Murphy Snr to sell any of his property in Ireland. At question number 83 on page 22, Mr. Gogarty says "I organised a meeting in Smith Foy & Partners' offices to exchange contracts and that Mr. Gogarty and I went to the meeting and that I brought maps and contract documents." Mr. Gogarty is mistaken in this. I am assuming that the meeting that Mr. Gogarty refers to is a meeting I mentioned in the preceding paragraph hereof, namely that which took place on the 25th July 1988. That was the only meeting I ever attended at which Mr. Smith,, Mr. Bailey and Mr. Gogarty were also present in relation to the Forest Road lands."

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So he is clear there that there is only one meeting, isn't that right?

A. Yes.

63 Q. "Mr. Gogarty is mistaken when he says that the purpose of the meeting was to exchange contracts. It would not be possible to do this at an initial meeting when the terms of the deal had not been settled, the purchase price established and the purchaser's solicitor having had the opportunity to investigate title. What Mr. Gogarty says in this regard is not accurate.

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"Mr. Gogarty further says at question 83 that contracts

were exchanged and hands were shaken on the deal. This did not happen, indeed could not have happened and Mr. Gogarty is mistaken in what he says."

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He goes on to say "Mr. Gogarty further says that we went back to my office and he said I should ring Roger Copsey to tell him what happened because he was the financial controller and I rang Mr. Copsey and he went for me saying "You had no authority to sell them lands at all, that I am dealing with them." I say that again Mr. Gogarty is mistaken in this. The meeting to which I have referred did not conclude until around seven o'clock in the evening and I would not have telephoned Mr. Copsey at that hour because I believe he would not be in his office at seven o'clock and I further say that when Mr. Gogarty says that Mr. Copsey went for him, he is mistaken."

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Now that, I think, accords, does it, with your recollection of the evidence of Mr. Gogarty relating to this transaction in the Smith Foy offices, isn't that right?

A. Correct.

64 Q. And it would appear from this document that certainly as between Mr. McArdle and Mr. Gogarty, there is a dispute as to whether or not the parties ever shook hands on a deal, amongst other disputes, I might add, isn't that so?

A. Correct.

65 Q. And what is being said by Mr. McArdle, amongst the issues he takes with Mr. Gogarty, is he is saying there was no deal shaken on by the parties, isn't that right?

A. That is correct.

66 Q. Now I take it that you also have considered, in considering the evidence, evidence given by Mr. Michael Bailey, a party

who equally disputes large parts of the evidence of Mr. Gogarty in relation to very many matters, isn't that so?

A. Yes.

67 Q. And I am going to ask you now to consider the contents of Mr. Bailey's evidence which was heard on Day 73 at page 8 from the reference starting at page 6, on page 10 and I am going to hand you a copy of that, the other parties should be able to find that in the documents already circulated to them. (Documents handed to witness.) If not, I have copies if they want them. The page reference is page 10, the very top right-hand corner.

A. I see.

68 Q. You will see at line number 9 -- have you found firstly the page?

A. I have, yes.

69 Q. I am going to read from 9 on which is a point at which Mr. Bailey is offering his account of what took place in relation to the negotiation of the purchase of Forest Road and, in particular, the reasons why the initial offer, it was increased to the ultimate sum of 1.45 million. And it starts at 9 as follows:

"Chairman, this letter on the 24th June is setting out a proposal to Grafton Construction to their lands, the Forest Roads, and the offer being made was for the lands, for the consideration of 1.250 on a phased basis which, there is no point going into it, if you want me to go into it, I will go into it, but I think that the kernel here is at the third paragraph or fourth paragraph, "all financial contributions and levies in respect of services and open spaces reserved in the planning permission are to be discharged by the vendor and receipts thereof furnished on

closing."

Now that was our offer, 1,250,000. It eventually ended up, 1,450,000, including the bill of £122,460 being discharged by the vendor's company. There was no responsibility of we, the people who were purchasing the property. The reason that the contract cost us 1450 was very simple. We made our offer of 1250 to include our betterment levies being paid. We then had further negotiations where we rose our offer to 1.3 million in the presence, I believe, of Mr. McArdle, Mr. Kevin Smith and Mr. Gogarty and we shook hands on the deal in Smith Foy's office and a few days went by and there was a call from Mr. McArdle to Mr. Smith.

Now we, in goodwill, believed that we had the deal done and Mr. McArdle reluctantly said to Kevin Smith, "There is another offer" and Kevin got in contact with me. We had a meeting. Mr. Gogarty and Mr. McArdle attended the meeting and I said to Mr. Gogarty, "Why trust you? You are after gazumping me." We stuck out our hand and agreed on a deal and he got into a fair rage. There are two witnesses there that can identify this. He had an umbrella in his hand in Kevin Smith's office in 59 Fitzwilliam Square and he actually went for me with the umbrella, I mean physically went for me with the umbrella and I walked out of the offices down the stairs and Kevin Smith came down after me and he said to me, "Mick, do you want to do this deal or not? It's going to cost you another 150 grand if you want to do it" and to this day I was never as upset as I was because I believed I had a deal done. They reneged on the deal and I was given the option of doing the deal at 1450 or else lose the deal and in actual fact it was Kevin

Smith at the bottom of his stairs in his office, he said "Mick, you either do it or you don't do it" and I advised him to go up and do the deal and that is the actual history of the 1250, the £122,460 and ending up with 1450 with no staged payments, with no separation of payments.

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It was a straightforward payment I think to close, I don't have the contract here with me but I believe it was to close in three to four months. It was subject to nothing and he bought the lands at 1450 including the payment and the responsibility for the betterment levy in the old planning permission or the existing planning permission, whichever it was set. That was our deal on the Forest Road lands and I hope I have explained that very clearly, Mr. Chairman."

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That's the conclusion of his reference to the transaction involved. Between that account and the account given by Mr. McArdle, there are considerable and serious difficulties, isn't that right?

A. Correct.

70 Q. Firstly in this instance, Mr. Bailey is saying that there was a concluded deal upon which the parties shook hands, whereas Mr. McArdle disputes that, isn't that so?

A. I think there are two differences in what Mr. McArdle is saying.

71 Q. I think there are many, but certainly as regards that one difference, I am asking you whether that one exists, and I am not trying to shut you off from highlighting others.

A. The shaking of hands I agree. Now whether a deal is -- my point is of course what Denis is saying, it's not possible to have complete -- conclude a deal in the circumstances

that pertained. The difference in the two accounts is whether they shook hands on the deal.

72 Q. But that is a difference which is clear and apparent. It is one where Mr. McArdle denies it happens. It's one where Mr. Bailey says it happens, and that he was greatly annoyed about it, isn't that right?

A. Correct.

73 Q. And is that, as far as you are concerned, the probable explanation for the reference in Mr. McArdle's documents to there being a moral obligation to deal with Mr. Bailey as above a legal obligation? That the moral obligation arose from the fact that a deal had been shook hands on, albeit that it may not have met the legal requirements of the Statute of Frauds, which would have obliged it to have been in writing, signed by the parties or their agents and identifying the property in question and certain other details, isn't that --

A. That's what I was referring to.

As far as I recall, that at no time did Denis McArdle say to me that there was a moral obligation. I think, and I am not sure whether it's made absolutely clear in his note, but my recollection is that what Denis McArdle was saying was that Jim felt that there was a moral obligation.

74 Q. Well, can you envisage any circumstances other than one where the parties had actually shook hands on a deal where there would be a moral obligation, though perhaps not a legal obligation?

MR. CUSH: With respect, Mr. Chairman, now Mr. O'Neill is now asking this witness as to what might have been the case as to why Mr. Gogarty thought there was a moral obligation in respect of a deal with which he had nothing whatsoever

to do. Now, Mr. O' Neill has gone quite a long way down that road already but I think that is one step too far, with respect. The witness can't possibly answer that question.

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MR. O'NEILL: It is a question in sequence and the nature of questions that have been put in a similar vein, agreement on them sought by Mr. Cush and I can't see that he can have any objection to this. Of course I am bound by the witness' answer. I am merely trying to understand the transaction in which he did have a role to play. There is a dispute as to whether or not he himself engaged in negotiation over this property or not and I am trying to understand what the moral obligation referred to was and hopefully the witness can help me and if he can't, so be it. I am just asking --

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CHAIRMAN: On the basis that you are bound by his answer, then you can't keep on chasing him, as it were. Whatever he tells you is the answer, I think the question is certainly germane to the inquiry we are making.

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MR. O'NEILL: Essentially, Mr. Copey, I am trying to establish whether or not you are aware of any other circumstance in the transaction whereby Mr. Gogarty and Mr. Bailey were negotiating for the sale of the lands, that a moral obligation would arise other than if the parties had agreed a deal, though perhaps not a legally enforceable one.

A. I am not aware that the moral obligation arose through the shaking of hands. I can imagine a moral obligation being there if you had negotiated with someone, hadn't shaken

hands, but your word is your bond. So whether or not Jim Gogarty felt that, but at no time, from my recollection, and I think I would have remembered that, did Denis McArdle or indeed Jim Gogarty come to me and say that there was a moral obligation arising through the action of shaking hands.

75 Q. Right. I will move from that now, Mr. Copsey, to your dealings with Mr. O'Keeffe in relation to the inquiries that were being made of you by Mr. Murphy Jnr in relation to there being any payment out of the JMSE or Murphy Group funds to a politician. There are, we know, a series of contacts which you had with Mr. Murphy in relation to this. The first of them being by telephone from you from Moscow to him, is that right?

A. Yes.

76 Q. The next -- that was in 1996 --

A. Or early 1997.

77 Q. Or early '97 and then there were three contacts in 1997, the first of them I think in May or thereabouts, the next in July, on the 1st July, that afternoon, we can fix that one fairly accurately. And the next one on a date in August when you felt you might be able to give us a date by reference to your diary, but you weren't able to do so on Friday. Now, are they the meetings -- sorry, the contacts that you recall?

A. That's correct.

78 Q. Have you had any opportunity of checking when in fact the August meeting took place by reference to your diary?

A. No, I haven't, mainly because I quite forgot. It's the 23rd or 24th August. I can make a telephone call at our break and find out.

79 Q. Following upon those contacts, I am just a little unclear

from my reading of the transcript as to whether or not you spoke to Mr. O'Keefe on each of the occasions after you had spoken to Mr. Murphy or whether it was only after you yourself had identified the fact that there was a political payment in July and your subsequent consideration of either the verbal exchange with Mr. Murphy or the limited documentation that he showed you in August which led you to a position where you could discuss the matter with Mr. O'Keefe. Do I indicate the distinctions clearly enough to you first?

A. That's very clear. I most certainly spoke to Tim O'Keefe prior to the meeting of the 23rd/24th August. The one which I can't really fix in my mind is the Russian one because I may have not spoken to him because there would have been a gap between the phone call and when I came back into Ireland. I think it possible that I spoke to him at that time, but I can say quite definitively that I did speak to him after May, July and then again August.

80 Q. Okay. So if we can deal with the May, July and August communications with Mr. O'Keefe. As far as I understand the conclusion of your discussion with Mr. Murphy Jnr on the telephone in May, was that you had answered in the negative a specific query put to you as to whether or not there was any, you had any knowledge of a payment to Mr. Ray Burke in the sums of either 40, 60 or £80,000 in June of 1989.

A. Correct. And I also think that that was -- sorry, you have to ask the question again, my apologies.

81 Q. I was asking you whether the conclusion of the first telephone conversation with Mr. Murphy in May of 1996, you had responded in the negative to a specific query --

A. Sorry, I have it now, yeah. Yes. I think also he

mentioned that it was a bribe as well, so that was the other important factor which actually threw me off the scent, as it were.

82 Q. So having answered it in the negative, what conversation did you then have with Mr. O' Keffe?

A. Well I just asked him whether he could remember anything, because remember what I did say to Joe Murphy Jnr at that time was no, I had no recollection but I also advised him that he should look in the books or I asked him whether he had looked in the books and he said that he had so I also, as a cross check again, I went to Tim and asked him whether he could remember anything. Obviously if he remembered anything, I would have immediately got back to Joe.

83 Q. Okay. Now, you asked him whether he remembered anything. Now obviously you had to paint the scene for him. What did you ask him to remember and recall so that he might assist you?

A. Well exactly that time that I could recall the words which Joe Murphy Jnr had used to me. So I would have posed the same question to Tim as Joe Jnr had posed to me.

84 Q. At that time and indeed always, you have known that it was Mr. O'Keffe who was there on site, fulfilling the function as the financial controller, isn't that right?

A. That is correct.

85 Q. And the person who would have been responsible for firstly ensuring that correct financial entries were made in any records that were kept of expenditure, isn't that right?

A. Correct.

86 Q. And secondly, attributing any expenditure to the proper account or journal, isn't that so?

A. That is correct.

87 Q. So did you discuss with him at that time the journals which

would have been kept or the possibilities for any payment out being made?

A. No. We didn't go into it to that level of detail.

88 Q. I mean obviously a politician is not a supplier to you and he wouldn't appear in the sales ledger and any expenditure would have to be an expenditure of an unusual accounting nature, isn't that right? It would require some specific accounting reference?

A. Yes, it would and I think that's why we very quickly dismissed it because I think that had it been a payment to a name like Burke or -- Tim probably would be more au fait with the politicians' names than I would, he simply has a greater interest than I do but no, nothing came up in our conversation other than the fact that Tim could not remember.

89 Q. But did you discuss between yourselves, if there was to have been any such payment, how it could possibly have come through either of the companies involved and from an accountancy -- you were obviously having a discussion with another accountant about a matter which obviously had an accountancy aspect from your point of view being respectively the financial director and financial controller of the company, isn't that right?

A. Yes. We didn't go to that level of detail.

90 Q. I see. So it was there as a mystery for both of you perhaps to ponder over it but you had reached no conclusion in May?

A. That's correct. But I am not sure we pondered an awful lot there after. As far as we were concerned, this was a query from an ex-client, it really didn't involve us, as such. We would have been helpful to the ex-client if we could have been, but after that, that was, as far as we

were concerned, the end of the matter.

91 Q. Now, in July of the same year, 1997, it was a matter which was certainly much more in the public domain, though I think you have told us that you paid little interest in the coverage that this was being given at a national news level, is that right?

A. That is correct.

92 Q. But you did indicate, I think in the course of your evidence, that you felt that at one point in time, your reason for not considering it further was that it was a matter which people thought would go away, including perhaps Mr. Murphy Jnr and yourself, and therefore you didn't particularly consider it further?

A. Subject to looking at the transcript of the hearings, I can't recall having said that or implied it.

93 Q. Very good. In any event, within two months of your initial contact, you had the second contact. At this point in time you, for a reason that you cannot recall at this point, triggered a memory of an event having taken place which involved the payment of a political contribution and an involvement of James Gogarty.

A. That is correct.

94 Q. And this arose in the context which had not changed, I take it, of there being an allegation of a bribe being paid to Mr. Burke?

A. That is correct. Whether or not any other facts had come out in the newspapers as well in the intervening period, I don't know, simply because I don't know what triggered my memory.

95 Q. Right. But your memory having been triggered, you now had more information with which to go back to Mr. O'Keeffe and to, again, endeavour to see if you could establish, through

him, how the matter may have been dealt with in JMSE, isn't that right?

A. Yes.

96 Q. And when you went back to him, what did you say to him on this occasion? How did you express the information that you now came to learn and what inquiries did you make as a result of that?

A. I simply said to him that I had a feeling at the back of my mind that there was a political donation involving Jim Gogarty, did he recall anything of it, and his answer to that was no, he couldn't shed any further light at all.

97 Q. Now, the next occasion of course is when you met with Mr. McArdle -- sorry, you met with Mr. Murphy who had the benefit of the documents which were opened to the Tribunal this morning from Mr. McArdle and he either showed you those documents or discussed them with you and that triggered further memory or recollection on your part, isn't that right?

A. That is correct.

98 Q. And did you take any attendance, record any notes or keep any of the documents, if there were documents given to you by Mr. Murphy, so that you could discuss them in further detail with Mr. O'Keeffe?

A. No, I didn't.

99 Q. Did you think to bring Mr. O'Keeffe into this meeting that you were having with Mr. Murphy, now that it became apparent to you that something about which you had been asked questions over a period extending back for some nine months or so was now revealed, and he might perhaps have some input in that transaction?

A. No, I didn't. But what I did do is discuss it at the first opportunity thereafter.

100 Q. When you learned, as you did on the 23rd or 24th August, that there was a connection between the political donation which had been requested of you by Mr. Gogarty in 1989, and in respect of which you had devised the method of accounting for that payment as an intercompany loan between the individual companies and in the knowledge that this involved Mr. O'Keefe, did you not specifically bring Mr. O'Keefe in and take him through this on a step by step basis to establish exactly what his involvement in this was?

A. Yes. We spoke in more detail because we had more detail about which to speak.

101 Q. And at the conclusion of that meeting with Mr. O'Keefe, which presumably was on the same day as Mr. Murphy's conversation with you or perhaps the following morning, was it?

A. Yes. I mean, I can't recall. As accountants, we are often out at meetings, away. It would have been at the earliest opportunity, whenever that was.

102 Q. Fine. At the conclusion of that meeting with him, I take it you had as much knowledge after that as you do have today really, is that right, of the transaction? Did you add to your stock of knowledge as how this was dealt with after that date, the --

A. Yes, I added to my stock of knowledge afterwards. I think that the whole question of where Bailey fitted in and where he didn't fit in and other factors which surrounded the generality of what had been said became clearer later.

103 Q. And I really meant to ask you about the specific dealings of either yourself or Mr. O'Keefe and Mr. O'Keefe's dealings with the money itself, rather than what came from the outside as a general matter. Did you learn about the

fact that it was Mr. O'Keeffe, for instance, went down and collected the money and all those factors? Did they all become immediately apparent once you had been able to identify the transaction to him as the, if I might call it, the cash 20 and 10,000 cheque transaction, which I take followed from your knowledge of the McArdle/Kiernan or McArdle memorandum, isn't that right?

A. I think at that same meeting with Joe Murphy Jnr, he had told me of the 10 and 20,000 and the fact that he had found it in the books of JMSE. So at the meeting with Tim, I think that Tim said two things to me. The first one was that he had no idea up until my conversation with him that it was a political donation and that would have accorded with my understanding, because I hadn't mentioned it to him as the entries in JMSE didn't require that information and then I think the second thing is that he did recall going down to the bank and getting £20,000 for Jim Gogarty, yes.

104 Q. In the light of that knowledge which you received from Mr. O'Keeffe, did you feel that your joint knowledge of this matter might be advanced if you were given the opportunity of considering the documentation which had been prepared throughout 1989 and until the 14th August 1990, by your firm and given to JMSE?

A. No, again I was approaching this simply from the point of view of helping a client and I gave information to him. If the client had required me to have a look at papers and to spend what I would call time over it rather than moments of time, then he would have asked me, but in answer to your question, I didn't volunteer to, no.

105 Q. I see. Do you remember in setting up the system of accounting which was set up after Mr. Downes had ceased to

be the accountant and which you had mentioned in your correspondence with Mr. Wadley whether or not that included, amongst other things, the maintenance of a cheque journal, the maintenance of a cash book, the receipts books and various items of that nature?

A. It wasn't a completely 100 percent new system. It may have been -- it may have been computerised later on, but I think the cheques journal had always been in existence, so I probably wouldn't have altered that.

106 Q. Would you have provided for a cash book and if so, did you ever see that book?

A. No. A company the size of JMSE would not normally have a cash book, simply because the volume of transactions would have filled the book so quickly, so it was done at the beginning on what's known as a Kalamazoo system, which is a system whereby you use carbon copies etc. of loose leaf binders and then after that, I believe it was computerised, but generally it would not have what is a cash book. We may be getting into the niceties of the terminology used in accounting.

107 Q. I'd like to know, if possible, the type of physical record which should exist for the cash transactions of JMSE during the period that you were there from June 1988 until August of 1990. What documentation can you (A) remember putting in place and (B) ever see that recorded such cash transactions as took place and by that I mean ones which involved the handing over of cash or the holding of cash in the company.

A. You are talking cash rather than --

108 Q. Yes.

A. -- than cheques.

109 Q. Cash.

A. The only books which recorded cash per se would have been petty cash. Petty cash by definition being small amounts of money, you want a jar of coffee, you want -- somebody needs a sub of £20 because they are taking a rail fare or something like that, that they would be relatively small amounts of money and all of the transactions would be recorded in what is known as a petty cash book.

110 Q. Do you recollect that during the time that Mr. Downes was conducting the financial affairs of the company, that amounts of scrap from time to time would be realised for cash and he indicated that to you, these sums would come in in a cash form?

A. I can't clearly remember. It doesn't surprise me, but I don't have any specific recollection of it, but it doesn't surprise me.

111 Q. Do you ever remember sums coming in in that form which might be one-off sums, but wouldn't be entered as sales, for example, or otherwise?

A. I genuinely wouldn't have gone down to that level of detail, no.

112 Q. Thank you, Mr. Copsey.

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CHAIRMAN: You are finished with him in toto, is that right?

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MR. O'NEILL: I have, Sir.

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CHAIRMAN: Thank you very much, Mr. Copsey, for coming down.

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MR. HERBERT: Before Mr. Copsey leaves, is the issue of the entry in his diary finished with?

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CHAIRMAN: I think it might be clarified. Actually what we will do is this, we will take a coffee break now and in the coffee break, we will clear that aspect up and take his answer before he actually departs. Thank you very much.

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

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MR. O'NEILL: Sir, I think it can be recorded by consent for the record that the meeting referred to by the last witness, Mr. Copsy, took place on Wednesday, 20th August 1997, and is recorded in his diary as "4 o'clock: Joe Murphy."

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CHAIRMAN: Thank you.

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TIM O'KEEFFE, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. O' NEILL:

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MR. O'NEILL: Mr. O'Keeffe, I think you are presently a partner of the last witness, Roger John Copsy?

A. Correct.

113 Q. And when did you become a partner in that firm?

A. Three years ago.

114 Q. And you are, I take it, yourself a chartered accountant then?

A. Correct.

115 Q. If we could just go back some little while and you might tell me when it was that you commenced your training, be it as an articulated clerk or whatever, in accountancy.

A. In 1985.

116 Q. In 1985?

A. Correct.

117 Q. And was that after leaving school directly?

A. No, that was after obtaining a degree in the NIHE Dublin, which is now DCU Dublin.

118 Q. I see. And in 1985 then you commenced your articles, is that correct?

A. Correct.

119 Q. How long did that take?

A. Three and a half years.

120 Q. I see. So in mid-1988 or thereabouts, you were in a position to apply for admission to the Institute, is that right?

A. Correct.

121 Q. And you did so, I take it?

A. I did so in December, '88.

122 Q. In December '88. I am just a little unclear as to precisely when it was that you became employed by Copsey Murray. Was it before you commenced your articles or after?

A. On the commencement of my articles, October '85.

123 Q. So from 1985 until December of 1988, you were there in the capacity of an audit clerk, is that it?

A. Well a trainee accountant, yes.

124 Q. And from December onward, you were qualified and from the evidence that's been given to date, it would appear that sometime in November of 1988 or thereabouts, Mr. Copsey indicated to the board of JMSE that he was putting in place an accounting system which provided for the weekly budgeting and matters of that nature, is that something which would have been implemented through you?

A. Not at that time. There was a previous employee of Copsey

Murray in situ in JMSE.

125 Q. And who was that employee?

A. Damien Allen.

126 Q. Damien Allen.

A. Yeah.

127 Q. And did he -- he remained there until you took over from him, is that the position?

A. Correct.

128 Q. I see. And as best you can, can you tell us when it was that you took over from him?

A. It was April or May of '89.

129 Q. April/May '89?

A. Yes, there would have been a hand-over period. He was going on study leave.

130 Q. Between the time you qualified then in December and April or May, you obviously were either working on another job --

A. I was working on other clients, yeah.

131 Q. Other clients, I see. So your knowledge of what I might call the Murphy companies and the Murphy interests, did that begin in April/May of 1989?

A. No. The first time I met the Murphys was in June or -- May or June of '88. I attended a meeting with Roger Copsey, Joe Murphy Snr, Joe Murphy Jnr, his wife Una and Jim Gogarty in Wilton Place to discuss the ousting of the existing board of the Murphy group of companies.

132 Q. Can you recollect if that is the early morning meeting that has been referred to by other witnesses?

A. No, this was an evening meeting, I specifically remember it because I was playing football and I arrived late.

133 Q. Well do you know whether that meeting took place prior to or subsequent to the removal of the existing directors of JMSE?

A. That meeting took place prior to because at that meeting it was agreed at the next morning, myself and James Gogarty and Una would go down to the premises in Baggot Street and basically sit in.

134 Q. Was that to sit in at a pre-planned meeting of the existing board?

A. No, there was no pre-planned meeting. It was just to I think reinstate the Murphys' interests, that they were controlling these companies.

135 Q. To be physically present?

A. To be physically present.

136 Q. Did that then go on to lead to the litigation?

A. Yes.

137 Q. Was that a factor in that?

A. From then on, yeah.

138 Q. You were asked to provide a statement to the Tribunal and the Tribunal is in receipt of a document which is dated 16th December of 1989. It's an unsigned statement but it bears your name at the bottom of it and I'll just ask you firstly to adopt that statement, if it is the statement that you prepared. (Document handed to witness.) If you would just like to read through that if you would, Mr. O'Keeffe?

A. I think there is -- I brought a statement down with me this morning that was signed in, I think it was March of -- so -- that I submitted.

139 Q. Well I haven't seen that statement, I don't know if it accords with the statement that has already been furnished but if your solicitors are prepared to put it in -- I don't understand how this statement is now being provided to us, Sir, for the first time after an original statement having been delivered to the Tribunal dated 16th December

1998.

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MR. CUSH: I can't explain that at the moment, Mr. Chairman. I presumed it was the same document and I will just have to check that with the witness at the next break. I am sorry about that confusion.

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CHAIRMAN: I think it's better to have a break now and check what the situation is because we must function in a situation of knowledge.

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MR. O'NEILL: I would like to read it and consider its content and see whether or not it in any way --

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CHAIRMAN: The first thing we will do, we will break for -- how long is it?

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MR. O'NEILL: I think fifteen minutes is necessary. I regret to say that.

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CHAIRMAN: We will break for fifteen minutes and see what the situation is.

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

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MR. CUSH: Chairman, I am grateful for the time and apologise it was necessary, it was to do with our internal workings. I also apologise for the confusion. I didn't think that there was any difference between the two statements, one being in December and the other being in March of this year which was drafted by Mr. O'Keefe himself

and I didn't realise the second one was expanded upon.

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MR. O'NEILL: For completeness, we are going to revert to where we started. I was asking Mr. O'Keeffe firstly to confirm that we have before you two documents, both bearing the title "Statement of Mr. Tim O'Keeffe", the first of those documents dated the 16th December 1989 which is unsigned and I am going to ask you to follow as I read from that document into the record and please correct me if I err in my reading of the document.

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Now, the document commencing "In the matter of the Tribunal of Inquiry into Certain Planning Matters and Payments.

Sole Member, Mr. Justice M. Flood. Statement of Tim O'Keeffe.

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"In 1989, I was employed by Copsey Murphy, chartered accountants and financial consultants of Charter House, 5 Pembroke Road, Dublin 2, as a trainee accountant. I was seconded to work in JMSE's office at Santry, Dublin during 1989. I was involved in the day to day operations of JMSE and its sister company, AGSE, in Fleetwood, England. In particular, I was involved in the preparation of monthly accounts, debt collection, creditor payments, wages and valuation of work in progress.

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"I reported to my principal, Roger Copsey, of Copsey Murray in relation to and in respect of management accounts and cashflow issues. On a day to day basis, I took my instructions from Mr. Jim Gogarty and Mr. Frank Reynolds. I recall during that year and from memory, it may have been June 1989, I was requested by Mr. Gogarty to attend at AIB

Bank, Talbot Street branch, to pick up a sum of money from that bank and deliver to him at JMSE's premises at Santry, Dublin. I recall that Mr. Gogarty arranged for some person to accompany me to the bank, to drive me there. I cannot be exactly certain who accompanied me but it may well have been Mr. Frank Reynolds. I can recall attending at the bank and from memory, the money in cash was available and ready for collection by me and my function insofar as I can recall was to check/count the money that was made available.

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"I am sure I did check the money but from memory, I cannot be definitive as to how much money there was but I assume it was £20,000, as that would appear to be the amount of money now talked about.

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"I can recall collecting the money, putting the same in a briefcase, then returning to the JMSE premises where I met Mr. Jim Gogarty and handed the money to him. I was not at any time a cheque signatory nor had I any authorisation to arrange payments from AIB or any other bank. When preparing the monthly accounts, I questioned what this money related to and was informed that it was a loan to Lajos Holdings Limited, one of the Murphy property holding companies, and this is how I recorded it in the books.

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"I was aware that he, Mr. Gogarty, personally dealt with all the property and any matters that came to me relating to property were given to him as he was solely in charge of that aspect. I have no knowledge whatsoever of any sum of money being paid to Mr. Raphael Burke at that time, June 1989."

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"Dated 16th day of December, 1989", space for signature  
and then typed in "Tim O'Keefe".  
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Now, Mr. O'Keefe, in relation to this document, have you  
ever seen a copy of this document before?

A. I have, yes.

140 Q. And where and when did you see that document?

A. I can't be exactly sure, but I will imagine around December  
the 16th, 1998. It was sent to my office but there was a  
few aspects in that I was unhappy with. I didn't sign it.

141 Q. When you say it was sent to your office, was it under cover  
of a letter to you personally or was it --

A. Under cover of a letter to me personally.

142 Q. Right. And how did the content of that letter come about?

A. I'd say following a meeting I had with Roger Copsey in the  
offices of Michael Fitzsimons.

143 Q. Can you give me the date of that meeting please?

A. I would say it was probably the day before this. It  
was --

144 Q. You think it was the day before?

A. The day before, a week before, I can't be sure on that.

145 Q. Well, doing your best, and whilst the document is dated  
16th December 1989, it's clearly a typographical error and  
it should be 1998. But it's not that long ago. Did you  
receive the document the day after the meeting or a week  
after the meeting?

A. I honestly can't remember.

146 Q. I see. Would you have recorded in your office diary or  
any other document the date of your meeting with Mr. Copsey  
and Mr. Fitzsimons?

A. I may have done so.

147 Q. Do you have a copy of the covering letter with you or --

A. I don't, but I could get it.

148 Q. Fine. If you could possibly do that before we resume after lunch. Was this your first involvement with the preparation of a statement for the Tribunal?

A. It was.

149 Q. Had you been contacted by the Tribunal directly?

A. I had, yes.

150 Q. And when was that?

A. It was sometime prior to this, I'd say maybe a month prior to this.

151 Q. Was it between the 30th November 1990 when a meeting had taken place with Mr. Grehan and this date, the 16th December?

A. Sorry, what meeting with Mr. Grehan?

152 Q. You perhaps have not been following, and I don't expect you were, on a daily basis, the transcripts of evidence but you may know that there was a meeting held with Mr. Grehan, who was a former director of the JMSE companies, in Dundalk on the 30th November?

A. Sorry, I was unaware of that.

153 Q. You were unaware of that. In any event were you contacted immediately after that, in other words in early December and asked to meet with the Tribunal, by the Tribunal lawyers?

A. Yes, I was.

154 Q. Did you speak with --

A. I did. On the telephone.

155 Q. On the telephone, was that with Mr. Hanratty?

A. Correct.

156 Q. And did you agree to meet with Mr. Hanratty?

A. He requested that I would meet him so I provisionally said

yes. I informed Mr. Copsy and he immediately asked me to ring Michael Fitzsimons' office and they said that I should submit my statement through them.

157 Q. You, at that time, did not have any legal representation yourself, is that so?

A. That's correct.

158 Q. And is Mr. Fitzsimons your solicitor?

A. Yes, in relation to this matter.

159 Q. Not in relation to other matters?

A. No.

160 Q. Is there any reason then that you didn't keep the arrangement which you had to meet Mr. Hanratty?

A. I was taken by surprise when Mr. Hanratty rang me. And I honestly didn't know if I had any involvement in this.

161 Q. You didn't know if you had any involvement in this?

A. Directly in the payment of a bribe to a politician. So, I would have met him on normal circumstances.

162 Q. Right. So do we gather then that you increased your knowledge sometime between his contact with you and the preparation of this document on the 16th?

A. Yes. I would have.

163 Q. I see. When this document was prepared, you were asked to sign it and you refused, is that right?

A. Well refused might be a bit strong, but there was certain parts of it that weren't as I expressed them at the meeting.

164 Q. I see. And did you set out those parts in your response to your solicitor indicating that these should be added to your statement?

A. Verbally yes, and then I was informed that it was going to be expanded, my statement, which is the statement that is now furnished and it's dated the 2nd March.

165 Q. Obviously that took place in March, did it, the expansion of your statement?

A. Yes, correct.

166 Q. What matters were not covered in your consultation that rendered it inappropriate or led to your decision not to sign this document in the form in which it was presented to you?

A. Well, firstly in the first line, in the first paragraph, it states that I am a trainee accountant. That's quite incorrect. I was an accountant at the time. I just thought that it was too short and didn't expand all the areas.

167 Q. Right. What matters in particular did you feel were relevant that should be included?

A. Well I think that my involvement with the other Murphy companies was excluded totally in the first draft. Although I wasn't at a senior level, I would have been aware of other matters going on.

168 Q. Any other matters?

A. Well, there was one specific point there that on a day to day basis, I took my instructions from Jim Gogarty and Frank Reynolds. I think in my revised statement, I took my instructions from Gay Grehan and Frank Reynolds.

169 Q. Does it follow that you did not say at the meeting that you took your instructions from Mr. Gogarty and Mr. Reynolds?

A. At the meeting, it might have been unclear. I would have taken my instructions from Mr. Gogarty on a daily basis in relation to issues that pertained to land.

170 Q. I think you have already acknowledged in your statement that there weren't day to day issues in respect of the land, isn't that right?

A. No, correct.

171 Q. So there would be no question of you saying I took my instructions on a day to day basis from Mr. Gogarty in respect of land matters because there simply weren't day to day matters to take instruction on, isn't that right?

A. Correct.

172 Q. So it's unlikely you said that?

A. Well, I may have implied it at the time. When thinking back, the people that I would have responded to in JMSE would have been Mr. Gogarty, Mr. Reynolds and Mr. Grehan.

173 Q. Were there any other matters that you felt other than your reference to involvement with other Murphy companies that was left out of your statement?

A. No. They are all included in the expanded statement.

174 Q. But the expanded statement wasn't prepared for three months after this, or almost three months, isn't that right?

A. Correct.

175 Q. Your dissatisfaction or your correction of this statement was immediate when you received it, presumably on a date prior to the 16th or immediately after the 16th of December, isn't that right?

A. Yes.

176 Q. Having corrected this statement or furnished the information that would be necessary for it to be corrected, you didn't receive a draft statement in accordance with your correction, isn't that right, until the expanded statement?

A. Until the expanded statement, that's correct.

177 Q. Did you decide to go down in March and expand your statement or again was this document, that is the expanded statement, presented to you for a signature in March?

A. No, I would have drafted the expanded statement and submitted it.

178 Q. When did you do that?

A. I would say just prior to getting it back. I can check that. There would be correspondence on that.

179 Q. The suggestion that you drafted it means that you would have sent it to Mr. Fitzsimons?

A. Correct.

180 Q. But not that you would have got it from him and sent it back. Do I have the sequence right?

A. Yes, I would have drafted it and sent it back down to him.

181 Q. Well, you are sending it directly to him rather than sending it back to him?

A. Sorry, correct, I would have sent it to him.

182 Q. So you weren't sending it back. You sent him a statement which you drafted, is that correct?

A. Correct.

183 Q. And did you draft that in consultation with him or at a meeting with him or --

A. No, I drafted it in consultation with the first statement and with my recollection of events.

184 Q. You haven't mentioned yet and I am curious as to why you haven't, Mr. O'Keeffe, that in your first statement, you make no reference to any of the Murphys personally. You -- sorry, the first statement makes no reference to any personal contact between yourself and Mr. Murphy Jnr, isn't that right?

A. Correct, yes.

185 Q. And it makes no reference to there ever being any meetings between yourself and Mr. Murphy Jnr, isn't that so?

A. Correct.

186 Q. And do you know why that was left out of your statement?

A. I think the first statement dealt primarily with my time in the offices of JMSE which commenced in '89, where my

statement covers my whole involvement with the Murphy Group.

187 Q. I now turn to your second statement, I'll be coming back to the first one, but just so we know exactly what it says. It's the document which is signed by you, has your signature on it. It's dated 2nd March 1999, isn't that right?

A. Correct.

188 Q. And if we just follow, if you would, as I read from that, again "In the matter of the Tribunal of Inquiry into Certain Planning Matters and Payments. Sole Member, Mr. Justice Feergus M. Flood." Is that something you put in on your draft statement you sent to Mr. Fitzsimons?

A. Yes, I would have taken it from the first statement, yes.

189 Q. I see. "Sole Member, Mr. Justice Feergus M. Flood. Statement of Mr. Tim O'Keefe." You would have put that in also, would you?

A. Correct.

190 Q. "In 1989, I was employed by Copsey Murray, chartered accountants and financial consultants, of Charter House, 5 Pembroke Road, Dublin 2 as an accountant. I was seconded to work at JMSE as offices at Santry, Dublin during the year 1989, from memory, this would have been from May 1989 to August/September 1989. I was involved in the day to day operations of JMSE and its sister company, AGSE, in Fleetwood, England. In particular, I was involved in the preparation of monthly accounts, debt collection, creditor payments, wages and valuation of work in progress.

.

"From memory, there was a shake-up within the company and a gap at accountancy level occurred and I filled that gap.

I reported to my principal, Roger Copsey, of Copsey Murray

in relation to and in respect of management accounts and cashflow issues. On a day to day basis, I took my instructions from Mr. Frank Reynolds and Mr. Gay Grehan. I would have dealt with James Gogarty in relation to queries on the lands, i.e. rent queries but this would have been very little. Mr. Gogarty dealt with the lands exclusively on a day to day basis.

.

"During my time with the company, I would spend approximately three days at JMSE in Santry. One day a week at AGSE at Fleetwood and one day at the Gaiety Theatre. After the appointment of the company accountant and the initial hand-over to him, I returned to work in Copsy Murray.

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"As part of my duties, I worked with Roger Copsey on various companies within the Murphy Group. Internally, James Gogarty would appear to have been the boss in that this was my impression of his overall status. I recall that I met Joseph Murphy Snr only once during my time with the company and this was on an occasion when a meeting was held at Wilton Place for the purpose of removing Liam Conroy from the board and co-opting new directors onto the board of the relevant companies. Roger Copsey attended this meeting and I went along with him.

.

"I recall that Mr. Murphy Snr was in attendance, as was his wife Una, Joseph Murphy Jnr and Mr. Gogarty. In relation to Joseph Murphy Jnr, from memory, I only recall meeting him on one or two occasions during my time with the company. I recall during that year and from memory, it may have been June 1989, James Gogarty requested me to go

to AIB Bank, Talbot Street branch and pick up a sum of money from that bank and deliver it to JMSE's premises at Santry, Dublin. I did not normally go to the bank as lodgments etc. were usually sent by courier or taken by other staff members of JMSE.

.  
"This would have been an unusual request as the company did not make cash payments, which is why I can still recall the incident in question. I was told to go to the bank, count the money and bring it back. As this was such an unusual request, I presume I would have contacted Roger Copsey in relation to same but I do not have any definite recall of such a conversation with him. I recall that Mr. Gogarty arranged for some person to accompany me to the bank, to drive me there. I cannot be exactly certain who accompanied me, but it may well have been Mr. Frank Reynolds.

.  
"I can recall attending at the bank and from memory, the money and cash was available and ready for collection by me and had been prepared by prior arrangement. When I asked for the money, I was brought into an office at the bank, where the money was on a table in bank bags. My function, insofar as I can recall, was to check/count the money that was made available. I am sure I did check the money.  
From memory, I cannot be definitive as to exactly how much money there was but I assume it was £20,000 as that would appear to be the amount of money now talked about.

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"I assume that I signed for the money, although I do not recollect doing so, nor can I be certain as to whether I brought a cheque with me to cover the cash. I can recall

counting the money, putting same into my briefcase and then returning to the JMSE premises where I met Mr. James Gogarty and handed the money to him. I was not at any time a cheque signatory nor had I any authorisation to arrange payments from AIB or any other bank.

.  
"When preparing the monthly accounts, I questioned what this money related to and was informed by Roger Copsey that it was a loan to JMSE -- sorry, by JMSE to Lajos Holdings Limited, one of the Murphy property holding companies and this is how I recorded it in the books. I was aware that he (Mr. Gogarty) personally dealt with all the property and any matters that came to me relating to property were given to him as he was solely in charge on that aspect.

.  
"I have no knowledge whatsoever of any sum being paid to Mr. Raphael Burke at that time, June 1989."

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Dated this -- signed, Tim O'Keefe, signed and underneath signature is 2nd March 1999 and then your signature is under that, isn't that right?

A. Correct.

191 Q. So this document, I take it then, was retyped by your solicitor in this format and sent back to you, was it, for signature, or is this --

A. I'd say that was typed in our office and sent to the solicitor.

192 Q. You think it was typed in your office and sent in that format, is that right?

A. Correct.

193 Q. So were there any other matters in this statement which were matters which you had drawn your solicitor's attention

to in December of 1998 to when the original document was offered to you for signature or did this encompass all the matters which had concerned you in the first instance?

A. From recollection, the first document didn't cover my involvement with the other companies as I previously stated and the second document was expanded to cover that. I would say on the second last paragraph there, there is one error, that should be to Grafton Construction Company, not Lajos Holdings.

194 Q. I am sorry, you are making a correction now to the second last paragraph --

A. Yes.

195 Q. The reference to Lajos Holdings Limited.

A. That should read Grafton Construction.

196 Q. Grafton Construction. Just to deal with that point, Mr. O'Keefe, you had made the same error, if that be an error, in your original statement which was, or the original statement which was provided for your signature in December.

A. Well, yes correct, the same error occurs, yes.

197 Q. You had time to reflect on the initial document and you did so on the basis that it was incorrect?

A. Correct.

198 Q. And the opportunity for correction of the fact that Lajos Holdings Limited was referred to became apparent to you in December of 1998, isn't that right?

A. Well no, if it had, I would have corrected it. I just obviously missed it.

199 Q. You had the opportunity of correcting it --

A. I had the opportunity --

200 Q. -- in 1998. You chose not to correct it obviously?

A. I obviously missed it, yes.

201 Q. And you then drafted, of your own will, though the first document was drafted by your solicitor, you were responsible for the entire contents of the second document?

A. I am, yes.

202 Q. Isn't that right?

A. Yes.

203 Q. So you must have determined at some point in time in March 1999 that you had been informed by Mr. Copey that it was a loan by JMSE to Lajos Holdings Limited, is that right?

A. Well that's what I am saying, that's incorrect.

204 Q. I know it's incorrect but I am trying to establish why you believed it to be correct in March of 1999 when it was obviously incorrect then, just as it is incorrect now and today is the first occasion upon which you seek to correct it. I am trying to establish why it is you put it in the first instance, why it is that you did not correct it when it became or was open to you to correct it following the December document, and why it is only now that you are seeking to correct it?

A. Well this is the first time I have seen it since that date and it's just an error. I apologise.

205 Q. You are obviously were drafting this document in March 1999, almost ten years after your involvement with the Murphy companies, is that right?

A. Correct.

206 Q. And how did Lajos Holdings Limited spring to mind as a company that may have been involved in this?

A. I can't answer that. It's an error. It should be Grafton Construction.

207 Q. I know it is an error and you acknowledge it to be an error and I am wondering why it is that you'd remember the existence of an entity called Lajos Holdings Limited when

presumably all inquiries that were being made of you were payments by the Murphy companies or payments by JMSE. Why would you have brought up Lajos Holdings Limited?

A. Well Lajos Holdings was the Murphy holding company.

208 Q. And when do you recall that? When do you recall that Lajos Holdings Limited was the Murphy holding company?

A. Well I would have known that from my dealings.

209 Q. Yeah, but there were many Murphy companies, dozens and dozens of them and I wonder why you recall Lajos Holdings Limited?

A. It was the holding company and I probably would have dealt with more the transactions in that company than any other company.

210 Q. You believe that it was the holding company of the lands, is that right?

A. No, I think was the holding company of the Murphy group of companies in Ireland, which would include the land companies.

211 Q. Could I suggest to you that it was only in December of 1989 that the land-holding companies liquidated their assets in favour of Lajos Holdings so that Lajos Holdings became the vendor of the Irish companies to the Baileys? That hadn't happened by the time you left or by the time you ceased to be working on a day to day basis if your statement is correct, isn't that right?

A. I would have worked on the Murphy companies right up to August 1990 when we parted company with them.

212 Q. I see. So that, and there is another error there in the fourth line of your statement, where you say "You were seconded to work in JMSE's office in Santry, Dublin in the year 1989. From memory this would have been from May 1989 to August/September 1989." That's an error. It should be

August/September 1990?

A. No, that's correct. I was seconded to work in the offices as the financial controller but I worked on other Murphy matters back in our own office in conjunction with Roger, up to the date of our parting of ways.

213 Q. Which was August of the following year?

A. Correct.

214 Q. So you became aware of the involvement of Lajos as a holding company, number one, and as the company involved in the sale of the land-holding companies to the Bailey Group after that transaction had been completed in December of 1989, is that right?

A. Well, that's not what I said. I would have been aware that Lajos existed and, as I said, it's an error. It shouldn't have been in there.

215 Q. So when you say in your statement that "When preparing the monthly accounts, I questioned what this money related to and was informed by Roger Copsey that it was a loan by JMSE to Lajos Holdings Limited, one of the Murphy property-holding companies, and this is how I recorded it in the books."

There is in fact no record in the books of you recording payment to Lajos Holdings Limited of £30,000, isn't that right?

A. That's correct, it's recorded as a loan to Grafton Construction.

216 Q. It is recorded as a loan to Grafton Construction?

A. Correct.

217 Q. In the books?

A. Of JMSE.

218 Q. Of JMSE, I see. And you are talking of this in the context of preparing monthly accounts, is that right?

A. Correct.

219 Q. So that we know that Grafton, not being a trading company, would not have monthly accounts, isn't that so?

A. That is correct.

220 Q. So it wouldn't have appeared in the monthly accounts of Grafton but you say it would have appeared in the monthly accounts of JMSE?

A. Correct.

221 Q. Now, where do you say it appears in the monthly accounts of JMSE?

A. It would be recorded in the monthly accounts of JMSE, there would be a loan to Grafton Construction and then if the loan was repaid within the month, which I think from memory I think it was, there would be monies in, monies out.

222 Q. Now you have had the opportunity, with Mr. Copsey over the weekend, of reviewing all the documents which were provided by your solicitors, namely five volumes of documents described as the Copsey Murray files and I'd like you to refer the Tribunal to any document which you say records in the monthly accounts of JMSE a loan by JMSE, allowing for your correction today, to Grafton Construction Limited?

A. Well okay. I maybe worded that badly. In preparing the accounts, that figure -- if the monies were repaid within the month, it wouldn't appear anywhere in the management accounts of JMSE.

223 Q. I just wonder where, in the documentation to support your statement, it exists and I will quote your statement again, "When preparing the monthly accounts, I questioned what this money related to and was informed by Roger Copsey that it was a loan by JMSE to Lajos Holdings Limited, one of the Murphy property-holding companies, and this is how I recorded it in the books."

A. It would appear on the cheque stubs.

224 Q. Very good. So you say there is a record in the books which you prepared when preparing the monthly accounts which show this as a loan by JMSE to Lajos Holdings or Grafton as you now say?

A. To Grafton.

225 Q. Would you like to refer us to that document please? You referred to a cheque stub?

A. Correct.

226 Q. That isn't a monthly account, is it?

A. It's used for the preparation of the monthly accounts. It's used then to write up the cheque journal which would have been done by the bookkeepers in Murphys, Jim Mitchell from memory.

227 Q. And you are referring here to documents which you recorded, isn't that right?

A. I would have recorded the cheque stub, yes, the cheque journal would have been written up by the bookkeeper.

228 Q. We will give you a booklet of documents which has been circulated already and Mr. Copsey has dealt with it at some length and at tab number 9, there are documents -- I think, Sir, perhaps the witness might consider this over lunch, given that it's now one o'clock, he will have an opportunity -- or ten past one I should say -- because I will be a little time with the witness and it might be an appropriate time to break.

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CHAIRMAN: Yes. I think it is important in this instance that the witness is being examined on a matter of considerable importance.

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MR. O'NEILL: The documents at tabs 9 and 10 will be

specifically dealt with. The others I think may well not concern you, but were relevant for Mr. Copey's examination.

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CHAIRMAN: Shall we say -- I will say twenty past two.

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THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

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THE TRIBUNAL RESUMED AS FOLLOWS AT 2:20PM :

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CONTINUATION OF EXAMINATION OF TIM O'KEEFFE BY MR. O'NEILL:

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CHAIRMAN: When you are ready, Mr. O'Neill.

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229 Q. MR. O'NEILL: Before lunch, Mr. O'Keeffe, I was asking you about your recording of the monthly accounts of JMSE and your statement to the effect that you had recorded the statement in question as a loan which JMSE to Grafton Holdings Limited or Grafton Construction, I beg your pardon, Grafton Construction Limited in the accounts and you instanced the cheque record as an instance of the keeping of monthly accounts.

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Now, firstly, are cheque stubs considered in the monthly accounts of a company or are they prepared contemporaneously with the writing of a particular cheque?

A. The cheque stubs would be written up when a cheque is requested. It is then subsequently written into a cheque journal.

230 Q. Yes.

A. Which forms one of the prime books of the company.

231 Q. Right. Well I am asking you whether the writing of the

cheque itself could properly be called the preparation of the monthly accounts of the company.

A. No, not in the preparation of the monthly accounts.

232 Q. You indicated that the payments in question were recorded in the cheque book. Did you intend to indicate in that that comprised some of the monthly recording of the accounts, that you were referring to in your statement?

A. Well when preparing monthly accounts, you would take the cheque book, the purchases ledger and the cash receipts book to prepare the monthly accounts from, together with stock control accounts and petty cash.

233 Q. Those items are the sort of evidence that would go into the preparation of the monthly accounts, isn't that right?

A. Correct.

234 Q. Yes. But when you were referring to the monthly accounts, I take it you were talking about the preparation of a sheet or document or ledger called the monthly accounts for the company, is that right?

A. Well, in preparation for that, you would have to finalise each of the ledgers.

235 Q. Yes. I appreciate that but I want to know if there's a document which comprised the monthly account for June of 1989, upon which one will find written by you an entry called loan by JMSE to Grafton Construction Limited. Is there such a document?

A. Well, there would be a set of management accounts for June 1989 which I would have prepared but what you will find is in the workings for those accounts, there will be an expenditure from the cheque payments book which would be a loan to Grafton and subsequently, there would be a receipt which would be a receipt from Grafton repaying that loan. So in the one accounting period, the loan was made and

repaid so it wouldn't appear on the balance sheet of the management accounts at the end of June.

236 Q. So, the answer then to my question is that there is no record as such in which it appears as a matter of being written into the record that there was a loan by JMSE to Grafton Construction Company Limited in the sum of £30,000. Is the answer to that yes or no?

A. The answer is yes, other than it appears in the prime books of the company.

237 Q. The prime books of the company themselves require interpretation, isn't that right, to --

A. Correct.

238 Q. To reach a conclusion that there was in fact such a loan?

A. Correct.

239 Q. Could I suggest to you a different thing, to suggest that one recorded a loan in the records of the company as opposed to the suggestion that one records details from which, if somebody carried out an analysis of those individual records, one might make the assumption or conclusion that there is a record of the loan. Do you understand the question?

A. Yes.

240 Q. You chose to express it in your statement, that whilst preparing the monthly accounts, you questioned what the money related to and was informed by Roger Copsey that "it was a loan by JMSE to Lajos Holdings Limited, one of the Murphy property-holding companies and this is how I recorded it in the books." Would you like to revise that statement?

A. No, well -- as I explained already, in preparing monthly accounts, you would have to complete each of the ledgers as part of the preparation of the accounts and to do so, I

would have had to have an explanation as to what those two cheques were for.

241 Q. OK. Would you tell me what ledgers you completed?

A. I didn't manually write up the cheque payments book, I would have written up the cheque stubs which would have been passed on to the bookkeeper to write up.

242 Q. Are you saying if we look to the cheque stubs, we will see that you recorded a loan from JMSE to Grafton Construction Company Limited, is that what one will see?

A. You will see an entry Grafton cash payment, which in my interpretation, that is an intercompany loan.

243 Q. That's your interpretation of it but it's not what you recorded. If you look to document number 160, which is the cheque payments stub, it's at tab 9, the first document there.

A. Oh yes, it's 118, OK. Yes.

244 Q. If you look to that and you will see that it says 8th June 1989, "Re Grafton --

A. "Re Grafton," yes.

245 Q. "(Cash) £10,000."

A. Correct.

246 Q. Where is there anything on the face of that document that says that that it is a loan from Grafton other than a payment either for or on behalf of Grafton?

A. Well in my interpretation of books of a company, that is a loan to Grafton, OK, I could have written it better, I could have said loan to Grafton but my understanding of that is that it is an intercompany loan.

247 Q. That's your interpretation or understanding of the transaction that you recorded here. Could I suggest that that involves you knowing what the transaction was rather than it being the conclusion that merely because one uses

the word "cash" it necessarily means there's an intercompany loan. Do you understand the question?

A. Well the word "cash" doesn't mean that but the word "Grafton" means that.

248 Q. So the recording of the word "cash" could mean something other than a loan between the companies, isn't that so?

A. Correct, it could, but in this instance, it doesn't.

249 Q. Fine. So when you say that you recorded it as a loan, this document certainly is not one of the documents which records it as a loan, isn't that so?

A. Well, this document does record it as a loan. That's what this cheque stub indicates.

250 Q. This cheque stub indicates that it's a payment for cash?

A. Correct.

251 Q. It does not say that it's ever --

A. On behalf of Grafton.

252 Q. Where does it say that?

A. "Re: Grafton".

253 Q. It means there's a connection with Grafton?

A. Correct.

254 Q. There is a cheque for cash that has a connection with Grafton but no further explanation?

A. Well Grafton, to anybody writing up the cheque payments book would assume or would know that that is an intercompany balance.

255 Q. But you are the person, Mr. O'Keeffe, who chose to use the words "I recorded it in the books" and I am suggesting to you that this is not a record in the books of there being a loan. It is a record of there being a transaction that had a connection with Grafton in which an amount of cash was paid and nothing more, isn't that so?

A. Well, that's your interpretation of it, I have to disagree.

256 Q. I see. Some other accountant, as you know, who is going to come in and perhaps audit these books would look at this cheque stub and could I suggest would be none the wiser as to how to treat it in the accounts of the company after looking at this document other than to know that there was a cash transaction, isn't that right?

A. No, I disagree. I mean the books of JMSE, there's a perfect audit trail of this transaction and if I was recording this transaction today, or yesterday, I would do it exactly the same. There's a perfect audit trail from all aspects and if there was any confusion at the time, the bookkeeper, Jim Mitchell, would have asked me exactly what I meant by that and in the cheque journal he has written down Grafton Construction and it's analysed on the cheque analysis as an intercompany loan.

257 Q. Where is the cheque analysis? Are you talking about the ledger entry for JMSE which is shown at page -- it's the journal entry, the typed one, is that right?

A. No, it's the handwritten schedules, it's the listing of all the cheques.

258 Q. The listing of the cheques?

A. That is the cheque payments book.

259 Q. You will find in the bottom right-hand corner a number for the document and if you could just draw my attention to that, I would be grateful, the page number is on the bottom right hand corner. 167 has been mentioned and I just wonder what that is.

A. Correct, 167.

260 Q. 167 is the cheque journal?

A. 167 is the page reference and it's under --

261 Q. I see the two entries for the 8th June. This is a journal that has been referred to before as the cheque payments

journal, isn't that so?

A. Correct and if that was extended on, that would be, that's an A4 page but that's an A3 page in effect and further on, continue on, it would be analysed under intercompany balances.

262 Q. If you turn to the next page, that's 168 and if you turn to the page after that, that's 169?

A. Yeah.

263 Q. And that document has been provided as the cheque journal for JMSE for the month of June 1989?

A. Correct but it's incomplete.

264 Q. It's incomplete?

A. Yes, the original would be an A3 sheet, it might even extend further, depending on the number and variety of analysis that you would need. The first column there is creditors which in normal circumstances take up the bulk of the cheque payment entries but anywhere if there's not a corresponding amount in that column, it would be analysed further out across that sheet.

265 Q. Is that where it says 'credit' on the side of it there? It extends further beyond that?

A. Depending on -- with computerisation now, this kind of working wouldn't exist at the moment but in days gone past, it could even run to three or four pages of A4 analysis. Look, a cheque for wages, it doesn't appear there in the analysis so you would have to look at the original documentation.

266 Q. The first thing I am going to ask you about this document, Mr. O'Keefe, this is not a document completed by you, is that right?

A. That is correct.

267 Q. So when you talk of recording certain matters, you didn't

record it here?

A. I recorded it on the cheque stub.

268 Q. You recorded it on the cheque stub. What other document did you record it on, if any?

A. In the books of JMSE?

269 Q. We are not talking about any other company.

A. No, no.

270 Q. Because you told us you didn't record it in the monthly accounts of any other company.

A. Correct, so nowhere else.

271 Q. So when you were talking about having recorded this in the books of JMSE, what you intended to say was that your name appears on two cheque stubs dealing with this transaction, is that right?

A. Correct, which, in my view, formed part of the books of the company. They formed the records.

272 Q. Hardly the monthly accounts of the company, Mr. O'Keefe?

A. No, well -- what I said was when preparing the monthly accounts, I asked what these payments were for to enable me complete the accounts.

273 Q. Does it follow from that that your query arose when you were preparing the monthly accounts for June of 1989?

A. I am not a hundred percent sure. It could have been prior to that. It could have been when Jim Mitchell wanted to write up the cheque journal. It could have been --

274 Q. These are your words, Mr. O'Keefe, not mine and I am asking you to explain them. "When preparing the monthly accounts, I questioned what this money related to." I am asking when it was that you were preparing the monthly accounts for June 1989.

A. Well, as the company accountant, the preparation of the monthly accounts is not a single day job. It happens

throughout the full month. Every record you make as an accountant in the company is with a view to preparing the monthly accounts.

275 Q. The only account that you prepared was when you wrote the cheque?

A. Correct, but I would have instructed Jim Mitchell to write up the cheque journal and I would have recorded the cash receipt in the cash receipts book when it came in in the same month. So I take your point, writing up the books, I didn't write up all the books but that wasn't my function.

276 Q. I am inquiring as to when it was you, in effect, made the inquiry as to what this money related to. What you have given is a statement to the effect that you did so when you were preparing the monthly accounts and I am asking you whether you would prepare monthly accounts at month's end or otherwise?

A. At month's end I would have prepared the physical accounts.

277 Q. So is the probability then that you questioned where this money, what this money related to, towards the end of June or the beginning of July of 1989?

A. Or as I have said previously, if Jim Mitchell had come to me saying I am writing up the cheque journal and there's the two entries missing, I would have rang Roger at that point in time and found out what the entry was.

278 Q. But when was it?

A. I just cannot recall that.

279 Q. Why do you relate it to the preparation of the monthly accounts if you cannot recollect when it was?

A. Well I would have to have it completed before I prepared the monthly accounts so it could be any time from the 8th June to the date I completed the accounts.

280 Q. Well then I am just curious as to why you use the words

"When preparing the monthly accounts, I questioned what the money related to." I am suggesting that that carries the inference that at the month's end, you set about establishing what this particular payment was and that upon receipt of the information which you received, you then went to the accounts and you made the records or entries in the books. That's what that sentence suggests.

A. But as I have explained previously there, preparing the monthly accounts is a whole month's work. Every entry you make is in preparation of the monthly accounts.

281 Q. So what you really meant to say that at some stage, that month after completing the cheque stub, I entered this as a payment to cash on the cheque stub?

A. No. I would have entered the payment to cash on the day I wrote the cheque.

282 Q. Right. Well are you distinguishing that entry from the subsequent preparation of the monthly accounts in this statement?

A. Well no, as I said, all entries are in preparation of the monthly accounts. I subsequently would have went back to Mr. Copsy to find out how to analyse it and was it to be an expense in the monthly account of JMSE or what was it? And I was informed it was a loan.

283 Q. So that took place some weeks after the event, is that right?

A. Not necessarily. It took place sometime between the 8th June and the preparation of the accounts which would have been early July.

284 Q. If Mr. Copsy had informed you before you ever collected the money that this was to be an intercompany loan and so treated in the accounts, it would not be correct, I suggest, to state that "whilst preparing the monthly as

accounts, I questioned what this money related to" because you would already have been made aware prior to the collection of the money how it was to be treated in the accounts.

A. Correct.

285 Q. Do you understand the question?

A. Correct, but I wasn't made aware prior to collecting the money as to what it was for.

286 Q. You were made aware how it was to be treated in the accounts.

A. When I subsequently asked him, yes.

287 Q. When did you subsequently ask him?

A. As I said, sometime between the 8th June and the day I prepared the accounts.

288 Q. Well he has indicated to the Tribunal that his surmise and recollection is that you must have contacted him to obtain clearance to obtain money and that he would have told you that this was to be treated as an intercompany loan and that you should collect the money. Do you understand that?

A. Yes, that could be correct and on the 8th June, I might have wrote it into the books.

289 Q. I am suggesting to you if you did know that on the 8th June, would you not have written this statement in the form which you did because it creates an entirely erroneous impression that it was towards month's end that you first questioned what the money related to and you were then informed by Mr. Copsey that it was to be treated as a loan. Do you understand?

A. Well, as I said the preparation of the monthly accounts is every entry in the books. That's my understanding of it.

290 Q. You equally say your only entry personally compiled by you was the cheque entries, the two cheque stubs, isn't that

correct?

A. Correct.

291 Q. So when you talk of record in the books, it's limited to these two documents which we have.

A. Plus the subsequent receipt.

292 Q. Subsequent receipt. Who is the receipt from?

A. From Denis McArdle.

293 Q. From Denis McArdle?

A. Well from his office but it was a refund from Grafton Construction of the £30,000 which was lodged to JMSE.

294 Q. This was the letter of the 13th which enclosed the cheque?

A. Correct.

295 Q. Which was a cheque which he had countersigned in favour of JMSE?

A. That may be the case, I am not sure.

296 Q. Do you remember that or you don't remember that?

A. I don't remember that.

297 Q. So if we look at these two cheque stubs then, we know that they are from the cheque account of JMSE at AIB in Talbot Street, isn't that right?

A. Correct.

298 Q. They are in sequence, they are both identical, save for the amount which is 10,000 in one instance and 20,000 in the other instance, isn't that right?

A. Correct.

299 Q. I take it that to that point and perhaps indeed since that point you, as a chartered accountant, have not been involved in obtaining large sums of money from banks?

A. No, correct.

300 Q. Have you ever gone down to a bank on behalf of a client and counted out bundles of hundred and fifty pound notes running to thousands and thousands of pounds?

A. No, never.

301 Q. It's unlikely to be something you'd forget even if you had to count out the money which I take is not usually a function done by a chartered accountant, is that right?

A. It's not normally done by me anyway.

302 Q. I am sure normally there would be a clerk or cashier if one was in a cash business would rapidly go through a bundle of notes and be able to reconcile the amounts, isn't that right?

A. Yes.

303 Q. So this transaction apparently had two phases to it, is that right, one was the preparation of cheques and the other was the collection of cash?

A. Correct.

304 Q. And we know that you wrote the cheque stubs and presumably therefore you also wrote what is on the face of the cheques?

A. Yes, I would assume that.

305 Q. The cheques could have been made payable to Grafton Construction Company Limited, isn't that right? They were JMSE cheques, they were for the benefit apparently of Grafton Construction Company?

A. Correct.

306 Q. Yes.

A. But at the time, I was unaware of that, to the best of my knowledge and that's why I put down cash. My recollection is both those cheques were made payable to cash.

307 Q. You are saying when you wrote the two cheques, you didn't know what they were for or who they were for?

A. That's correct other than they were made out to cash.

308 Q. Well then why did you write "Re Grafton" if you didn't know what they were for?

A. That's on the cheque stub. As I have explained, I contacted Roger Copsey, one, to ensure that this was in order to collect and two, to find out what it was for and I cannot be a hundred percent sure whether in that telephone conversation he told me what it was for or it was a subsequent telephone conversation.

309 Q. But he must have told you something that led you to believe that this was a cheque for Grafton? You so recorded it on the face of the cheque stub.

A. Correct, when --

310 Q. In the normal course you would record on the cheque stub what was recorded on the cheque itself is that so?

A. Well, what's recorded on the cheque stub is cash and the reference is "Re Grafton" and that is what would have appeared on the cheque cash.

311 Q. Well was there any reason why it was an intercompany loan or if it was a payment for Grafton that it shouldn't have had Grafton Construction Company, £10,000 written on it?

A. Not if the purpose of the cheque was to cash it. If Grafton Construction Company Limited appeared on, it would need to be lodged to that account.

312 Q. Or endorsed by Grafton Construction Company in favour of somebody else?

A. Correct.

313 Q. In which case there'd be evidence there was a payment to Grafton and Grafton's accounts would presumably deal with the endorsement?

A. Well no, I mean, but there's perfect evidence here that it's in relation to Grafton, there's a perfect audit trail in JMSE.

314 Q. There's a perfect audit trail that establishes that cash left not where it went or what was it for. Do you call

that a perfect audit trail?

A. There is a perfect audit trail. It records there was a loan given to Grafton Construction Company Limited by JMSE and refunded by Grafton Construction Limited.

315 Q. The deduction, I suggest, is that because there was a payment out and a return by Grafton, that it must have been a loan, that is a deduction, isn't that right?

A. I was informed by the financial director of the company that it was an intercompany loan.

316 Q. So that on the face of the cheque, you say the cheque was made out to cash?

A. Correct.

317 Q. And you say that there was also a second cheque made out to cash but for a lesser sum?

A. Yes, there was two cheques, one for 20,000 and one for 10,000.

318 Q. You went down to a bank to collect cash?

A. Correct.

319 Q. Before doing that of course you had to have the cheque signed by the signatories. You had prepared the cheques for signature but you are not a signatory.

A. That is correct.

320 Q. How many signatories were there on this account?

A. To my knowledge, there would have been Mr. Gogarty, Frank Reynolds, Gay Grehan --

321 Q. Roger Copsey?

A. He may have been, yes, I am not sure if there was anyone else.

322 Q. Well, do you remember when you prepared these cheques, where you prepared them and where you brought them to for signature and where and how they were signed?

A. My recollection is that I prepared them in the accountant's

office in Santry, which was where I was situated and the cheque book would have been in my drawer under my control. I then, from memory, went to the boardroom, gave the two cheques to James Gogarty, where he was, for signature.

323 Q. So you didn't have them signed by both signatories in your possession, you gave them to Mr. Gogarty?

A. Correct.

324 Q. And you don't know which of the signatories signed it, whether it be Mr. Gogarty, whether it be Mr. Copsey, whether it be Mr. Reynolds or whether it be Mr. Grehan but you do know that it requires at least two of them in order for the cheque to clear, isn't that right?

A. That is correct. But from memory, it was Frank Reynolds and Jim Gogarty who signed the cheques.

325 Q. And where is this memory coming from at this point in time?

A. Both men were present at the day, Mr. Copsey wasn't on the premises and I can't recall if Mr. Grehan was there.

326 Q. But you recall preparing these two particular cheques?

A. Correct.

327 Q. Did Mr. -- did anybody tell you why this was that they wanted two cheques prepared for cash?

A. No.

328 Q. But you understood the nature of the transaction to be that you were to present one of them for cash and you were to retain the other, is that right, or prepare the other --

A. No, prepare the other. I never saw the other cheque again.

329 Q. So they could have been for entirely separate purposes, isn't that right?

A. They could have been, yes.

330 Q. One could have been for 10,000 expenditure to A and the

other for 10,000 expenditure to B?

A. Well, 10 and 20, yes.

331 Q. 10 and 20.

A. They could have been.

332 Q. And in the normal accounting and audit procedure then, one would always distinguish between the two. One wouldn't necessarily assume that the 10 and 20 represented one £30,000 transaction, isn't that right?

A. That is correct.

333 Q. Unless one was specifically told that this is all the one transaction, is that right?

A. Correct, but that would be recorded in the books of Grafton Construction as that's where the money would be expended from.

334 Q. Recorded in the books of Grafton Construction?

A. Correct.

335 Q. But any recording of it in the JMSE accounts should record it as 10 and 20, is that right?

A. 10 and 20 and both of them are referenced intercompany loan Grafton.

336 Q. From your point of view, the 20,000 could have been independent of the 10, is that right?

A. It could have been, yes.

337 Q. And so the 10 might require a separate accounting record from the 20, isn't that right?

A. Yes, in the books of Grafton Construction. It has a separate accounting entry in the books of JMSE. It's the two cheques are recorded separately in the cheque payments book.

338 Q. Because there are two cheque numbers?

A. Correct.

339 Q. They have to be recorded because you are recording what

happened a particular cheque rather than one particular transaction?

A. Correct.

340 Q. So this document, or these cheques, having been prepared by you, you were not there to witness the signature of them, is that right?

A. That is correct.

341 Q. And whilst you say that Mr. Reynolds was there with Mr. Gogarty, you are not clear as to whether or not it was Mr. Reynolds who in fact accompanied you to Talbot Street but you believe that he might?

A. I believe that it was Mr. Reynolds. I couldn't be one hundred percent sure but on probability, I'd say I am 90 percent sure that it was him.

342 Q. That I take it would equally be unusual because you have told us that cheque payments, cheque lodgements were generally made either by courier or some member of the accounting staff but certainly not somebody in, not the future managing director or anybody of director status, is that right?

A. That is correct.

343 Q. A further indicator, I take it, to you that this was a somewhat unusual transaction?

A. No, this was an extremely unusual transaction, yes.

344 Q. And did you do anything about recording the fact of this transaction from your own purposes? Here you had somebody wishing to take cash, in effect, out of one or other of these related companies for a purpose of which you were utterly unaware, is that so?

A. That is correct but the request came from the chairman of the company who, in my belief, at the time was the most senior Murphy executive on the premises, was treated by

every one as the boss man. I confirmed it with the financial controller who I had worked for and both of them said it was OK.

345 Q. But you knew of course that Mr. Murphy Snr was the most senior man and you had met him in the capacity where he was in dispute with former directors, isn't that right?

A. That is correct but Mr. Murphy Snr was based in Guernsey.

346 Q. Yes. But he was in Dublin to remove the previous board of directors in circumstances where you learned that there was certain acrimony between the parties which resulted in legal action and a legal challenge only twelve months before this incident, isn't that right?

A. That's correct.

347 Q. But you yourself still felt you should be a party to this extraction or removal of cash from the accounts without keeping any memo or attendance of that circumstance, isn't that right?

A. Well I have recorded it in the books and it is perfectly recorded. If this happened tomorrow, I would record it exactly the same.

348 Q. When you went down to get the money, somebody had already made the arrangement, is that right?

A. That is correct.

349 Q. But you obviously were not present or you would have recorded who it was who did make the arrangement for the money?

A. That is correct.

350 Q. You were with one of the signatories certainly of the cheque at the time you went into the bank, is that so?

A. My recollection is I went into the bank on my own.

351 Q. I see.

A. Mr. Reynolds waited in the car outside, which was parked,

if you know Talbot Street, it's on the Gardiner Street side on the far side of the lights because parking was a problem.

352 Q. Can you remember what he was driving?

A. My recollection is that it was a Ford Sierra. It was sort of a company car.

353 Q. Had you ever been in this bank branch before on the business of JMSE or any of the related companies?

A. I may have been in it but if so, once or maybe twice. Not as a regular visitor in the bank, no.

354 Q. Did you know any member of the staff of the bank by name, personal level or anything of that nature?

A. No.

355 Q. You say you were taken to a room and an amount of cash was on the table already, is that right?

A. Yes, that is correct.

356 Q. Was any request of you made to complete any documentation?

A. I can only assume that I signed for it. I have no recollection of that but I am sure the bank wouldn't let me walk out with £20,000 if I didn't sign for it. I also make the assumption that I brought the cheque with me and presented it but again, I have no direct recollection of that but the facts must assume that.

357 Q. You don't remember handing over any cheque?

A. No.

358 Q. And equally, though you counted the sum, you don't remember what the sum was?

A. Well, when first asked, my honest recollection is no but from the evidence being presented and from relooking at my workings, I am confident that it was £20,000.

359 Q. It could have been £30,000, for example?

A. Well then I would have had to bring two cheques and I

failed to see what reason there would have been to write two cheques.

360 Q. Well you had written two cheques?

A. Yes, but if I was going to go to the one bank to cash it, there would be no reason to write two cheques.

361 Q. Unless there was other cash available to make up 30, for example?

A. Sorry, I don't follow.

362 Q. Unless there was other cash in JMSE available?

A. Sorry, I --

363 Q. That you wanted to make up £30,000 in cash on a particular date and if you went to the bank and obtained 20, there could still be 30 on the basis of some other intercompany transaction having produced £10,000 in cash, is that right?

A. Well in my time in JMSE, there was no cash other than maybe £100, £200 a week petty cash. I never came across any other cash balances of any description or kind.

364 Q. So having counted out the cash, you went back to the offices of JMSE with the cash, is that right?

A. That is correct.

365 Q. And Mr. Reynolds had accompanied you there and back, isn't that right?

A. That is correct.

366 Q. He was present with you when you arrived back in JMSE therefore?

A. Back on the premises, yes.

367 Q. And is there any particular reason why you didn't give the money to him but gave the money to Mr. Gogarty as you remember?

A. Well, Mr. Gogarty requested the money.

368 Q. Yes.

A. And it was to him I was going to give it back to.

369 Q. And do you remember where it was you met him in the building?

A. I met him in the boardroom.

370 Q. He had waited for you, is that right?

A. Well he was still there, yes.

371 Q. Do you know of any reason why Mr. Gogarty could not have accompanied Mr. Reynolds to the bank and received himself the £20,000 rather than sending you to come back to him as he waited for the money?

A. I have no answer to that, other than as an elderly man, he may have felt uncomfortable going into the bank to draw out £20,000 in cash.

372 Q. He drove himself at that time?

A. Yes, as far as I understand.

373 Q. He could have driven Mr. Reynolds or indeed driven you there?

A. He could have but I think if you were to know Mr. Gogarty, if you had someone to do something for you, why do it yourself?

374 Q. Yes. And the relationship that he had in the premises at that time as I understand it, and you may correct me on this, is that he was engaged in the preparation of a claim against the ESB for extras which involved liaising with a Mr. Merry and others and most of his work was done at his home rather than in the offices of JMSE during the months coming up to June 1989, is that so?

A. That would be correct but on most days, if not every day, he would visit the premises but it might be for half an hour, twenty minutes. He was there on and off but yes, I would agree with you.

375 Q. Now, you were none the wiser, after you had given Mr. Gogarty the money, as to where the money was to go?

A. That is correct.

376 Q. You knew that this highly unusual and peculiar transaction had taken place and was that something which ever became a subject of some speculation, discussion, rumour, hearsay or anything else of that nature whilst you remained as a seconded employee of Copsey Murray in the premises of JMSE?

A. No.

377 Q. There was no occasion in which you heard it mentioned to, for instance, John Maher or Gay Grehan or any other individual?

A. No.

378 Q. You never heard any reference to any payment to Ray Burke, or anybody of that nature?

A. No.

379 Q. You knew, I take it, from your perusal of the accounts of the company, that this money did not feature as a payroll payment to any member of staff, isn't that right?

A. That is correct.

380 Q. You knew that it was a payment which did not feature as the cost of acquisition of stock or anything of that nature, isn't that so?

A. No, I was aware it was treated in the books of JMSE as an intercompany loan. It was recorded as that and that was the end of it.

381 Q. Well it wasn't quite the end of it for you because amongst the functions you performed for JMSE, you also had a function in relation to the related companies and the preparation of financial documentation for them, isn't that so?

A. I had a role in various dealings with the other companies, not in the preparation of financial documents.

382 Q. OK. Well, the document at page 190 of the documents

before you, is that a financial document?

A. No, that's more of a memorandum from myself to Roger Copsey explaining where the cash went to on a specific transaction or a series of transactions.

383 Q. And do you have difficulty in describing that as a financial document? It seems certainly to me as a layman that it sets out a long series of figures and against each figure, there is an identifying feature which I would expect in a financial document.

A. Well, it's not a financial document in terms of being a financial document of any particular company. It's a record of a cashflow on a particular transaction.

384 Q. And you say that such a document doesn't fall within the description of what you would call a financial document, is that your evidence?

A. Correct.

385 Q. I see. Well, if we turn to the document which is document number 170, page 170, do you see that?

A. Yes.

386 Q. You have to read that by turning it on its side. That's a document firstly that you might confirm having seen before?

A. Yes.

387 Q. And it's a document which was prepared by Mr. McArdle who was the conveyancing solicitor for the Forest Road lands, isn't that so?

A. Correct.

388 Q. And in that document, he records the receipt of monies and the disbursement of those monies, isn't that so?

A. That is correct.

389 Q. And this was a document which was furnished to your firm as the accountants for the Grafton Construction Company Limited, isn't that so?

A. That is correct.

390 Q. And if we turn to the document and in particular to the left-hand column of that document, there is recorded there a series of transactions in the year 1989 and in the immediate left-hand margin, there is a date and one then moves across the page to see how it was treated and both as regards recipient and amount, is that right?

A. That is correct.

391 Q. I think we have in fact the wrong document on the screen.

A. No, that's the document I am looking at.

392 Q. Maybe it is right but it's a very poor copy. You have a hard copy in any event in front of you, Mr. O'Keefe?

A. I have, yes.

393 Q. If we run through the items where there is reference to JMSE. Do we see that the first document on the 28th March, JMSE £80,258.

A. I see that.

394 Q. Then the next item is June 13th, JMSE £30,000?

A. I see that.

395 Q. The next item, August 3rd, JMSE £60,000?

A. I see that.

396 Q. As against that, there are other entries in respect of other companies within the group, in particular Lajos Holdings Limited, where there is an entry for £300,000 on the 16th August, isn't that right?

A. That's correct.

397 Q. Now, if we turn back then to the document at page 190, that document is looking at essentially the same transaction as is recorded in the solicitor's documentation but it is looking at it from an accountant's point of view effectively, is that so?

A. No, I think that document you are looking at on page 190

000083

would have been prepared before the solicitor had finalised his document and it was prepared for a particular purpose.

398 Q. Yes.

A. And the purpose was to tell Mr. Copsey how much money from the sale of the lands was available.

399 Q. But to learn of that, he would have to know what money had been directly expended by the solicitor out of those funds, isn't that right?

A. Correct.

400 Q. And how was he to know what funds the solicitor had expended unless he had been in contact with the solicitor about it or you had?

A. Well we would have had various correspondence from the solicitor, letters, memos, recordings of phone conversations in relation to the expenditure made by the solicitor on behalf of the company, which is where my document 190 would have been prepared from. Quite obviously the solicitor's document, which is later on, is much more comprehensive. He has all the expenditure and all the receipts in there.

401 Q. Now, how did you treat the matters which were set out as JMSE payments in the Grafton accounts, in your document?

A. Well my document isn't the Grafton accounts.

402 Q. You described it in your document, I will ask you now to deal with how you attributed the JMSE payments or what's described as JMSE payments?

A. Well the first one that is dated March 28th, JMSE, 80,258. I have treated that as a cost.

403 Q. Yes.

A. Planning permission, although in hindsight, it was probably more levies and contributions than planning permission but

I recorded it as that for whatever reason at the time.

404 Q. Sorry, just to expand a little on that, where did you receive the information that this particular amount had been attributable to the cost of the planning permission?

A. Well we would have had various correspondence in relation to payments made, levies, etc.

405 Q. Well --

A. I mean --

406 Q. Can you refer specifically to this correspondence? You have had the five books of correspondence and documentation furnished to you on your files and can you identify where it is that you received a breakdown of these individual amounts other than through this document on page 170 that I have referred you to already?

A. Well I'd have to get the files, the correspondence files at that point in time.

407 Q. Right.

A. To trace where I got the figures for this document. Quite clearly if I had the document prepared by Denis McArdle, my document would be somewhat different in terms of, I mean, he has, there's interest accrued and there's other payments that I haven't made yet made and that's obviously because I wouldn't have had that information at the time of my preparation of this document.

408 Q. So you say that there's a document in any event that indicates the £80,258 is for planning permission?

A. Well, I may have picked it up that way. It may be for the payment of levies or the payment of contributions.

409 Q. Yes. I mean --

A. Yes, there would be.

410 Q. There are legitimate costs?

A. I appreciate that.

411 Q. So let's not qualify it. This was down as planning permission as you saw it?

A. Correct.

412 Q. And was that because you believe that this was a charge incurred in relation to planning permission?

A. In this document, this was an actual disbursement of funds.

413 Q. Yes, so you had to indicate where it was that the funds went?

A. Correct.

414 Q. Right. And they went, in that instance, to planning permission as far as you were concerned?

A. That is correct.

415 Q. Now, that was JMSE, the first of the JMSE payments?

A. Correct.

416 Q. The second thing --

A. The June 13th one.

417 Q. The second sequence is the payment in the --

A. June 13.

418 Q. June 13th.

A. Correct, yeah.

419 Q. And how do you deal with that?

A. I have it under the heading of costs, if you like to raise the screen.

420 Q. Yes.

A. And I have left it blank.

421 Q. We will just move to costs, Mr. Kavanagh, please.

A. If you move it to the side where you can -- yeah.

422 Q. So we have costs in the left-hand column?

A. Correct.

423 Q. We then move to the right and we have planning permission?

A. Well, planning permission --

424 Q. I am just describing what's on the screen for the record,

Mr. O'Keeffe.

A. Sorry, apologies.

425 Q. We have costs on the left-hand side, we move to the next column on the side and we have planning permission. We move further right and there are two dots. We move further right and there's --

A. Sorry, there's not two dots there, that's a dash.

426 Q. A dash, JMSE, and then we move across to the figure, £80,258.

A. Correct.

427 Q. Now in the next line, underneath costs, there is a blank, isn't that so?

A. Well, opposite costs, there's a colon which indicates a list.

428 Q. Which indicates a list, I see.

A. If you want to look up --

429 Q. You better identify the colon there?

A. If you see opposite proceeds, there is colon and then there is deposit balance draft. Then we come down to costs, there's a colon, then there's planning permission, a hyphen to indicate who paid it, which was JMSE. Then there's a blank because I didn't know what the £30,000 was expended for. I knew it had come from JMSE and you can follow that document all the way down and you know, similar features run through it.

430 Q. There is a colon in front of JMSE, is that right?

A. No, this is a hyphen.

431 Q. Sorry, a hyphen, again in front of the JMSE so what you are indicating is that where we have planning permission there and where we go across and where there is one entry for JMSE, that one must distinguish that from the entry immediately below it because it doesn't refer to planning

permission, is that right?

A. Correct.

432 Q. In the normal course you would list similar items, one following upon the other and under the same description, isn't that right, without the necessity of writing planning permission on each occasion, is that right?

A. Well I would have put a narrative like D-O, Do, which would indicate that it was similar but there is a narrative there because it wasn't similar. It was specifically left blank because I didn't know who it was for.

433 Q. You told us you knew it was an intercompany loan?

A. That is in the books of JMSE.

434 Q. Yes.

A. Which is quite correct. This is a cash account between Reliable and Grafton setting out where the monies were expended.

435 Q. But you knew that it was received as a loan, isn't that right?

A. But this £30,000 is the repayment of that loan.

436 Q. The repayment of the loan?

A. Correct.

437 Q. So when you say you didn't know what it was for, you did know what it was for, it was repayment of a loan from JMSE, isn't that right?

A. Well, no, that's not correct.

438 Q. Did you not know that it was the repayment of a loan from JMSE?

A. It -- I would have known that it was the same £30,000 but in the books of Grafton, it has to go against the specific cost heading or disbursement heading. And in this circumstance, it's not -- the money was expended by Grafton.

439 Q. So?

A. So I didn't know what it was for. I left it blank.

440 Q. You knew that that money had been expended as the repayment of a loan from JMSE. That's what --

A. Correct, and that's why the dash says JMSE. That's where the money came from.

441 Q. Why does it not have the words "Repayment of loan" in front of it?

A. Because I was hoping to find out what it was for at some future point in time and fill it in.

442 Q. You did in fact record other repayments of intercompany loans, isn't that right?

A. Correct, as disbursements.

443 Q. Further down the document as a disbursements, you had repayment of an intercompany loan from General Agencies of £300,000?

A. Yes, that's correct, that would have been an intercompany loan reflected in the financial accounts of both those companies and that would have been a movement of funds.

444 Q. Surely this is a movement of funds at least, Mr. O'Keeffe?

A. In the books of Grafton, it's an expense, it's a cost in Grafton.

445 Q. It is a mystery disposition of monies of which you were unaware, is that right?

A. That is correct.

446 Q. Which could have been simply entered with a question mark after it or before it to say this is a particular payment of which I do not know what it was about. You could have done that.

A. Correct, in hindsight, but this document was not prepared for that purpose. This document was very specific. This was an in-house document from me to Roger to tell him how

much money was left. The narrative that is used here is an aide memoir for myself, for my own purpose.

447 Q. Somebody was to view this document, is that right?

A. Well Roger Copsey was to.

448 Q. And Roger Copsey did view this document?

A. He did.

449 Q. And he viewed it in the witness-box, two, three days ago and having reviewed it, his interpretation of it, as I suggest anybody else's interpretation of it is, that planning permission includes two payments, one which we can identify as the £80,258 and the other he can identify as £30,000. That is the conclusion that he drew from the document on that occasion and I suggest is the conclusion that anybody else reading the document would draw from it?

A. Well I don't think Mr. Copsey drew that conclusion and that is my document. I can only tell you what I understand from it and --

450 Q. Right.

A. You know, there is a -- I did not know what that payment was for so there's no reason I would make a quantum leap to put down planning.

451 Q. Firstly, if you had known what it was for, I suggest you would have written it exactly as we see it on that document there, planning permission, two items under that heading, one 80,250 and the other £30,000, isn't that how you would have recorded it had you known what it was for?

A. If I had been told --

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MR. CUSH: Sorry --

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MR. O'NEILL: I am asking the witness a question and I would like an answer.

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CHAIRMAN: The witness must answer the question and you can  
debate whether it's relevant or not.

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MR. CUSH: I don't have any objection to the relevance of  
the question. I have objection to the premise of the  
question because the premise of the question assumes a  
certain finding by you, Sir, in your report and that's  
entirely what Mr. -- Mr. O'Neill knows that.

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MR. O'NEILL: That is not so, Sir, I have asked the  
witness specifically had he known that this was the £30,000  
payment for planning, would he have entered it as it  
appears on the document? That is a perfectly  
straightforward --

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MR. CUSH: Yes, I am sorry, that question put that  
hypothetical way, if he had known it was for planning, is  
that the way he would have entered it? That question is  
fair. If I misunderstood Mr. O'Neill's question the  
mistake is mine but I don't recall him saying if it had  
been provided.

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CHAIRMAN: On the premises that that is the question.

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MR. WALSH: On behalf of Mr. Burke, I heard Mr. O'Neill  
say if he had known what it was for, would he have entered  
it as £30,000?

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MR. CUSH: Yes.

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MR. WALSH: That's assuming a finding.

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CHAIRMAN: Whatever else, we haven't got to that point.

We are a long way.

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MR. CUSH: That's precisely the objection I think I share with My Friend and maybe Mr. O'Neill would like to clarify his position.

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CHAIRMAN: I would agree, it was perfectly clear --

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452 Q. MR. O'NEILL: If there had been a payment of £30,000 for planning permission, I suggest to you you would have recorded it exactly as it appears on the document in front of you, namely planning permission two individual items, one £80,250 and the other £30,000, is that so?

A. No. If the second one was planning permission, I would have either written planning permission again or put D-O underneath it in the middle to indicate it was a similar item being carried down.

453 Q. You believe that Mr. Copesey may well not have interpreted the document as being one which recorded planning permission payment of £30,000 and I have to suggest to you that his evidence, on resumption on the day after, was that on the day that this document was produced, he rang you and he discussed a document which showed that £30,000 had been paid for planning permission. Do you remember a phone call from him to that effect on his mobile phone from this Tribunal?

A. I do.

454 Q. In that didn't he tell you he had just seen a document which recorded a payment of £30,000 for planning permission and how was that to be explained? Is that what he said to

you?

A. He said to me he had seen a document that looked as if it was recording a planning permission but he said it couldn't be because he didn't know it was planning permission and he hadn't told me and there was no way I could have known.

455 Q. So that you would accept that somebody of his experience on looking at such a document could reach the conclusion that in fact what it was recording was that there were two payments for planning permission?

A. Well --

456 Q. Is that so?

A. I disagree.

457 Q. You disagree? So what you are saying is that he should have immediately realised that this did not mean what it appears to mean, isn't that so? He should have had an explanation immediately for it, the explanation you are now inviting the Tribunal to --

A. I think when he looked at it, he said "there is a blank and it indicates that I didn't know."

458 Q. Certainly that was not his evidence. This documentation goes on, it records individual fees to certain individuals. It records disbursements. It records intercompany loans, isn't that right?

A. Correct.

459 Q. And the first of the intercompany loans is an intercompany loan to Lajos of £400,000, is that right?

A. I can't actually make that out --

460 Q. I think it is, if you look at it in the hard copy rather than the screen --

A. It's very difficult to see. It's a very poor copy.

461 Q. It is a poor copy and it's £400,000 and if you relate it back to -- I have a more legible copy. (Document handed

to witness.) I will accept the point that we are dealing with the points costs firstly, you move to planning permission, JMSE £80,250. Next line JMSE £30,000. Next line, fees: And do we have a hyphen there again?

A. No, that's a colon which indicates a list.

462 Q. Fees, colon, which indicates a list as you say.

A. Yes.

463 Q. And Copsey Murray £16,500, sale of land - is that 2,000?

A. That's 20,600.

464 Q. Sorry, £20,640. I think your copy is a little clearer than mine. I have a clearer copy now. And then E and W, Ernst and Whinney, release of title deeds, 3,365. Kent Carty, search, £15, Jack Manahan, £310.

Next is mortgage release, £342.50. They are all categorised in a series of documents, isn't that right?

A. Yes, they are all under the heading "Costs" .

465 Q. Right. If we move down then under 'Disbursements'.

Again there's a colon.

A. Correct.

466 Q. Intercompany loan.

A. Yes.

467 Q. Colon, Lajos.

A. Correct.

468 Q. £400,000 and then Marcus Sweeney, 60,000.

A. Colon again, £60,000.

469 Q. That £60,000 payment was paid by Grafton by way of a loan to JMSE, is that right?

A. I am not disputing that. I am not a hundred percent sure but I'll accept that.

470 Q. And it is recorded in the JMSE books I take it as well?

A. As far as I understand, yes.

471 Q. And then these items are ticked off, isn't that so?

A. Correct, yes.

472 Q. There are two ticks?

A. Yes.

473 Q. And then purchase of lands Poppintree, colon, deposit,  
£6,500. Balance: £58,792.48. Stamp duty, 502,687.

A. That's correct.

474 Q. And then the next document unfortunately the date is off  
screen but it seems to be a line and then 89.

A. It's 889 something --

475 Q. 889, sorry, re: payment of intercompany loan General  
Agencies and there's £300,000 there, is that right?

A. Correct.

476 Q. And there is no colon there.

A. Well there's no list.

477 Q. There's no list because there's only one item?

A. Exactly and there's a hyphen to say where it came from,  
General Agencies.

478 Q. And then tax on disposal, colon, Grafton, colon 157,289 and  
then Reliable, colon, 61,400 and then 23, funds available  
at the end, is that right?

A. That's correct.

479 Q. So that document has specific detail though it is not for  
the specific accounting purpose, it has specific detail to  
identify the essential nature of these individual  
transactions that are recorded in monetary form and also by  
description, isn't that right?

A. That is correct.

480 Q. The purpose of it, you say, was to establish what the  
likely available funds would be from the acquisition of the  
£1.45 million coming in to Grafton from the sale of its  
assets, isn't that right?

A. That is correct.

481 Q. And with the exception, you say, of the one payment for £30,000, there is an explanation given for every other matter on it, isn't that right?

A. That is correct. But that document is by no means a definitive document, as you can see from --

482 Q. By no means a --

A. By no means a final document as you can see from Denis McArdle's subsequent document which would have a lot more detail.

483 Q. What final account document do you say there is from a Copsey Murray point of view other than this document?

A. I don't think we prepared a final document, we were no longer acting for them.

484 Q. Well, you are suggesting that there might have been some other accounting of this particular sum?

A. No,.

485 Q. Are you?

A. Well Denis McArdle's client account balance is a much more detailed account of this similar transaction.

486 Q. It is more detailed but it's not in any sense an account document. The accountant would have to explain that particular document himself, isn't that right?

A. Correct.

487 Q. And in particular would have to attribute sums which would appear as JMSE and pigeon hole them into particular expenditure so as to establish what that money was paid for?

A. That is correct.

488 Q. And why is it you say that this particular document could not have been prepared after Mr. McArdle's document?

A. Because Mr. McArdle's document has a lot more detail. It has interest earned on the money on the client account

deposit which, if it was available to me, I would have used because it reflects more accurately the cash balance available.

489 Q. We know this document was prepared by you.

A. That is correct.

490 Q. We know equally that it was a document that found itself in the audit papers of the auditors, I am not sure if you are aware of that.

A. My understanding is it wasn't with the auditor's papers, that the Tribunal reference is quite different on it I believe.

491 Q. And that's your deduction on that point. Did you ever discuss this with the auditors?

A. No.

492 Q. Have you had any conversation with Mr. Bates about this document or about the preparation of the accounts of JMSE by you?

A. Now, is that -- I had one meeting with him with counsel maybe three weeks ago.

493 Q. I see.

A. But this document did not come up.

494 Q. I see.

A. The preparation of the accounts did come up and my only involvement was and he himself said that he hadn't contacted me and I just confirmed that.

495 Q. Did you deal with him in the time that you were working for JMSE?

A. Oh yes I would have dealt with John Bates when he was on the premises.

496 Q. And he would have known that you were the in-house accountant in effect during the period you were there and subsequently when I think Mr. Maher came in after you, is

that right?

A. That is correct.

497 Q. He would then have dealt with Mr. Maher, is that right?

A. Correct.

498 Q. But in relation to any dealings which may have taken place in June of 1989, you undoubtedly would be the man who would best be able to explain those transactions, isn't that right?

A. Well I would have been able to explain them insofar as I had known. The man best able to explain them would have been Jim Gogarty or Roger Copsey.

499 Q. Well you are not suggesting that Mr. Gogarty was keeping the accounts, are you?

A. No, but -- on matters of expenditure, he would have been the best man to ask what the money was used for.

500 Q. Well you were the financial controller of JMSE, isn't that right?

A. Correct.

501 Q. That was your job description. You accordingly would have to be in a position to account for expenditure by the company, isn't that right?

A. That is correct.

502 Q. And by account, I take it we are not just ending up with a final balance sheet but rather recording each individual item so that the auditor or another accountant, on coming in and looking at the documentation, would be able to identify individual payments against individual liabilities or expenditure as the case may be, isn't that right?

A. That is correct and in the books of Joseph Murphy Structural Engineers, there is perfect recording and there is no dispute or -- right.

503 Q. So there certainly was no reason why any auditor should be

confused as far as you were concerned, about the payments of any monies involved in this £30,000 transaction because you believe there's a perfect audit trail which would connect the payments in question to Grafton and onward, is that right?

A. There is no confusion in the books of JMSE which were written up under my supervision. The books of Grafton, I did not write up and there may well have been some gaps that the auditor would have to find out what they were.

504 Q. What was your relationship with Mr. Bates in 1989?

A. Oh, very good relationship with Mr. Bates.

505 Q. A good professional relationship I take it?

A. Correct.

506 Q. And from time to time you will deal with any number of auditors and they have their job to do and you have your job to do, is that right?

A. Correct, I am an auditor myself.

507 Q. And essentially that is to resolve any matters which don't immediately come out of the accounts in the clearest of fashion, is that right?

A. That is correct.

508 Q. And if somebody cannot communicate with you on a particular issue on day 1, they will come back to you to establish it before they sign off on the accounts, is that right?

A. Correct. The normal procedure would be you would write to whoever you were requesting the information from and get a reply.

509 Q. Were you ever written to by Mr. Bates to explain this payment?

A. No.

510 Q. It is suggested that Mr. Bates made contact with some other person in your firm. I take it, as a partner of the firm,

you have made some inquiries to see whether any person in your firm can recollect being so contacted?

A. Well, we have but unfortunately as in any accountancy firm, the only staff members that were there at that point in time that are there now would be the three partners and the receptionist. All other staff members have since departed.

511 Q. But certainly if somebody was raising a query about the accounts for Grafton in 1989, you were the person to deal with it because you were -- by person I mean you were the accounting person to deal with it because you had been the accountant and you had been there at the time that these payments were made, isn't that so?

A. Correct. If Mr. Bates had asked me, I would have endeavoured to find out what it was, I would have contacted Mr. Copsey directly and I would have put it in writing to him as to what it was.

512 Q. As you would have expected he would have put it to you?

A. Even if he had verbally rang me and asked me, I would have endeavoured to do that and any reply I would have given to him would have been in writing.

513 Q. I see. I want to clarify, if I may, Mr. O'Keeffe, the position about your initial statement and your subsequent statement and the additions to one that were not in the other. To synopsise what you said about this, you said you attended at a meeting, you gave an account of events, a document came back to you in a certain form which was not complete in the sense that it didn't address all of the relevant matters that you had raised and for that reason, you were not prepared to sign it as a statement to be circulated. Is that a fair synopsis of the situation?

A. I think I may be contradicting myself now but earlier on I

was thrown a bit and I apologise for that. I had no problem with the initial statement. It was felt by counsel that it should be expanded in certain areas and the initial statement had one or two things that were incorrect, one being that I was a trainee accountant and quite clearly I wasn't, and that's it. I had no problem with the first statement or the second statement -- sorry, I have no problem with the first statement. It is just expanded on in the second statement and I would have signed it if requested. I think it was counsel's suggestion that it should be expanded.

514 Q. Well I asked you specifically about this this morning, Mr. O'Keefe and you indicated that you received a statement in the post from the solicitor. You read it, you were not happy to sign it because it was not as you would like it and you got back to the solicitor, is that not the position?

A. Correct. There was one or two things in it that were incorrect, one being the fact that I am quoted as being a trainee accountant where quite clearly I am not.

515 Q. But I gathered from what you said this morning that it was your decision, not the decision of counsel, not to sign this document. What is the position? Was it your decision not to sign the first document? I will find out the reason subsequently but --

A. Well, I had no problem with --

516 Q. I am not asking you if you had a problem. I am asking you whether or not it was your decision not to sign the document which you received in the post from your solicitor? Do you understand the question?

A. Yes.

517 Q. Very good. What's the answer to it?

A. It was my decision.

518 Q. Right. Now, you made that decision for a particular reason?

A. Correct.

519 Q. And that was because, as I understand it from what you told us this morning, it was not complete, is that right?

A. That is correct.

520 Q. Because there were matters that you had indicated the day previously which were not contained in your statement, is that correct?

A. No, it was not complete insofar as that I am a chartered accountant and was at the time. The statement I was given dated the 16th December had me down as a trainee accountant.

521 Q. Right. Which could have been dealt with by your putting a line through trainee, initialing it and then signing the statement, is that so?

A. It could have been.

522 Q. It could have been. But you chose not to do that. Is that because there were other matters which you had expanded upon in your interview with your solicitor which were not contained in the document?

A. No, I -- I actually think it was when I contacted the solicitors, counsel had indicated that my statement should be expanded and it was --

523 Q. Counsel wasn't in touch with you on the 16th or 17th December, isn't that right?

A. Sorry, Mr. Fitzsimons -- his offices.

524 Q. They were in contact with you after they had sent you the statement and you hadn't signed it, isn't that right? You were to send back the statement in signed form, is that correct?

A. I may well have sent it back signed.

525 Q. You may well have send it back signed?

A. Yes.

526 Q. I thought your evidence this morning was you didn't sign it because you didn't feel you could sign it?

A. I explained I was thrown this morning and what I said was rushed and harried.

527 Q. Well --

A. I apologise for that.

528 Q. Are you saying that there is a signed copy of this statement in existence?

A. I cannot be a hundred percent sure. At the time there was some debate whether or not these statements would be signed and I am not sure was I directed simply not to sign it? I cannot be a hundred percent sure on this. I apologise.

529 Q. Tell me, Mr. O'Keeffe, to clear up this aspect of it, would you be prepared to make available to the Tribunal the attendances which your solicitor took upon you on the 15th December and the attendance he took on you prior to the preparation of the statement which has in fact been sent to the Tribunal today?

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MR. CUSH: Before the witness answers that question because that isn't a question which, in my respectful submission, ought properly to be directed to the witness and we have had exactly this sort of a question being raised before the Tribunal, we have had this sort of objection that I am now making but if I could indicate to Mr. O'Neill the reason why we haven't come back to Mr. O'Neill since this first arose is because we haven't had the opportunity of going back to the offices of Fitzsimons Redmond and check the attendances and check the documents

but when we have had that opportunity, we will come to Mr. O'Neill and tell him all we know about this how this confusion arose. For example, one small detail hasn't been mentioned here is that all of the statements that went in from all of the Murphy personnel or persons who made statements went in unsigned so I suspect there's a far far smaller degree of mystery about this than might appear at the moment but I can't clear it up now which is why I am staying quiet but with respect, that last question from Mr. O'Neill is not a proper question to direct to the witness.

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CHAIRMAN: Mr. Cush, I find it unusual, I won't put it any stronger than that, that where a problem such as this arose, that over the luncheon interval, your office could have been in contact and inquiries made and the answer -- it must be a matter of simply flicking open a file at a particular point at a particular date, seeing what it shows and really I find it quite unique that that was not done.

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MR. CUSH: Sir, with respect, on my instructions, contact was made with the office and attempt was made to sort it out and there was no answer back before we started here again this afternoon but, Sir, an answer will be forthcoming as best we can as to how this arose as soon as we have this information. I can't say more than that.

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CHAIRMAN: I accept that by you, Mr. Cush --

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MR. O'NEILL: It seems to me the contemporaneous accounts of these events is contained in the document prepared by

Mr. Fitzsimons on the date in question followed by the draft statement which came to this witness and in any response he may have had. There seems to be an obvious conflict in the evidence that is appearing on this particular subject and I would have thought that it would be an aid to the interpretation of these apparently conflicting matters that these documents would be made available to the Tribunal to establish what the factual situation was in December and in March when these statements were prepared.

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MR. CUSH: It may well be and my objection is to the witness in the witness box being asked to possibly waive privilege in relation to certain material. That shouldn't be put to a witness in the witness-box.

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CHAIRMAN: Just a moment. Firstly, let me understand the situation as I understand it. Mr. Fitzsimons is acting as solicitor for this witness in this Tribunal.

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MR. CUSH: Correct.

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CHAIRMAN: Now, he is not here under the cover or umbrella of any other party. Therefore the relationship between Mr. Fitzsimons and this witness is one of solicitor and client and the client is at all times, as I understand the situation, perfectly entitled, without compulsion obviously, to waive any privilege that might exist for the purposes of clarifying an unusual situation.

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MR. CUSH: Yes, he is.

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CHAIRMAN: And what this witness is being asked to do is to say can we see any -- and we don't -- sorry, not we, the Tribunal do not know what the contemporaneous note contains, we just want to know what was the contemporaneous record by way of clarification of a puzzling - let it not be put any further than puzzling - situation.

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MR. CUSH: Hearing the way you put it I understand but I am not sure that's the way Mr. O'Neill is putting it. He seems to be indicating that you are not interested in the content, you want to string together some sequence from the memo.

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CHAIRMAN: If the memorandum says X or Y or what is in some way in conflict with what we have heard to date, perhaps the witness's memory is fading and the record at the time is probably the more useful -- I don't want to put it any higher than useful.

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MR. CUSH: I do want to assist here because I personally don't believe that there's a great deal more to this than ought to be and I would like to say the accurate story but I do object to a witness in the witness box being asked to waive privilege, that's effectively what he is being asked to do, without benefit of advice and very often pops out an answer one way or the other and it may not be an answer in his best interests. I personally am very keen to examine the documents and will have an answer for Mr. O'Neill in the morning as best we can and I think that's the way it ought to be left as between the legal representatives rather than involving the witness. That's the way the business has been done in large part up to now, Sir.

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MR. O'NEILL: This, Sir, is firstly, not a court case and this witness is here solely as a witness as to facts and I am not seeking in any way to damage an interest of his. I merely wish to establish what the factual sequence of events is firstly and what the content of his initial recall was prior to the preparation of the statements in question so that we may interpret what has been said. That is as much as I require and I think it is a matter which could be resolved by these documents which I am quite sure are relatively short documents being faxed to the Tribunal from Mr. Fitzsimons' office now or considered by him and the witness can then offer his views as to whether his recollection of events now accord with what he believes the position to be in December or indeed in March of this year.

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This is, as I say, an unusual situation where statements were circulated by the Tribunal in the belief that they represented the signed statement of the witness in response to a request for a narrative report. It subsequently transpires, as far as we know, these were never in fact adopted or signed by the witness. Other parties who may have had a right to cross-examine on the content of the new statements were denied that opportunity by Mr. Gogarty, who I think was the first witness called, and other witnesses who perhaps wanted to know this detail either in support of their own position or otherwise and it is because of that situation which has arisen through no wrongdoing, fault or lack of procedural fairness on the part of the Tribunal, that I am seeking to resolve the matter at this point in time.

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CHAIRMAN: I am just looking at my watch, we are coming up to the four o'clock point. You are obviously not going to conclude because there are other people interested to -- what I suggest we do is that we adjourn now five minutes before time with the ordinary sitting of the time of the Tribunal and that Mr. Cush takes the opportunity of the adjournment to consult his file and I think that Mr. Cush of course will take his own course but might I respectfully suggest that the documentation should be made -- I believe in cards being face upwards -- if you would be kind enough to have the documents faxed across to the Tribunal that they can consider it for tomorrow morning.

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MR. O'NEILL: I would have thought, Sir, that I would be finished with the witness once I have looked at that documentation and it is a matter of --

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CHAIRMAN: Well in those circumstances, I suggest that it could be resolved now. I am quite prepared to rise now. I do appreciate, Mr. Cush, that you must see this document before you do anything with it.

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Now, the fax equipment here is in our offices. I don't mean the -- I don't think there's a fax into this hall, is there? No. Well if you fax it to a specific person, we will name a specific person, Maire Ann, she will put the document when she receives it, into an envelope, bring it down to you and hand it to you and no deciding authority, if I may use the phrase, will have seen the document.

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MR. CUSH: There's only one of those.

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CHAIRMAN: That's the fairest way I can do it. Would you kindly try make those arrangements and let me know. I will certainly rise until such time as is convenient to you.

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MR. CUSH: I am obliged to you.

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CHAIRMAN: Is that all right, Mr. O'Neill?

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MR. O'NEILL: Certainly, Sir.

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THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS: (5.40)

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530 Q. MR. O'NEILL: Mr. O'Keeffe, before we broke, I was endeavouring to establish what the factual history was of the preparation of a statement circulated by the Tribunal, having received that statement in an undated -- sorry, in a dated but unsigned and unadopted form by yourself, that is the statement of the 16th December, the first of the statements. Do you understand?

A. Yes.

531 Q. My recall of events is that you had indicated that you didn't sign that statement for the reasons that I am not going to go into in detail again but it had been received by you in the post with an accompanying letter from your solicitor, Mr. Fitzsimons, is that so?

A. Yes.

532 Q. And that statement had come to you, as I understand your evidence, following a meeting which had taken place which

was attended by Mr. Roger Copsey, Mr. Fitzsimons and yourself in which you had gone through the history of events and this statement was prepared following that, isn't that so?

A. That's what I said, but I may have been confused.

533 Q. I see. Well would you like to indicate in what aspect you may have been confused in relation to that sequence of events that you gave to the Tribunal? Firstly, was there a meeting attended by yourself and Mr. Copsey and Mr. Fitzsimons?

A. Well -- I can't be sure as to the timing of that meeting, that could have been after I had submitted my statement.

534 Q. I see. So, we are still talking about the first statement, which is the statement in December. Now, just to clarify that, that was not a statement intended to be circulated by you because you hadn't signed it, is that right?

A. Correct but I -- there's very little in it that I disagree with.

535 Q. I appreciate that but I am just wondering when it is you are referring to there being a meeting between yourself, Mr. Fitzsimons and Mr. Copsey. You say it may not have been before the statement, which is the statement circulated and that was a statement which apparently was prepared by your solicitors on the 16th December 1998 but it may have been after that date, or do you say it might have been after the March statement which was the one you did sign but was never circulated by the Tribunal?

A. It may have been after the March statement.

536 Q. It may have been after the March statement?

A. Yes, I apologise for the confusion but I am confused myself as to the sequence of meetings and --

537 Q. Well do you know if there wasn't a meeting between yourself, Mr. Copsey, and Mr. Fitzsimons, how it is that the statement of the 16th December came to be sent to you? What information did you impart, in other words, that resulted in this statement being formulated and sent to you, do you know?

A. I can't exactly recall but I may have been requested to draft a statement.

538 Q. Right.

A. That may be a result of my first draft and subsequent telephone conversations.

539 Q. It may have been the result of a first draft and subsequent telephone conversations. Do you remember any of those conversations?

A. Not in detail, no.

540 Q. Do you remember was it a question and answer series? Did you have specific questions put to you or did you volunteer a different sequence of events or how is it that this statement --

A. Well I think as I thought more about it, more things came back to me.

541 Q. And did you think to put those down in writing and send them off in the week or so after you had received the first of these statements?

A. Well no, I didn't put anything in writing. I'd say I would have had telephone conversations on and off with the office of Michael Fitzsimons.

542 Q. But you never sent them a draft statement until sometime in March?

A. The March statement was my final statement.

543 Q. Yes, but was there an intervening one in December.

A. I sent -- not in between -- not to my recollection, not

between the first statement and second statement, no.

544 Q. I am still somewhat uncertain as to why it is you felt yourself in a position to be able to state in evidence this morning here that the statement was prepared following a meeting with Mr. Copsey and Mr. Fitzsimons if, in fact, there wasn't such a meeting at that time.

A. This morning I was a bit confused and I apologise for that.

545 Q. I see. There's just two other matters I want to deal with and perhaps one very briefly. You do refer in your amended statement, by amended I don't mean to suggest you adopted the first one but in the second of the two statements that we have before the Tribunal, you indicate that you had meetings with Mr. Murphy Jnr, isn't that so?

A. No, I think what I stated was that I met him once or twice in the course of my --

546 Q. Well that surely, if you meet somebody, means you had meetings with him? I am not going to define it but exactly you say in relation to Joseph Murphy Jnr, from memory I only recall meeting -- so there were meetings, is that right?

A. Well meeting to me would mean by might have said hello to him, might have actually saw him on the premises in JMSE but there was only one meeting in attendance with Joe Junior and that was the initial meeting in Wilton Lodge back in May or June of 1988.

547 Q. So you distinguish that meeting from a subsequent observation of him, is that correct?

A. Correct.

548 Q. So what you really meant to convey here was that you only knew him to see, sort of in common parlance, rather than you had had meetings with him?

A. That is correct.

549 Q. And those meetings, you have indicated one was in 1988 in the pre-coup situation and when was the next one?

A. I can't recall.

550 Q. But was it at the premises of JMSE?

A. It may well have been on the premises of AGSE when I was in Fleetwood.

551 Q. Well you obviously recall some event there and I am just wondering where it is and when it is that this meeting took place. You weren't speculating when you made this positive statement, you were referring to some specific memory?

A. Well I mean I recognise Joseph Junior so I have met him once or twice in the past. As to when and where, I cannot be any more specific.

552 Q. I see. Now in relation to his contacts with Mr. Copsey, did you become aware of the fact that he, Mr. Murphy Jnr, was endeavouring to track down the sources of an allegation that was prevalent at the time that money from JMSE had been used to bribe Ray Burke?

A. This was in 1997?

553 Q. Yes.

A. Yes, Mr. Copsey mentioned it to me and asked me had I any recollection of such an event to which I stated categorically no.

554 Q. Right. I take it you read the papers and from what we understand from Mr. Copsey, you have some interest in politics, certainly a greater interest than he has?

A. That is correct, yes.

555 Q. And I take it you were aware of certain matters that were in the public domain, through newspapers reports and other comment, about a connection between JMSE and a payment to Ray Burke?

A. Correct.

556 Q. So that you had an opportunity of considering that, I take it, either before or during the time you were discussing it with Mr. Copsey, isn't that so?

A. That is correct.

557 Q. Right. And did you understand the detail of that to be firstly that this had taken place in June of 1989?

A. No, I didn't understand it was specifically June.

558 Q. When did you understand it to have been?

A. I can't honestly say I put any time period on it.

559 Q. You knew that Mr. Gogarty was supposedly involved, is that right, as the person who'd paid over money?

A. Well I am not a hundred percent sure as to when I became aware of that fact but yes.

560 Q. And you knew that Mr. Gogarty retired from JMSE during the period in which you were there on secondment, isn't that right?

A. That is correct.

561 Q. You knew that as of 1989, in July, effectively he was no longer attending the JMSE premises, isn't that right?

A. That would be correct.

562 Q. So that if he had made a payment as an executive of JMSE, it would have been certainly not after that date, isn't that so?

A. Well I hadn't considered that but I would take that to be a reasonable assumption.

563 Q. And did any of that jog your memory about this unusual occurrence that you had been involved in where he, Gogarty, made a demand of you to go down to the bank and collect a very substantial sum in cash? Did you make the connection between those two events?

A. No, cause all the reports that I remember of and my

discussions with Roger were for far greater amounts of money and, you know, when speaking to Roger, he was discussing in terms of the Bailey transaction which I just didn't connect at all.

564 Q. Well, did you understand that the allegation was that the payment by JMSE had been matched by a payment by the purchasers, the Baileys?

A. I understood that was --

565 Q. Right. So that if you were aware of a £30,000 payment or a £30,000 withdrawal, it would follow that if that had been matched by others, the figures you would be talking about would be £60,000, is that right?

A. Correct, but at the time, that payment was authorised by Roger and if he didn't know -- I was never informed as to what that payment was used for.

566 Q. Right.

A. And I made no connection with that payment and the bribe.

567 Q. Although Mr. Copsey, on his evidence, on at least three occasions before August of 1997, asked you specifically about this circumstance and you did not remember the fact that you had gone down and collected the money in Talbot Street and brought it in a briefcase to the JMSE premises and handed it over, as you say, to Mr. Gogarty?

A. Not in the connection that he was talking about, no.

568 Q. But in any connection, you had only ever been involved in one unusual transaction for the assimilation of a large sum of money, isn't that right?

A. Correct.

569 Q. You knew that probably in 1989, Mr. Gogarty was involved in some transaction, according to himself and according to what was reported in the press, isn't that right?

A. Well I am not sure as to when I was factually aware of

that.

570 Q. Well you certainly became factually aware of it in August when there were public statements by Mr. Burke on the incident, isn't that right?

A. Correct but at that point in time, I still didn't associate it with that payment.

571 Q. Notwithstanding Mr. Burke's statement, public statement in August, you still did not make any connection between the receipt of those monies by him from Mr. Gogarty and your withdrawal of monies in the same month, and indeed in the same week or two as was covered?

A. That is correct.

572 Q. And were you not in the slightest bit curious because it would appear that the connection between the two was inevitable?

A. It was eight years ago. I hadn't actually given it any consideration. I was of the opinion that everything had been done correctly in the books of Joseph Murphy Structural Engineers.

573 Q. Well was that really your concern, to establish whether it was correctly in the books rather than to make the connection between the two?

A. No, sorry I might rephrase that but I had made no connection.

574 Q. Yes. It may seem terribly obvious, perhaps you may agree, that now it is screamingly obvious?

A. Well in hindsight, yes, but at the time, I haven't considered it at all.

575 Q. And this is even in August of 1997?

A. Correct.

576 Q. So it was only after you had discussed matters then with Mr. Copsy that you made the connection yourself or did you

ever make that connection?

A. Well I never made the connection because I was never told till a long time later that there was actually a political donation made.

577 Q. Right. Were you not told in August 1997 by Mr. Copsy that there had been a political donation made and that that was the transaction that he had requested you to record as an intercompany loan?

A. Not in those words. I am not sure when he told me that there was a political donation made.

578 Q. When he did tell you that there was a political donation made, did he tell you why he had asked that it be recorded as an intercompany loan between the two companies?

A. Yes, that it -- the political donation was being made by Grafton.

579 Q. Yes. And was that the only explanation he gave you?

A. Correct.

580 Q. I see. Now there were, you say, a number of telephone conversations and these subsequently found themselves reduced to telephone attendances between yourself and Mr. Denis McArdle when you were in the position of being the in-house accountant in JMSE and when he was the company solicitor, isn't that so?

A. Sorry --

581 Q. You indicated before we rose for the last break that in your communications with Mr. McArdle, that you did not glean the information which found itself in document 190 from his breakdown, which was prepared on the 2nd February of 1990?

A. That is correct.

582 Q. But that you had prepared that from communications which you had had with Mr. McArdle in the course of you being the

in-house accountant and he being the solicitor to Grafton Construction, isn't that so?

A. No, the document that I prepared would have been after I had left the position of financial controller in JMSE. I would have still been working on the Murphy cases on an ad hoc basis for Roger back in the office and that document would have been prepared from, I think I said correspondence from Denis McArdle, not telephone conversations.

583 Q. The series of questions and answers that you gave a little earlier on this issue are as follows, you were asked "And the purpose was to tell Mr. Copsey how much money from the sale of land was available" is your answer.

"Question: But to learn that, he would have to know what money was directly expended by the solicitor out of those funds, isn't that right?"

Answer: Correct.

Question: And how was he to know what funds the solicitor had expended unless he had been in contact with the solicitor about it or you had?"

Answer: Well, we would have had various correspondence from the solicitor, letters, memos, recordings of phone conversations in relation to the expenditure made by the solicitor on behalf of the company, which is where my document 190 would have been prepared from. Quite obviously the solicitor's document, which is later on, is much more comprehensive. He has all the expenditure and all the receipts in there."

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Now, you understand that?

A. That is correct, but the telephone conversations were not my telephone conversations.

584 Q. You say "We would have had various correspondence from the solicitor." You then break down that correspondence into letters, memos, recordings of phone conversations, in relation to the expenditure made by the solicitor. Now I am asking you specifically about the recordings of phone conversations. Who would have taken the recordings of phone conversations? Do you mean they are written records?

A. They would be notes Roger would make.

585 Q. I see.

A. If we had discussions with Denis McArdle as to the distribution of funds.

586 Q. But you are aware of existence of those written recordings?

A. Well I am making that assumption. I have no proof of that now.

587 Q. So when you gave the answer that we would have had these things, this is all an assumption on your part and not intended to have been a statement to record what in fact happened, is that the position?

A. Well I can't be a hundred percent sure but from previous correspondence that I have seen, there was numerous telephone notes between Roger and Denis McArdle and I had made the assumption that I would have used them and if that assumption is incorrect, well I apologise.

588 Q. Well, your assumption was on the basis that you had seen numerous attendances from Roger upon Mr. McArdle, is that so?

A. Together with documentation.

589 Q. Let's deal with the question first that you have been asked, not what the additional documents were. Are you saying that you saw telephone attendances, records, prepared by Roger upon his communications with Denis

McArdle? Do you understand the question?

A. Yes.

590 Q. What is the answer?

A. Yes.

591 Q. Because you may know, having considered the five volumes of documentation which were provided to you by the Tribunal over the weekend, that there are no telephone attendances of Roger Copsey upon Denis McArdle present in those files, isn't that so?

A. That could be correct. I haven't scrutinised them. I accept that.

592 Q. Well where do you think the telephone attendances which were taken are now? Presumably they were telephone attendances taken on the Copsey Murray files rather than on the JMSE files, is that right?

A. That would be correct.

593 Q. And you would have been responsible for maintaining that file for a period of some time, is that right?

A. I would have had access to that file. I wouldn't have had any responsibility for maintaining it.

594 Q. Well you'd add to the file, is that right?

A. If I was asked to do something specific, I would revert to the file and any other correspondence we had.

595 Q. You'd be familiar with the file?

A. Yes.

596 Q. How many telephone attendances do you think there were?

A. I can't recall -- I'd have no idea.

597 Q. From your experience of Mr. Copsey's method of working, would you expect a corresponding attendance on his file for an attendance Mr. McArdle may have on his file?

A. No, it would only be a note if it was something specific.

598 Q. If, for instance, he was to get in touch with Mr. McArdle

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and ask Mr. McArdle to give him £30,000 of which £20,000 was in cash, is that the sort of information that you would expect to see on the telephone attendance of Mr. McArdle? A specific request coming from Mr. Copsey of which Mr. McArdle presumably has no prior notice, is that something that you'd expect Mr. Copsey to have recorded?

A. No, I -- what Mr. Copsey would record is something that Denis McArdle was asking him to action.

599 Q. Asking him to do?

A. Yes. And he would make a note so that he could pass it down to me or whoever else in the office was going to action it.

600 Q. Do you remember Mr. Copsey contacting you in relation to the receipt of a cheque from the ICC funds?

A. I have no recollection of him getting in touch with me specifically in relation to that matter.

601 Q. This would be to ensure that monies which had been declined by Mr. Gogarty would be accepted by you in JMSE?

A. Well I think my evidence is that when Mr. Copsey informed me that it was an intercompany loan, he explained that the money was going to be repaid to the company and I would have been expecting that.

602 Q. You would have expected him to record that?

A. No, I would be expecting that money to arrive.

603 Q. Fine. Thank you.

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MR. CUSH: I take it, Sir, you are not proposing -- Mr. O'Neill seems to be finished and I take it we are not going to continue any further this evening.

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CHAIRMAN: I don't think so, no.

MR. CUSH: I wonder could I just indicate, Sir, that in that time lapse that we had, a number of documents became available to us which I showed to Mr. O'Neill and I'd just like, if I may to use this opportunity this evening rather than tomorrow, to simply list the documents which I was able to show to Mr. O'Neill, if I may.

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CHAIRMAN: Certainly.

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MR. CUSH: I will be very brief, Sir. I was able to show Mr. O'Neill a letter of the 8th December from the Tribunal to Mr. O'Keeffe. A letter of the 10th December -- speaking now about 1998, Sir -- from Mr. O'Keeffe to Mr. Fitzsimons, his solicitor, enclosing a first short draft of a statement. And I was able to show Mr. O'Neill that short draft statement.

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I was then, on receipt of the most recent set of documents, just before you sat again, Sir, I was able to show Mr. O'Neill two telephone attendances between Mr. Fitzsimons and Mr. O'Keeffe. I was then able to show Mr. O'Neill a letter of the 14th December from Mr. Fitzsimons to Mr. O'Keeffe enclosing a draft statement which was an elongated version of his first draft, together with a letter from the Tribunal to Mr. Fitzsimons referable to Mr. O'Keeffe. And then that sequence finishes, Sir, with the actual statement of the 16th December as furnished to the Tribunal.

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That is the sequence of documentation leading up to the 16th December, Sir.

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CHAIRMAN: Yes. Well there's just one aspect of this

matter that troubles me and I would like an explanation, if available.

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The first point in time which this witness attended at Mr. Fitzsimons' office was in December 1998. He then went on and ultimately in March 1999, what appears to be a final statement appears to have emerged. That statement takes nine months to get to this Tribunal.

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Now, I really would like to know why the Tribunal was not furnished and kept in touch with the fact -- if you were having a problem, by all means say so. Really, nine months is a matter which, when we were asking for statements -- as a matter of fact, this is a witness of fact in every sense of the word, he is not partisan in any way and I just do not understand a solicitor taking the guts of a year, a little more than a year actually to get a witness statement to the Tribunal.

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MR. CUSH: Well, Sir, I think the position in that regard is that the statement which it was always intended to furnish to the Tribunal was the statement of the 16th December and it was never, in fact, intended to furnish the March statement to the Tribunal. That was, as I described it earlier, our own internal working on Mr. O'Keefe's statement based as we then had it of some months of evidence from Mr. Gogarty, so we were in consultation with one of our clients referable to ongoing evidence to the Tribunal and we were saying to our client, we will need to deal with this, we need to deal with that and hence a very minor expansion of his statement.

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It was never intended that that statement would go to the Tribunal and what actually happened this morning was that Mr. O'Keeffe made reference to a statement in March, I happened to be looking at it on my desk and I myself didn't realise that it wasn't the 16th December statement because they are very similar and I handed it to Mr. O'Neill and from there this thing, I am afraid, has taken off.

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CHAIRMAN: With due respect, Mr. Cush, to what you have said, I naturally pay great attention to what you say, may I just point out when Mr. Fitzsimons, wearing his hat as solicitor to this witness, his task was to get a narrative statement, combining all his knowledge, and furnish it to the Tribunal, and that should have been done. Apparently all the material was obtained somewhere around last March and it hasn't got here until now.

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MR. CUSH: Just to be absolutely clear, there was a statement furnished in December, that was furnished to the Tribunal. I think there may be some misunderstanding there. We furnished Mr. O'Keeffe's statement in December.

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CHAIRMAN: Yes, but the point I am getting at is that you, with your hat as his counsel, or more accurately Mr. Fitzsimons, wearing his hat as this man's legal adviser, was information which should have been put before the Tribunal -- and I mean there was no conflict of interest in that sense.

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MR. CUSH: With respect, Sir, I don't think any person who has appeared before the Tribunal has updated their

statements as the Tribunal has gone on. Certainly not one of our clients has done that. What we were doing is meeting with our clients as the Tribunal was progressing and updating his statement. That's all that occurred here. It's as simple as that. I am terribly sorry for the confusion but that's how it emerged.

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CHAIRMAN: Thank you.

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MR. O'NEILL: May I, Sir, in response to that, the statement of this witness which was circulated was never intended on this witness's evidence to be circulated. He had not adopted the statement, he had not signed the statement, he had declined to sign the statement, yet it was circulated. It was subsequent to that time that a statement that he was prepared to adopt was prepared and signed by him and sent to his solicitor. That is the only statement or narrative account of this witness which was capable of circulation and it was not circulated. The witness has never indicated in his evidence, certainly to date, that this was intended not as a statement by him for circulation but rather as some form of internal memorandum or note as is suggested by Mr. Cush. I feel that I have to say that because we are not proceeding on the same basis, if he says that the evidence is that this document is an addition to an existing statement, there was no original statement of this witness to be added to.

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And there's just one final matter that I might deal with and there has been a request by certain members of the press who are present for sight of a document which was put up on screen and in the public domain in that sense but,

unfortunately, no physical copy of it is available to them at present but and they are asking for circulation of this document. I am referring to document 190, which has been the subject matter of the evidence over the past number of days, and with your permission, the legal team would wish to make that available to the press through the registrar if they wish to have a copy of the document. It's essentially because the document is a very poor quality on the screen and --

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CHAIRMAN: I have no problem with that whatsoever. Once the document is in the public domain, I would wish to facilitate the press. Now obviously I don't want bundles of copy documents floating around here like leafs in an autumn wind but wherever the press want a document which is in the public domain, in other words which has been given in evidence in this Tribunal, if they ask the registrar, I am sure the registrar will make available as soon as practical a copy for their behalf and that should apply in this instance.

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MR. WALSH: Mr. Chairman, before you rise, I might indicate on behalf of Mr. Burke that I do not propose cross-examining this witness at this point in time and I'd like to reserve my position until after Mr. Callanan has made his --

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CHAIRMAN: That's always assuming that you get in before the close of business.

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MR. WALSH: No, no, I will be here, Mr. Chairman.  
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CHAIRMAN: I mean that it might well be next term, I don't know, we have to see how we go. I don't know how long you are going to be.

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MR. WALSH: Just one other point, on the question of that document which you are allowing the press to circulate, would you consider asking the press to give the evidence or synopsis of the evidence at the same time if they are reproducing it in the newspapers?

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CHAIRMAN: I beg your pardon, I have no objection to you making that statement, I certainly would never attempt to address the press and say they must behave in a particular manner or must in some way treat a document or evidence in a particular manner. They are here to report. They have a freedom of reporting and I certainly can't control that freedom, and I won't try. There is on rare occasions where something is touching on privacy of an individual citizen or something that I might ask the press to perhaps treat it with a degree of care and a degree of discretion but that's the furthest I would ever go and that's on a very rare occasion and it only happens, I think it only happened about twice in the course of the Tribunal.

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MR. WALSH: It's a matter within your discretion, Mr. Chairman.

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CHAIRMAN: Thank you.

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MR. CUSH: I wonder could I just inquire as to whether or not the Tribunal intends calling Mr. Bates tomorrow?

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MR. O'NEILL: Yes, Sir, the Tribunal does intend to call

Mr. Bates tomorrow.

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MR. CUSH: Thank you.

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CHAIRMAN: Half past ten, gentlemen?

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THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
TUESDAY, 21ST DECEMBER 1999, AT 10.30AM.