

THE HEARING RESUMED, AT 10:00 AM, ON THE 22ND OF NOVEMBER,

2000, AS FOLLOWS:

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CHAIRMAN: Good morning everyone.

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MS. DILLON: Good morning judge.

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The next witness will be Mr. Pascal Taggart. Mr. John
Gordon, Senior Counsel, is here for Mr. Pascal Taggart.

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CHAIRMAN: Good morning.

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MS. DILLON: Mr. Taggart please?

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PASCAL TAGGART, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS
BY MS. DILLON:

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1 Q. MS. DILLON: Mr. Taggart. Good morning Mr. Taggart?

A. Morning.

2 Q. I understand that you are a chartered accountant by profession?

A. Well, I am not really. I am a Fellow of the Institute of Taxation. I am a financial accountant.

3 Q. A financial accountant; and in the late 1980's you were a partner in a firm of accountants called Gilmore and Taggart?

A. That's correct.

4 Q. And I believe that you were approached, at some stage, in relation to making an application for a local radio license in Dublin?

A. That's correct.

5 Q. Can you explain to the Tribunal who approached you and the circumstances of the approach?

A. Yes. Oliver Barry would have rang me up and asked for a meeting. He came into my office and approached me to do a business plan for a Dublin radio station and would have asked my would I front this for him.

6 Q. When you say that he would have asked you would you front this for him; would you explain to the Sole Member what was meant by that?

A. He was obviously applying for Century Radio. He wanted someone, a second option to apply for the Dublin radio license, and as far as I was concerned the first thing I

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had to do so was do a financial business plan for the
Dublin radio license.

7 Q. Yes. Did Mr. Barry indicate to you who was involved in
the application, other than himself?

A. Mr. Stafford and Mr. Ratigan were the only two people he
mentioned, and - sorry, Terry Wogan.

8 Q. Did you ever meet Mr. Stafford?

A. No, I never met Mr. Stafford.

9 Q. Did you ever meet Mr. Ratigan?

A. I never met Mr. Ratigan.

10 Q. Did you ever meet Mr. Terry Wogan?

A. I did. Mr. Wogan came over to participate in the business
plan and we went through the various areas where he was
going to contribute and the programmes that he saw,
considered were going to be most helpful to get the station
off the ground.

11 Q. Insofar as Mr. Wogan was making a contribution to the
business plan, did he see or have any difficulty with the
business plan as produced by you?

A. No, he had no difficulty with the business plan.

12 Q. Did you go through the costings with Mr. Wogan to any
extent?

A. I am not sure. I think he was more interested in the
artistic radio content - with him, probably not.

13 Q. Was it ever indicated to you that Mr. John Mulhearn might
have had an interest in the application?

A. Never.

14 Q. Were you aware that Mr. Mulhearn had an interest in the
Century Radio application?

A. No, I was not aware of that.

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15 Q. Can you indicate, briefly, and in general terms how you proceeded to prepare the application for the local radio license?

A. Yes, certainly. Obviously it was quite a business plan necessary for this. We didn't know too much about it. It was a new territory. So I introduced Peter Owens of Peter Owens, Marketing, he is now dead. Peter would be the premier marketing and advertising guy in Ireland, I needed that expertise. He also had experience of radio licenses in Canada, so he was what I call a "real find". He was also a real expert.

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I introduced a very good friend of mine, Kevin Heffernan, who was, as well as being a manager of a very successful Dublin team, was also a highly qualified personnel officer, what is known as a "H R person" today. I needed that for the employment, and the whole record of that type of thing, then I used a guy called Brendan Lynch who was with Brolyn Consultants, to put together the figures and the numbers. So the four of us were the team, you know, it was a very good team.

16 Q. Did you have meetings with Mr. Barry to discuss progress in relation to the matter?

A. Yes, Mr. Barry used to wander in and out and ask what progress we were having, you know? I was able to give him the progress, but as I say, that is as far as it went.

17 Q. Yes. Can you recollect when, approximately it was, that Mr. Barry first approached you in relation to the application?

A. I would say it was November, 1988.

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18 Q. Mr. Stafford has suggested to the Tribunal that while he didn't, he says he never met you, but that he was aware in September of 1988 that you were involved in making an application at the behest of Mr. Mulhearn and Mr. Barry?

A. That could be the case. I mean we were working on it for two or three months. I suppose, November - September, October and November, that sort of thing.

19 Q. Mr. Stafford also told the Tribunal that your involvement was at the behest of Mr. Barry and Mr. Mulhearn?

A. It was only at the behest of Mr. Barry because I didn't know Mr. Mulhearn. I didn't know he was connected at all.

20 Q. At the time that you agreed to take on this job, was it anticipated that you would become an equity partner in the enterprise?

A. It was, sort of a small equity partner. Obviously I was never that convinced that radio stations were that profitable. I never - everybody else in Ireland thought they were very profitable. To me they were quite a risk, and if I was going to participate in it, it would have been obviously as a small shareholder.

21 Q. And did you ultimately agree a proportionate shareholding with Mr. Barry?

A. Yes. I said that we would take 15 percent of the situation, because that is all I wanted to expose my finances to, you know, because I was never convinced that it was that profitable, you know?

22 Q. And Mr. Barry and his backers were to take 85 percent?

A. That would have been the case, yes.

23 Q. And did you receive funds from Mr. Barry.

A. We put an initial fund together of 25,000.

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24 Q. The 25,000, was this to be the full fund for the preparation of the --

A. No. It was just payment on account to get the document together. As you will probably see in my figures there was something like ú75,000 in there for expenses, getting the document finished, finalising it, and the submission to the IRTC.

25 Q. I think, ultimately, in fact Mr. Peter Owens put in a bill of approximately ú45,000 in relation to the work that he had done?

A. He excluded something like 500 man-hours as well. That was just pure expenses and getting the whole thing tight and the whole thing together; information, research, market research.

26 Q. Could we have page 6123 please? Can you see that on the screen, Mr. Taggart?

A. I certainly can.

27 Q. That is an extract from a bank account entitled "Radio 1, Current Account"?

A. That's correct.

28 Q. That shows that in on the 30th of December, 1988, there was a lodgement of ú21,250. There was an additional lodgement from Gilmore and Taggart of ú3,750?

A. Yes, 15 percent and 85 percent.

29 Q. So the ú21,250 represents Mr. Barry's contribution of 25, of 85 percent of ú25,000?

A. That's correct.

30 Q. And the ú3,750 is the 15 percent contribution of ú25,000 by Gilmore and Taggart?

A. That's correct.

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31 Q. And at that stage was it anticipated that this would be the full extent of the fund that was required?

A. Obviously not. Not in my mind, but obviously he had different views on this.

32 Q. Can you recollect, and it is a long time ago, whether Mr. Barry gave you a cheque himself?

A. Oh, he would have given me a cheque himself, yes, or I would have, or he would have sent it in the post. He was the only person I was dealing with at this point in time.

33 Q. This account was opened, I think, by Messrs. Gilmore and Taggart. In relation to operating the account that would be needed for the preparatory work for the radio station?

A. This was for expenses.

34 Q. I think, ultimately, the account was closed after the matter did not proceed any further?

A. Well, there was, we expended 25,000 in all. 23,000 by Gilmore and Taggart and 2,000, I think, was for something to do, for studio advices etc.

35 Q. Yes. You said that you had a number of meetings with Mr. Barry and you discussed the progress of the preparation of the document that you were going to submit in relation to the local radio station. What was Mr. Barry's views of your projections in relation to the costings?

A. He wasn't at all happy with my projections. He thought they were grossly overstated.

36 Q. In what way did, was he of the view at that they were grossly overstated?

A. Well, it wasn't absolutely clear why he thought that, because I never saw the Century Radio application or any programme or anything else. Clearly we had worked our

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figures down to a fine art, you can see them in the documentation, and obviously from where I was sitting it was going to take 1 million pounds worth of equity and 2 million pounds worth of overdraft facility; he was in the region of 500,000; we were in a very big collision course almost immediately after the figures came out.

37 Q. If we could have 1163 please? This is an extract from the Dublin Local Radio Project. I think it is in hard copy in front of you Mr. Taggart? It is coming up on the screen in any event. This is an extract from the document that was prepared for the submission for the local radio station.

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The first paragraph indicates that shareholders funds will amount to 1 million pounds?

A. That's correct.

38 Q. In addition to that, if you move down the page, it indicates that the quarterly cashflow projections indicate there will be a funding requirement from bank borrowings for the first two and a half years after trading, after which the company will trade profitably. You were estimating those bank borrowings at ú250,000?

A. ú250,000. I think our cashflow there was a deficit of 216,000, obviously 250 would be reasonable.

39 Q. So after you had dealt with the numbers and the matters, the minimum investment that you regarded as reasonable, as I understand these figures, it was a million pounds from the shareholders and ú250,000 from bank borrowings?

A. Absolutely.

40 Q. I think if you turn to page 1190 please? This is an extract from the projected profit and loss account for

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Dublin 1 Radio.

A. Yes.

41 Q. You will see there, Mr. Taggart, that the advertising income or the total turnover income that is projected was ú1,000,524?

A. That's correct.

42 Q. And I think then you were, would have to deduct from that the figure that immediately follows it, which is ú228,000 being 15 percent advertising agency commission?

A. Absolutely, because we were well aware of these figures because of Mr. Owens' expertise.

43 Q. And you have staff costs at ú700,000 per annum?

A. Correct.

44 Q. And in the notes attached to the profit and loss account at note 5, which is on page 1195, please? You were estimating 40 persons to be directly employed in the management team?

A. That's correct.

45 Q. At an average cost of ú17,500 pounds per annum?

A. That's correct.

46 Q. And were you satisfied from the work that had been done by Mr. Owens and yourself that this was what was required to operate a local radio station?

A. I wouldn't say - we thought that it was what was needed, it wasn't a minimum. Obviously this was what we thought would be necessary.

47 Q. And was Mr. Barry in agreement?

A. Mr. Barry wasn't in agreement with any of these figures. You know, he never actually shot them down in what I call, in business terms, he just said "This is far too much" and "Your figures are wrong", and I was saying "Well, our

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figures are right" and "Can you tell me where they are wrong?"

48 Q. Did Mr. Barry ever tell you where your figures were wrong?

A. No, he never did.

49 Q. Do I understand it then that what Mr. Barry did was criticise the figures that you had put forward, without putting forward any alternative himself?

A. That's correct.

50 Q. You had also put forward, I think, a figure of ú35,000 for transmission costs on the basis that one transmitter only would be required, and that you had had some negotiations, or dealings, with RTE in relation to that matter?

A. That's correct. That's the figure.

51 Q. I think you also had a figure of ú750,000 for capital costs?

A. Mmm.

52 Q. And this included studios and matters of that sort; computer equipment, studios, matters of that sort?

A. You know, in our judgement you needed all that. Studios are pretty luxurious places and had to be well kitted out. We thought that was what was necessary.

53 Q. Did Mr. Barry ever make any comment on the studio costs?

A. He never took costs individually. You know, this is where I had a difficulty with him and his advisors. In general this is just not right. I said "This is the way I see it. Unfortunately this is what is necessary in my opinion". With a reasonable experience, to run a proper Dublin radio station.

54 Q. Right. In January of 1989, you signed, I think together with Mr. Kevin Heffernan, a document that is dated the 28th

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of January, which is at page - the full copy of it is page 6198. That should be coming on the screen in front of you Mr. Taggart?

A. Yes, the reason why I signed that particular letter was that it was all over at this stage. We had had a couple of rows in our offices, with him, Colm Allen and myself. Colm and Oliver Barry told us, or told me, that we didn't know anything about financial projections. I told them that they knew nothing about them. It was a bit heated. At that stage there was no way that we were going to go forward with Oliver Barry's proposal, and you can see, I think there was other documentation where you can see that they were actually, weren't too happy with me, because we wanted to abort the thing now.

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I said to him that if they wanted to get out of this at this price, then I was quite happy to replace them with other people who would be interested in putting up a million and a quarter to go forward. But this upset them, because I mean they started it off. They got us to sign this document. Now, once I took the commission from him in the first place, I would never do anything which he wouldn't agree to. So that when we signed that document, it didn't really matter because it was all over.

55 Q. Yes. In fact if we go back to look at some of the document that records the difficulties that you were having in January of 1989, if we could have 710 please? This is a fax from Mr. James Stafford to Mr. John Mulhearn of the 17th of January, 1989. And that indicates that Mr. Stafford was saying "we are having some very serious

problems controlling Mr. T" apparently that would be yourself "and intend to demand that they give us a letter in the following terms; a confidentiality clause is being added; if they refuse we will have to abort that deal" and the confidentiality clause that was attached is in similar terms to the confidentiality, to the document that you subsequently signed?

A. Absolutely. And as I say, as far as I am concerned they didn't need the letter. If we weren't - if I wasn't going forward with them I wasn't going forward with anybody unless they allowed to us do so.

56 Q. If you could explain to the Tribunal the serious problems that existed at that stage, or are they the serious problems you have already referred to?

A. They are the serious problems. Our figures show a million and a quarter, they were talking about half a million. I just didn't - I just couldn't believe that anybody could put forward a half a million to start a radio station in any shape or form. I mean, the figures are very self obvious.

57 Q. Yes. This fax was sent, apparently on the day before the license for the national radio station was awarded, which was the 18th of January, 1989?

A. Mm-hmm.

58 Q. You would have known, I presume, that Century Communications were one of the applicants for the National Radio License?

A. I knew that, yes.

59 Q. We will go through the document. There is a second fax at page 712, again from Mr. John Mulhearn on the 17th of

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January, sorry from Mr. James Stafford to John Mulhearn on the 17th of January, 1989, at a later time in the day in which they indicate that:

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"All is fine with Mr. T - at least for the moment anyway - Oliver says that they signed what was put forward them smiling - final format enclosed.

.
Tony Ratigan only got back last night and rang Oliver this morning just after Mr. T had been on to him "very depressed". Oliver told Tony to hold off going to the 1:30 meeting and that you would bring him up-to-date. Oliver is anxious to sort out that position as soon as possible. Perhaps you might coordinate with Oliver, if possible, this afternoon."

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The rest of the fax doesn't appear relevant to this issue.

Did you know Mr. Ratigan?

A. No, I never met Mr. Ratigan. I am only smiling about the "very, very depressed", I think "very, very annoyed" would be more appropriate.

60 Q. That indicates that while the document that was ultimately signed is dated the 28th of January, 1989, it appears that it was in fact signed on the 17th of January, 1989?

A. It could well have been.

61 Q. And that would have been the day before the national application was awarded?

A. I wasn't aware of that, but I take your word for that.

62 Q. Now, the document that was in fact, that was signed, is at page 6198. And if we scroll down to the bottom of that

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first of all, Mr. Taggart, you will see your signature at the bottom of the document, and that I think, and that I think of Mr. Kevin Heffernan?

A. That's correct.

63 Q. And at this stage it was anticipated that Mr. Heffernan would be an equity partner in --

A. Well, the reason is that - I intended him to be an equity partner if the thing went ahead, because he is a very good friend of mine and put in an enormous amount of work, and I thought he would actually be brilliant for the Dublin radio because he was one of the big names in Dublin in 1988.

64 Q. At the date that you signed this document, which was probably from the earlier fax that we have seen, the 17th of January 1989, you had already decided not to proceed with the enterprise with Mr. Barry?

A. Yes. We decided very early in January that we couldn't proceed with Mr. Barry, for the reasons given, that his estimate of what it would cost was at great difficulty with ours, great difference with ours. It was just 500,000 versus one and a quarter. It doesn't even bear debate.

65 Q. If we can go down briefly through this document Mr. Taggart. In the very first paragraph you confirm that you are the only directors and only shareholders of Dublin 1 Radio Limited, whereas the top of the letter, you will see is headed up "Radio Sales and Marketing (Ireland) Limited"?

A. Yes, I don't know why that is. We were quite happy to sign that letter on the basis - well it was an irrelevant letter, because we were doing nothing anyway.

66 Q. At paragraph 1, paragraph 1 in effect provides that they will co-opt to the Board. You will co-opt to the Board

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whenever requested, individuals nominated by you to constitute the majority of the directors?

A. That's correct.

67 Q. So that, in effect, paragraph 1 was giving control around the directors table to whoever this letter was addressed?

A. Absolutely.

68 Q. Yes. "2. You agreed to appoint as Chairman of the Board a director nominated by them" presumably Mr. Barry and Mr. Stafford?

A. Well, you know as I say, as far as I was concerned it was a totally irrelevant situation, because the, we weren't going forward in the scenario, you know. That is what they intended. It wasn't what I intended.

69 Q. All right. In any event, if we look at paragraph 3 of the document, it deals with the share capital, and that was providing for a split of 15 percent to yourself and Mr. Heffernan, and the balance of 85 percent would be issued, when requested, to Mr. Barry and presumably Mr. Stafford?

A. Absolutely.

70 Q. So that the net effect of paragraphs 1, 2 and 3 of the document was to give control of the company by way of the Board of Directors, the chairman, and the shareholding to Mr. Barry and Mr. Stafford?

A. That was their intention.

71 Q. That was their intention. Paragraph 4 provided "no appointments or contracts will be entered into whatsoever without your approval in writing first having been obtained"?

A. Absolutely.

72 Q. Number 5, which is the confidentiality clause, referred to

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in the earlier fax says: "No information on any matter relating to the company or its submission will be made available to any party without your consent in writing first having being obtained."

A. Correct.

73 Q. The effect of that last paragraph, I suggest, Mr. Taggart, was that you would not be in a position to submit the application for the local license to the IRTC without the approval in writing of Mr. Barry and Mr. Stafford?

A. Absolutely.

74 Q. So that the effect of signing this document meant, as I understand it, that Mr. Barry and Mr. Stafford could completely stymie any forward progress for the application for the local license, if they so desired?

A. That's correct.

75 Q. You had no difficulty signing that document because you had already come to the view that you would be unable to proceed to deal with matters with Mr. Barry?

A. Absolutely. It was a useless document as far as I was concerned.

76 Q. In the business plan that you had prepared, and which I understand was never actually submitted to the IRTC, the directors that were disclosed, or the promoters that were disclosed and the directors that were disclosed are at page 1124 of the document. And 1124 discloses Mr. Terry Wogan, Mr. Pascal Taggart and Mr. Kevin Heffernan as the directors?

A. That's correct.

77 Q. And the document, in this format, does not disclose that Mr. Barry had any interest in or involvement in the

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application?

A. That's correct.

78 Q. Or Mr. Stafford?

A. That's correct.

79 Q. Can you explain to the Sole Member why that was so?

A. Well, you have got to remember that Mr. Barry had asked me to do this business plan, and that they were making a Century Radio application, so therefore they couldn't be in both. As far as the IRTC, or whoever else was concerned, they had couldn't be in both teams. So this was the, this was going to be the format that they thought would go forward through to the application. But we had no intention of, when it got to, at that stage we had no intention of making the application.

80 Q. Were you aware of the requirement by the IRTC that all promoters or investors, whether in national or local radio, should be disclosed to the IRTC?

A. I would have been aware of that, yes.

81 Q. And this document doesn't make any such disclosure?

A. That document was prepared for Mr. Barry and his associates.

82 Q. And was it prepared on Mr. Barry's instructions?

A. Well, I mean obviously from Day 1, I was asked would I front the application, and I said that I would do the business plan first and then see what that throws out. If the business plan is correct, then we will have a look at who is going to be there, effectively. He was the guy who gave me the first commission.

83 Q. Who was the person who decided that Mr. Barry's or Mr. Stafford's involvement in Dublin Radio 1 would not be

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disclosed in this document?

A. Well, I think that is, you know, that is pretty obvious.

If they were in the other one, they couldn't be disclosed
in this way.

84 Q. Was that a decision made by you, Mr. Taggart, or a decision
made by Mr. Barry?

A. This was a decision made by Mr. Barry.

85 Q. And not by you?

A. No, but I mean I would be aware of what, why the decision
was made. I am not naive to think that the reason why, the
reasoning for it.

86 Q. Subsequently the matter did not proceed, the investment did
not proceed in the Dublin radio station. That's correct, I
think?

A. Absolutely. I never made an application for a Dublin radio
station, is that what you mean?

87 Q. Yes.

A. Yes, correct.

88 Q. And this document that we have just looked at, that
yourself and Mr. Heffernan signed, would have prevented you
making any such application, local application that you
prepared without the consent of Mr. Barry and Mr. Stafford?

A. That's right; but I mean in principle I would accept that
anyway. Once they gave me the commission on Day 1, without
that letter, I was never going to do it without them,
without their agreement.

89 Q. Now, I think you did subsequently contact Mr. Barry and try
to recoup some of your funds in relation to the matter,
isn't that right?

A. Well, as far as I was concerned he asked me to prepare a

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business plan, which we prepared to the best of our ability.

90 Q. Yes.

A. Obviously he wasn't used to the type of expenses that we had.

91 Q. Could I have page 1200 please?

A. Excuse me.

92 Q. This is a letter of the 24th of July 1989, Mr. Taggart, that you wrote to Mr. Barry in relation to outstanding fees and charges?

A. Correct.

93 Q. Okay. And if we go down through the letter and if necessary I will ask you to comment on it. You set out that Mr. Barry had successfully promoted the Frank Sinatra concert and launched Century Radio 1. You were now writing in regard to the expenses for Dublin 1 Radio. You remind him that you were allocated 10% of the share capital, five percent to Kevin Heffernan and the "remaining 85 percent remained at all times to yourself and Mr. Stafford." It clearly sets out the position, and the enclosed agreement was the signed document?

A. Was our agreement.

94 Q. That we have looked at.

"The expenses incurred on behalf of the promoters were as follows and as you are aware are fully documented. I have already paid all the expenses. I would also add that I personally probably spent 100 hours and Kevin Heffernan another hundred hours."

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You then set out the costs and expenses totalling

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ú56,134.75?

A. They are the costs we incurred and paid.

95 Q. And were they paid by Gilmore and Taggart?

A. Absolutely.

96 Q. At page 1201 you go on to say that you would point out that

"I would point out that the ú25,000 we initially
subscribed", and that ú25,000, I think, is Mr. Barry's
ú21,250 and the balancing payment from Gilmore and Taggart?

A. Correct.

97 Q. "Was certainly not meant to cover all of the expenses, but
was only a payment on account. It is unfortunate that you
saw this as a ceiling of our expenditure."

A. Correct.

98 Q. Had Mr. Barry indicated to you that he was of the view that
ú25,000 was the maximum that was to be spent in the
preparatory work?

A. No, he had not.

99 Q. After the deal was aborted, if I can use that terminology,
did he indicate to you that as far as he was concerned
ú25,000 was the ceiling?

A. Yes, he did. That is what he said. In other words our
costs were far too high. He didn't authorise, he didn't
think we needed that type of cost to prepare that type of
submission.

100 Q. You ask then to have the balance of the funds due to you
and you point out that Mr. Wogan and Mr. Ratigan will have
to pay their share. Then you say:

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"I would remind you that the application was aborted
primarily because of the attitudes of you and your backers,

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and no doubt in the past few months you have learned something about the problems of launch dates as well as the expenditure needed to hire that appropriately skilled staff as well as company cars."

A. I had to have a little dig somewhere, you know.

101 Q. Was that your view that was held at that time?

A. That was the view that I had all the time. He was not up to speed, as far as I was concerned, regarding what it would cost to run a Dublin radio station. So I wasn't surprised when he didn't get the costs right for running a Century Radio station. It is not only him, his advisors, he had lot of advisors as well. So, you know, my advice was that it took one and a quarter for Dublin, their advice was that it cost much the same for an all Ireland radio station. Whereas I have no doubt that if I was costing, it would have been considerably more.

102 Q. You then set out --

A. It is a matter of opinion of course, you know.

103 Q. You set out that you are obviously sorry that relations went the way they did, "but certainly it was far better for you and I to find out that we could not work with each other at an early stage rather than to have set off on a course that would inevitably end in absolute disaster"?

A. That is what I believed.

104 Q. "I hasten to add this is Kevin Heffernan's absolute thoughts as well."

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Was it your view that if yourself and Mr. Barry had proceeded in tandem with this application that you were on a collision course because of your views over the costings?

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A. Absolutely.

105 Q. Yes. And that the project would have become unworkable in any event, because agreement could not be reached on the costings?

A. Well, it would have become unworkable on the costings and on his attitude to the whole thing as well, obviously. I mean he didn't give us, if you are disputing a business plan with me, you will say "That is too high, that is too low. I agree with that". He never went into specifics, he just said that it was just too high. You know, that is his opinion, and his advisors opinion, you know, but I found it very strange that we were so much out of sync because we do a reasonable job in projections.

106 Q. You are satisfied, I presume, professionally that the projections you prepared for Dublin Radio 1, the application for the local station were, had a factual basis and were reasonable?

A. We got into great difficulty to achieve these figures, you know. In other words, we were very lucky that Peter Owens could give us the advertising and marketing figures. There are a lot of things in there from market research, audience research, all the things that he knew was going to cost - I remember with Kevin Heffernan, he was a skilled person, an officer who had 30 years with the ESB, who knew what it was going to cost. Also I knew what things were going to cost. I mean you don't get people for nothing, you know? All those costs were what we totally believed in. We weren't trying to exaggerate them or minimise them. They were what we thought were reasonable. But half a million, to one and a quarter million was a big gap in 1988, and a

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big gap today.

107 Q. Did Mr. Barry indicate to you that in relation to the gap between the start-up financing that you considered was necessary for the Dublin radio station, that he would not pay more than the half a million?

A. No, he wouldn't pay it. He wouldn't pay it. He was entitled to make that decision. We set off to do a business plan appraisal. Our figures were too high for him. He wasn't going to pay them. He is entitled to that. I will make that very clear. The client is always entitled to turn down the business plan. He irrevocably turned it down effectively.

108 Q. In your view, at ú500,000 it would have been cash starved?

A. In my view at ú500,000, it wasn't even a runner.

109 Q. Did you ever receive any response from Mr. Barry to your letter of the 24th of July?

A. I believe he did ring me to say that he didn't tell us to spend all that money, and that, you know, therefore he wasn't going to pay it, you know?

110 Q. Was it ever paid?

A. It was never paid.

111 Q. Can I ask you, did Mr. Barry ever mention to you that he knew Mr. Raphael Burke?

A. Never.

112 Q. Were you ever requested by Mr. Barry to make any donation or payment in relation to the application for the local license to anybody?

A. Never.

113 Q. Prior to the commencement of this Tribunal, were you aware from general knowledge at the time, that there may have

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been some discussion around about payment for licenses?

A. Absolutely not.

114 Q. Did everyone ever approach you seeking funding or payment in relation to the licenses?

A. Never.

115 Q. Would it have been a matter of public knowledge or reasonably well-known that you were one of the applicants, or you were starting to apply for a, one of the Dublin licenses?

A. Yeah, these things get out, apparently a lot of people - we were doing our research and asking people and probably also approaching well qualified RTE people who we wanted to get. So these things do get out. You don't hold these things tight. It did get out, I remember there was a big headline in the Evening Herald of "Taggart, Heffernan and Wogan". It did get out, you know.

116 Q. I think that you initially made the application in the name of Gilmore and Taggart; sorry you had written to Mr. Sean Connolly of the IRTC indicating an interest in making a submission for a local sound broadcasting contract and that was on the 17th of November, 1988?

A. That's correct.

117 Q. Document 6196. As I understand it, Mr. Taggart, that was the only document you sent in to the IRTC?

A. That is the only document. It was only just an information document, effectively to get the details.

118 Q. And you received the information from the IRTC, and you proceeded to put together your business plan?

A. Absolutely.

119 Q. Extracts of which we have looked at. In that

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correspondence with the IRTC you indicate that the people who were involved in the matter were Mr. Kevin Heffernan; and you give a description of who Mr. Heffernan is, this is on page 6197?

A. Mm-hmm.

120 Q. And you set out that he is a member of the Labour Court, he was a personnel officer with the ESB, team manager for the Dublin gaelic football team for many years, as well as winning an All Ireland football medal with Dublin in 1958, and he was also manager of the successful Irish football team that toured Australia in 1986.

Mr. Tony Ratigan is chairman of Property Trust PLC. He has been successful in the Irish and English property scenes over the past two decades."

Who would have furnished you with that information?

A. Oliver Barry.

121 Q. Right. "Mr. Terry Wogan is well-known worldwide as a radio and TV presenter having commenced his career in Ireland with RTE, and subsequently went to the UK to take up a position with the BBC. He has enthusiastically given his full backing to his involvement in this project and will commit both financial and professional expertise to the operation of the new station."

Was that your understanding, from your conversations with Mr. Wogan?

A. Absolutely. We met Mr. Wogan, who detailed all this. The financing side, I don't know what the percentage would be, I don't know what percentage Mr. Wogan was in for. Certainly I would expect him to be in for a reasonable

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slice of it.

122 Q. Then you set out your own particular qualifications and expertise there.

A. For what it is worth, yeah.

123 Q. Apart from that documentation, did you have any correspondence with the IRTC?

A. Not that I am aware of. There would be no, because we got that to get all the details of all the programmes they needed, the Irish content, the news content, all these type of things.

124 Q. MS. DILLON: I have no further questions, Mr. Taggart. But other counsel who are here may have some questions for you.

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CHAIRMAN: Does anybody want to ask Mr. Taggart any questions?

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THE WITNESS WAS CROSS EXAMINED, AS FOLLOWS, BY MR. O'CONNOR:

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125 Q. MR. O'CONNOR: Mr. Taggart, John O'Connor, solicitor for Oliver Barry. Just one or two questions very briefly, Mr. Taggart?

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I think you said in your direct evidence that it was decided in early January not to proceed with the application, is that correct?

A. No, what I would have said was, if I said that what I meant was that it was going terribly wrong at that stage.

126 Q. Mm-hmm?

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A. Oliver Barry and I were not in sync in these numbers. We were having fractious meetings, so I think that is the same answer, isn't it?

127 Q. It is. I just want to try and crystalise it, if we could?

A. Yes.

128 Q. Would it be fair to say that it was early January?

A. I would think so, yes.

129 Q. And not, I don't want to pin you down on this or anything, but insofar as the application itself is concerned, from the point of view of getting the agreement of all the parts; would it be fair to say that the actual application never really got to the starting blocks?

A. Absolutely.

130 Q. And one final question; the letter of the 28th of January, '89, which you described as the "useless document", I can see the reason for that, that is actually addressed to Tony Ratigan, the signed document, isn't that correct?

A. That's correct.

131 Q. No further questions Sir.

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THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MS. DILLON:

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132 Q. MS. DILLON: Just arising from that last point in relation to the document being addressed to Mr. Ratigan, in relation to that document, Mr. Taggart, what was your understanding about the parties with whom you were dealing when that document was signed?

A. I wasn't very interested at that stage. I mean, I was signing a document which meant that this thing was never going to go any further. If they asked me to put anybody

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at the top of that letter I would have addressed it "Oliver Barry", "Stafford", "Ratigan". I presume the reason they put Ratigan there was because his name wasn't in the other applications. That is what I would have presumed.

133 Q. Insofar as the document was tying you into a relationship with other parties, it was Mr. Stafford, Mr. Barry and Mr. Ratigan?

A. That's correct.

134 Q. Thank you very much Mr. Taggart.

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CHAIRMAN: Thank you Mr. Taggart for coming down. I appreciate your courtesy and assistance.

A. Thank you very much.

THE WITNESS THEN WITHDREW.

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MS. O'RAW: The next witness, Sir, is Miss Noreen Hynes.

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NOREEN HYNES, HAVING BEEN SWORN, WAS EXAMINED BY MS. O'RAW
AS FOLLOWS:

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135 Q. MS. O'RAW: Good morning Ms. Hynes?

A. Good morning.

136 Q. Ms. Hynes, you were appointed the Financial Controller of
Century Communications; is that correct?

A. I understand the title at the time was Head of Finance and
Administration.

137 Q. Head of Finance and Administration. And you were appointed
in June of 1989?

A. Correct.

138 Q. Is that correct?

A. Correct.

139 Q. When had you been approached first by representatives from
Century Communications to take on that position?

A. It probably was in May of 1989.

140 Q. Yes. And I believe you are a chartered accountant?

A. Yes, I am.

141 Q. And you had quite substantial experience beforehand?

A. I worked in Irish Distillers prior to that. That was my
first position in industry after I served my articles.

142 Q. I see, yes. And how long were you with Irish Distillers?

A. I was there for ten years.

143 Q. And what was the title of your position there?

A. Well, before I left it I was the Financial Controller of
Irish Distillers and a director of Irish Distillers
Limited.

144 Q. Yes. Now, if I can bring you first of all to the folder

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that you have in front of you there, and in the first section, at the yellow tab?

A. Yes.

145 Q. The first document there is the document dated the 16th of December 1988, page 125 please? This is the application made by Century Communications to the IRTC in conjunction with their, the National Radio Franchise. And if you could turn please to page 131 of that document.

A. Yes.

146 Q. These are the financial projections that were incorporated into that application. Can I ask you did you see that application document at all?

A. I cannot recall. I would assume these figures were prepared by the accountants at the time, but the application would have went in around the time I suppose I would have joined the company, or shortly before, shortly before. So I can't recall being involved in these particular figures.

147 Q. Yes. Well, actually the application went in on the 16th of December 1988, and I think Mr. Griffin has already given evidence that he was the person involved in the preparation of these figures. But can you recall seeing these figures, or working from these figures at all?

A. I cannot actually recall. That is not to say I didn't see them at the time. I just cannot recall.

148 Q. Yes, yes. If we move on to the green tab please? June of 1989, page 6004 please?

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This appears to be the first set of accountants, monthly accounts that were prepared at that time. I think Mr.

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Griffin was still acting as bookkeeper to Century Communications at that time. This is for the month of May, 1989; is that correct?

A. That was correct, yeah.

149 Q. Mr. Griffin continued as bookkeeper from the time of the application until some time in July or August?

A. Yes. That would be correct, yes.

150 Q. If we have a look at that document at page 6004 please, we see that the receipts there indicate a loan capital of ú133,334. Were you given any indication of who had provided that loan capital?

A. No, not at that time.

151 Q. I see. Then, if we continue on to page 5999 please? It is at the pink tab, and this is a letter from Mr. Eamonn Griffin to yourself, dated the 28th of July, 1989. And he encloses therewith draft management accounts for the month ended the 30th of June, 1989. He says:

"Please note that I have included under Current Assets a suspense item in the amount of ú26,250. This represents cheque number 5, which emanated from Oliver Barry's office. Patricia, from Oliver Barry's office, is making inquiries in relation to this."

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Can you recall that letter being sent to you and these accounts being sent to you?

A. I can't specifically recall it, no. But at the time the reason being that we were extremely, setting up the station and I was more involved in the administration at that stage, but I must have seen it.

152 Q. Yes.

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A. At the time.

153 Q. So he had passed on the accounts to you?

A. Mmm.

154 Q. Was he handing over the accounts to you at this stage?

A. I don't think so. I think it was later.

155 Q. It was at a later date?

A. Yes.

156 Q. But this figure of ú26,250 was brought to your attention in that letter?

A. Yes.

157 Q. Yes. And I think subsequently it arose on a number of occasions?

A. Well, it would have. The staff in the Finance Department would have continued to obviously query it.

158 Q. Yes. If we look at page 6001 please? We have receipts, loan capital ú250,000. This is an additional ú250,000 going into the company; is that correct?

A. Yes, that would appear so.

159 Q. During the period of June 1989. And in fact Mr. Stafford, I think, made a payment of, on the 15th of the 6th '89 of ú250,000 into the capital account. Were you made aware that that money was coming from Mr. Stafford?

A. I can't recall.

160 Q. Yes. Is it something that you would normally be informed about?

A. Well, at that time I was more involved in the administration of the station, and not so much involved in the day-to-day finance. We didn't have a huge amount of staff at that stage.

161 Q. Yes.

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A. We hadn't - we were just putting together the staffing of the station, so it is quite likely that I may not have known about that.

162 Q. Mmm. At page 6002 then, we have the total of loan capital now being 383,334. That would be the 133,334 that we saw in the May accounts, and then the 250 arising out of the June accounts; is that correct?

A. That's correct.

163 Q. And then excess of expenditure over income amounts to in excess of £100,000. Am I correct in thinking at that time there was no income coming into the company, it was only expenditures at that stage?

A. Yes.

164 Q. Yes. In relation to the level of expenditure at that time, were you aware of a budgeted amount of expenditure and how did that level of expenditure relate to the actual amount of expenditure?

A. At that stage we would have been recruiting Heads of Departments who would have been requested to prepare budgets for their departments. So there would have been a period, probably, where there were no Head of Department budgets, and that is a task that we had to carry out once they were taken on board, which would have been in those months. So it is quite likely there were no specific head of department budgets.

165 Q. Yes. In relation to the level of expenditure, had you any opinion at that point in time, the end of June 1989, about the level of expenditure that the company was engaged in?

A. Well, I was obviously very concerned about the level of expenditure, because at that stage I didn't have a feel for

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what the income level might be.

166 Q. Yes.

A. So we were spending money without actually knowing what we could earn, so obviously I was, I would have been concerned.

167 Q. You had concerns as far back as June of 1989?

A. Well not to, not to the extent that I was over concerned about it, but like any good finance person, you know, nobody - it would be normal to be concerned about expenditures, watching and trying to control them.

168 Q. Yes. Then at page 6003, we see at point number 5, "suspense cheque number 5: ú26,250" this appears to be the item that Mr. Griffin has referred to in his letter.

Would that be the case?

A. Yes, yes.

169 Q. And in relation to that term "suspense" What, in accountancy terms, is a suspense account?

A. When one doesn't know where to post the item specifically one must post it to a suspense account, which indicates you don't know what the item is for.

170 Q. Mmm. So no explanation?

A. No explanation.

171 Q. As at that time?

A. Yes, correct.

172 Q. And normally when there is a suspense item, is it the function of the accountant to, or the Head of Finance or the person controlling the finances at the time, to go and look after and to try and find out what it is?

A. Well, first of all the finance staff who would have been in the department would have been trying to find out. They

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would inquire, make inquiries. If they were not successful then they would come to me. If I was not successful I would go to Michael Laffan. If he wasn't successful it would go to the Chairman. That would be the procedure.

173 Q. Yes. On the 11th of August 1989, then behind the blue tab, page 5993 please? Again Mr. Griffin writes to you, and he encloses the draft management accounts for the month ended 31st of July of '89. Again he says:

"Please note that I have included under Current Assets a suspense item in the amount of ú26,250. This represents cheque number 5 which emanated from Oliver Barry's office. Patricia, from Oliver Barry's office, has informed me that he will speak to you directly in relation to this matter."

I think in August 1989 - was when Mr. Griffin was passing over the accounts to you, certainly from the Century files. He doesn't appear to have had an involvement after this particular letter, would I be correct?

A. That may be correct, I can't be one hundred percent sure.

174 Q. In relation to this note here, that "Patricia in Oliver Barry's office has informed me that he will speak to you directly in relation to this matter" did Mr. Barry come to speak to you in relation to this, directly in relation to this ú26,250 at this time?

A. No. No.

175 Q. Did you raise the matter with Mr. Barry?

A. Yes, I did. I would have raised it at the time verbally, and as you know, later in writing.

176 Q. This is back in August of '89 you would have raised it?

A. I would have raised it at the time, yes, because it was

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brought to my attention, so I would have been discussing it with Michael Laffan at the time.

177 Q. Would you have raised it directly with Mr. Barry?

A. I more than likely did at the time. I can't be one hundred percent sure though, because it was a verbal request, initially.

178 Q. What feedback did you get in relation to it?

A. Well, I obviously didn't get an explanation for it, because if I did I wouldn't have been raising inquiries later in writing.

179 Q. Yes. Mm-hmm. Do you recall discussing it with Mr. Barry, any specific meeting where you raised it?

A. No, I can't recall any specific meeting where I would have discussed it.

180 Q. Or any specific response back to you in relation to it?

A. No, I cannot recall. It is more than likely that I initially would have discussed it with Michael Laffan, to see if he could find out what it was about.

181 Q. Do you recall Mr. Laffan coming back to you about it?

A. I can't specifically recall, but I do know that Michael Laffan couldn't get any information from Oliver Barry about it either.

182 Q. Yes.

A. I do remember that.

183 Q. Yes.

A. I can't remember the individual instances.

184 Q. Yes. If we have a lack at page 5994, the following page please, and in "income" there appears to be no figure for income, at that stage, by the end of July, the company wasn't making any money. It wasn't on air yet, so it

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wasn't receiving any monies. Would that be correct?

A. Yes.

185 Q. Yes. And at page 5995 please, the following page, we have "receipts, loan capital ú148,334." In relation to that particular figure, do you know who provided that loan capital to the company?

A. No, I don't.

186 Q. Had you been given an explanation as to why a figure of 148,334, perhaps an odd figure, it is not a round figure for share capital, or loan capital coming into the company, had you been given any indication of why an amount of that figure was being paid into the loan capital account?

A. No, no. I wasn't given an explanation.

187 Q. Yes. If we look then at page 5997, again we have at paragraph 5 "suspense cheque number 5 issued from Oliver Barry's office. Oliver Barry to explain to Noreen Hynes the ú26,250" that is the entry in the accounts that would reflect the ú26,250; is that correct?

A. That's correct.

188 Q. And it still remains in the suspense account at that stage?

A. That's correct.

189 Q. At page 5998 then, we have a total of loan capital in excess of 530,000, and an excess of expenditure over income in excess of ú617,000. By this stage what were your views on the level of expenditure by the company?

A. Well, as I said before I was concerned, and I would have indicated my concern to both Michael Laffan and to, I believe, James Stafford at that time.

190 Q. Mm-hmm.

A. Coming up to the launch, you know, I was quite concerned.

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191 Q. And what was said to you in relation to those concerns?

A. I cannot recall, but I would have been saying it in the light of that we need to watch our expenditure levels. Just to, just a general comment, you know?

192 Q. Well, were you being given any reassurances that this money would be recouped, for example?

A. Well yes, of course. Of course I knew there was going to be income coming into the company. I knew that. Yeah. I was aware - there was a very optimistic air around at that time, I wouldn't have had a huge amount of experience in this type of situation, and especially in the radio business, so I would just obviously had to accept what the experts were saying, there was a good market for the radio business.

193 Q. And who were the experts that were giving you these assurances?

A. Well, obviously the directors were being advised by outside experts and the directors would have been giving us those assurances.

194 Q. The directors were giving you those assurances?

A. Of course they would have been, yeah.

195 Q. In particular who was giving you assurances, did Mr. Barry or Mr. Stafford give you assurances?

A. Well, if I ever - at any time I would have brought up the matter of expenditure levels, I would have received the assurances that when the team are put together, the top team, and always referred to as a "top team of people", a detailed business plan would be put together and that would be agreed by all concerned, including the board. That would be, it was a good business and it would be

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successful; and in order to ensure it was successful a good team of top people were being put together.

196 Q. Who said that to you?

A. That would be the tone at the time. I can't remember who said that to me, but they were the sort of, that is what was being said at the time. There was a great optimism for this new radio station.

197 Q. And were you being given assurances about income?

A. Well, the only assurances I would have got about income was when the business plan was put together in detail, of which I would have been part, in the preparation, and the Heads of Department, like the Sales Department, would have put together a business plan, and I can recall at the time that James Stafford would have been involved in that obviously, because the new team had just been put together, so there was a settling in period, then the business plan would have been prepared.

198 Q. What business plan was this?

A. It would have been, this would have been the business plan for the coming year.

199 Q. Can you identify the document to us, or can you --

A. I cannot recall if it is here. But we would have prepared a business plan. I haven't any details of it here in front of me, but we would have prepared, as a new team coming in, we would have prepared our overhead schedules and our income schedules for the coming year.

200 Q. Was this a document that was ultimately shown to people in Bank of Ireland, can you recall, at a meeting with the Bank of Ireland?

A. Yes, it may have been.

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201 Q. On the cover of it, it had a large microphone; is that correct?

A. I cannot recall.

202 Q. Yes.

A. But I mean when the, when the initial submission was made to the IRTC, that was prepared by accountants, a firm of accountants. Obviously that document couldn't be used by management.

203 Q. Why was that?

A. Because they had no part in the preparation of it.

204 Q. Yes.

A. So they had to prepare their own forecasts and their own budgets.

205 Q. So the business plan was very different to the application to the IRTC?

A. I don't think it was very different on the bottom line, if I can recall, but it may have been in terms of overheads and income level.

206 Q. Yes, Mm-hmm. If we have a look then at page 2174 please?

This is a letter from yourself, dated the 21st of August 1989, to Mr. Paddy O'Donoghue in Bank of Ireland. And you enclose with that the revised projections for Century. Can you recall that particular document?

A. I can't specifically recall it, but obviously I sent that letter after we had done some work on the projections, yeah.

207 Q. Yes. And would you have been a party to calculating those projections. Would you have been the person in charge of those projections?

A. I would have been the person putting it together. I would

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not have been the person in charge of it. The Chief Executive would obviously be the person who would be in charge of it.

208 Q. I see. And in relation to the calculation of the particular figures there, if we have a look at page 2175 for example? We have figures for turnover, presumably turnover is advertising income, is it?

A. Yes.

209 Q. Yes. And you have various figures from 1989 to 1996. In relation to those particular figures, on what basis were those figures derived?

A. Well, they would have been derived from, again the Heads of Department getting together and agreeing income levels, Head of Sales would have had to sign off on a budget. It wouldn't have been my figures.

210 Q. They weren't yours?

A. No, not at all. I would have just prepared the documentation.

211 Q. If we flick back please to the actual application, page 131 please? If we compare the figures at page 131 with those in page 1275?

A. I am just finding the page. Which section?

212 Q. Of course. The first tab for December '88 is where you will find the projections in the application to the IRTC?

A. Yes, yes.

213 Q. And page 131, if we have a look at the figures there for 1990, we have a turnover figure of 1910. For 1990 you have a figure, or Century has a figure of 5 million. For 1991 the figure in the application form is 2.9 million pounds, and the figure here is 5.5 million pounds?

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A. Excuse me, I think I am on a wrong page, but I am just trying to - oh yes, I have it here. Yes. Turnover - yes.

214 Q. We are comparing page 131 with 2175?

A. Correct.

215 Q. And we were just looking at the 1990 figure. And that is 1.91 million compared with 5 million?

A. Mm-hmm.

216 Q. The '91 figure is 2.9 million compared with 5.5 million. '92: 3.8 million compared with 6.05 million and so on, it continues in the same vein. There appears to be a significant difference between the projected figures that you are supplying to Bank of Ireland here and the figures that were in the application form. Can you tell me on what basis there was such a difference or why was there an expectation that income would be this level?

A. Well, I can only surmise that it was management's view at that time and the director's view at the time that that type of turnover level was possible.

217 Q. Well, who was giving those figures?

A. As far as I can recall it would have been again the Head of Sales would have been responsible for those figures, and I am sure that the directors were also involved in those figures.

218 Q. So the Head of Sales at the time was Mr. Seamus O'Neill?

A. Yes.

219 Q. And the directors at the time?

A. Oliver Barry and James Stafford.

220 Q. Would Mr. Crowley have been involved?

A. Yes, he would have been involved, yes.

221 Q. Mr. Wogan and Mr. De Burgh?

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A. I cannot recall.

222 Q. Yes. And in relation to the level of input of the directors with these figures; can you give us any comment on that?

A. My recollection would be that they would have been quite involved in this process.

223 Q. Mm-hmm. They would have discussed it with you?

A. They would have discussed it with, not just myself but very much so with the Head of Sales and Marketing and also with the Chief Executive.

224 Q. Mm-hmm. What was your opinion on these figures for turnover at the time?

A. I can't recall, because at the time, I can't go back, I know subsequently I thought they were very high, but not at that time. I had just arrived in the company.

225 Q. Yes.

A. With no experience of the radio business. I don't think I was anyone to question those who were there before me.

226 Q. Yes. So you were taking these figures based on the information that you were being provided with?

A. Absolutely.

227 Q. I see. And the last set of figures at page 2175 there, that is the return on shareholders equity, and we see by 1996 the figure being in the region of 65.2 percent, 1995 it is 55.7 percent. Did you feel, at that particular point in time, the return on shareholder equity to be optimistic or realistic?

A. I have to say that at that time I really couldn't have said because I had no experience in that business. I thought they were very high obviously, but if that was the type of

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money that the radio business was making, I had no doubt it was going to be a good business.

228 Q. Yes.

A. But it is easy to look back in hindsight. They were not my figures, no, these income figures were set by the management and by the directors of the company.

229 Q. Yes. And the majority of that return on shareholder equity, that derives from turnover advertising income, is that correct?

A. That's correct.

230 Q. Yes. If we continue on then please to the 7th of September, this is behind the yellow tab, at page 6141? This is a fax from Miss Mary Swords of Arthur Cox and Co. solicitors to yourself, dated the 7th of September, '89. And she says in that document:
"I now attach hereto a draft of a letter which will need to be signed by you in connection with the placing agreement. Similar letters will be signed by Michael Laffan and Eugene Fanning, in his capacity as Secretary to the company."

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If we have a look at that letter, that draft letter at page 6142? It is to be signed by yourself and it is addressed to Mr. Stafford and Mr. Barry, and it is "Re: Placing Document" in relation to it you say that:

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"I confirm in my capacity as Head of Finance and Administration of the company, that:

1. I am not aware of any reason why the warranties contained in the placing agreement should not be given by

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you and Mr. Stafford and Mr. Barry as directors on behalf
the company.

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2. I am satisfied with the disclosures given in the
disclosure letter.

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3. I am not aware of any other matters that are required
to be disclosed by the company in relation to the placing
agreement."

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Enclosed with that was the letter at page 6143. Which is
to be signed, I think, by Messrs. Stafford and Barry, and
addressed to Davy's. But in relation to that particular
draft letter of the 7th of September, '89, do you recall
signing that letter?

A. I actually don't recall signing it, and I, my normal
instinct would be if I received something like this to be
extremely cautious, because I wasn't there at the early
stages of the transmission, the submission to the IRTC. I
wouldn't have been aware of a lot of information, so I
would have been, my normal reaction would be to be
cautious.

231 Q. Yes. Well, we see the following day Miss Swords sends you
a revised draft of the letter, and we see at page 6146
please? That she has revised paragraphs 1, 2 and 3, and
they now read:

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"I confirm in my capacity as Head of Finance and
Administration of the company that as of the 7th of
September 1989:

.

1. I am not actually aware of any material or substantial reason why the warranties in the placing agreement should not be given by you, Mr. Barry and the company.

.

2. I am satisfied that the disclosures given in the disclosure letters state all material and substantial matters of which I am actually aware.

.

3. I am not actually aware of any other material or substantial matters which are required to be disclosed by the company pursuant to the warranties in the placing agreement."

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I think this revised letter was sent to you pursuant to a telephone call you had with Mr. Eugene Fanning, at least that is what the fax cover sheet would indicate, and the substantial clause in paragraphs, 1, 2 and 3, are the inclusion of the term "actual" in each of those paragraphs. Can you say why that was incorporated?

A. I cannot specifically recall, but I would think I was reluctant to sign this letter and he was trying to encourage me to sign it, but I can't actually recall signing it.

232 Q. Why were you reluctant to sign it?

A. Because I was not involved in the business for long enough to know if there was any information, at the time I may have just been reluctant to sign it because of my actual involvement and my influence on the figures.

233 Q. Well, had you any reason not to believe the figures that

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were being put forward?

A. I had no reason to believe or otherwise, that would be the thing. I was not experienced enough in that business to be able to give any opinion on the figures.

234 Q. Well, what was the extent of your inquiries in relation to those figures that were put forward?

A. Well, I obviously would have looked at the market at the time, and I would have taken a good look at what was possible to achieve, what it was possible to achieve. But you must remember that at that time, the transmission was supposed to have been in place, and a much wider coverage than actually transpired, and there may have been, I may have just been a bit nervous about it, you know --

235 Q. Well, this is in September of 1989, this is the 8th of September 1989, this is only four days after Century went on air. And the level of coverage at that stage, I think it was still very early to assess what level of coverage had been reached. Did you doubt the figures that were being quoted to you?

A. I cannot recall why specifically I was reluctant to sign the letter. I cannot actually do that. It may have been a whole combination of things. The fact is that I can remember at the time being very reluctant. I can't recall signing it, and that is all I remember.

236 Q. Well, who was asking you to sign the letter?

A. The --

237 Q. I know that Miss Swords and Mr. Fanning asked you, but did anyone else ask you to sign the letter?

A. I can't recall having a discussion with James Stafford or Oliver Barry about it, no.

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238 Q. At the end did you actually sign any such a letter?

A. I can't recall signing it.

239 Q. Yes. The Davy Placing Document at page 418 please, seems to incorporate the figures that you had provided to Bank of Ireland, to Mr. O'Donoghue the previous month. If we have a look at page 431, and if we compare the figures at page 2175, which are your figures that you have provided to Mr. O'Donoghue. The figures in that document to Mr. O'Donoghue appear to be the same, or very similar to the figures in the Davy Placing Document. The figures that you had provided to Mr. O'Donoghue, these were the basis of the financial projections for the Davy document, were they?

A. Yes, they would have been, yes.

240 Q. And again they derived from the same sources therefore?

A. Yes.

241 Q. So they were based on information provided by Mr. O'Neill and by the directors, is that correct?

A. That would have been correct.

242 Q. Yes. And at this stage the Placing Document, I think, was circulated on the 22nd of the 8th; the 22nd of August, '89. Would that have been correct?

A. I can't recall.

243 Q. Did you see a copy of the ultimate Placing Document?

A. I would have, yes.

244 Q. I see. If we go on then to page 6185 please? And these are the monthly accounts for September, 1989. This is a memo dated the 16th of October 1989, from yourself to Mr. Laffan. If we have a look at page 6187?

A. Yes.

245 Q. At the bottom of that we have "financed by" this is on the

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balance sheet, share capital of 205,000 and share premium of 1.89 million. And subordinated loan stock of ú250,000.

In relation to those figures there, which of this shows up the paid up share capital and amounts outstanding at this particular point of time?

A. Well, the amounts outstanding at this point in time wouldn't appear here, it would be more in a Debtor's Account somewhere.

246 Q. So this only shows up the amounts that had been paid in at this stage, does it?

A. Yes.

247 Q. So the share capital of 205, that would relate to payments that had been put in by the directors. Do you know how that was made up?

A. No, I don't. No.

248 Q. The share premium of 1.89 million?

A. That would be the amounts, I presume, that were in the Placing Document as a result of the private placing.

249 Q. And the subordinated loan stock of ú250,000; would you know who, where that came from?

A. Well, it is in the Placing Document, it should be in the Placing Document.

250 Q. Yes. And what does that say?

A. It says "share capital of 2.15 million" and "subordinated loan stock of ú250,000".

251 Q. Can you tell me what page you are looking at, please?

A. On page 432.

252 Q. Page 432. And in that Placing Document, where you are giving this information in relation to share capital and subordinated loan stock, do you know the breakdown at this

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stage of who contributed that monies to the company?

A. No, I don't recall knowing the individual subscribers.

253 Q. Yes.

A. At that time.

254 Q. Yes. Did you seek to find out who had provided the loan stock at that stage?

A. I cannot recall. I wouldn't have any particular reason or need to find who did at that time.

255 Q. Well, what was your understanding of the --

A. Whatever was in the Placing Document. I mean it stated the shareholders, I knew no more than what was in the Placing Document.

256 Q. In the placing document I think it says that the 825,000 is divided up between Mr. Barry and Mr. Stafford. I will get the exact reference for you now, page 8233.

"The directors have subscribed for 1.8 million Ordinary Shares of 10p each, issued at 50p each.

Oliver Barry and James Stafford - number of Ordinary Shares 1.65 million" - sorry page 423.

"Consideration is 825,000."

A. Yes.

257 Q. The directors have subscribed for 1.8 million Ordinary Shares of 10p each issued at 50p each. Oliver Barry, James Stafford - 1.65 million Ordinary Shares, and consideration at 825." Is it normal that shares held by directors would be described in a bunch like that rather than segregated between directors?

A. Well, I hadn't seen it before, but that's the way it was.

258 Q. You hadn't seen it before?

A. No, I mean normally, I wouldn't have seen that bunching in

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accounts before, it was unusual, but you know, it was the way, obviously, that they wanted it.

259 Q. Yes. Were you given any explanation as to why it was being described in that manner?

A. No.

260 Q. Yes. If we move on to the document at page 6191? It is behind the pink tab and it is entitled:
"Revised Sales Projection to 31st of December".

A. I have 6183 but --

261 Q. After 6189 we have 6191?

A. Sorry.

262 Q. Sorry, it is the dark pink tab for October '89.

A. 6189. Yes, I have that.

263 Q. Page 6191.

A. Mm-hmm.

264 Q. That is 6191 you have on screen?

A. Yes.

265 Q. Sorry, could I have 6190 then please? Sorry, it is 6190.

We have a revised sales projection to 31st of December, 1989. We have the ordinary budget and actual sales. These are the advertising sales figures, the budgeted amounts and the actual amounts; is that correct?

A. That's correct.

266 Q. Yes. And is this document a document that would have been prepared by yourself?

A. More than likely, yes.

267 Q. Yes. And if we have a look at the difference between the budgeted amount and the actual amount, we see a difference of, over the period 10th of September 1989 to the 1st of October 1989, a difference of 47 percent?

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A. That's correct.

268 Q. Yes. Given that there was such a difference between the budgeted amount and the actual sales amount, did you have concerns at this stage in relation to what had been put in the Placing Document?

A. Of course I did, yes.

269 Q. Did you voice these concerns?

A. Yes, to Michael Laffan.

270 Q. What happened as a result of voicing these concerns?

A. Well, Michael would have agreed with me, obviously, at the time, and we were into the cost cutting exercise.

271 Q. Yes.

A. We had to reduce overheads very quickly and that was the, that was the discussion at that time.

272 Q. At this stage the Placing Document was out though, is that correct?

A. Yes, it would have been.

273 Q. Yes.

A. Oh yeah.

274 Q. And did you draw the attention of the directors to the difference in the sales figures, the actual and budgeted amounts?

A. Yes, we would have. I would have provided Michael Laffan with all of the information to enable him to see the trend.

275 Q. Yes.

A. And to try to do something about it.

276 Q. And what feedback was coming back from the directors in relation to the difference between the actual and budgeted amount?

A. Well, there was a lot of surprise that the figures weren't

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as good as they had expected.

277 Q. Mm-hmm.

A. And they would have had a lot of discussions with the sales and marketing director.

278 Q. Yes?

A. And following that then, we would have looked at cutting overheads quickly.

279 Q. Do you recall any discussion in relation to the difference between the actual figures that you were getting in sales and the amount that was projected in the Davy Placing Document?

A. Well, we would have had a meeting about it at the time, and some serious discussions would have taken place.

280 Q. Who would have been at that meeting?

A. The Head of Sales. Probably all of the Heads of the Departments because it would have involved them at some stage.

281 Q. Yes.

A. I can't recall when the meeting would have taken place, but there would have been meetings.

282 Q. Would the directors have been present for those?

A. I can't not specifically recall, but it is quite possible, because they would have been involved at that stage, yeah.

283 Q. Could any remedial step have been taken in relation to the information that had been provided in the Placing Document and the actual figures that you had for sales?

A. Not to my knowledge.

284 Q. No.

A. I think the Placing Document was a document that was in progress while the team of management were being put

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together.

285 Q. Yes.

A. And the management would have found themselves in a very difficult position.

286 Q. Mm-hmm.

A. A very difficult position. Because they would have seen, beginning to see trends very quickly, and we were at that stage; at that stage we had large overheads, so there was genuine concern all round.

287 Q. Yes. That the Placing Document, and what was actually happening - granted that this is a, there is a time difference, we were talking about the placing document going out in August I think of, late August of 1989, but the actual figures then obviously arising in September of 1989.

A. Of course, and one wouldn't have any idea of the way the market would have went until such time as the station started transmitting. It is only then that the management would have been in a position to see the trends, the real trends.

288 Q. Yes. If we can move on then to page 91 please? This is a document dated the 23rd of October of 1989. And it is a fax from Mr. Crowley to Mr. Laffan?

A. Sorry, can you give me the number again?

289 Q. Sure, page 91. It is dated the 23rd of October of 1989?

A. Which section?

290 Q. This is in the dark pink section.

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CHAIRMAN: This is still in the section, it is about 20 pages further on.

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291 Q. MS. O'RAW: Your folder is actually in numerical order.

A. Yes, I have it in front of me.

292 Q. The letter says:

"Dear Michael, I would refer to the accounts in September and in particular the pages containing the balance sheet and bank covenants which I had not seen before.

.

In regard to the balance sheet can I mention the following:

1. Do we have a budgeted balance sheet to compare with the actual?

.

2. I cannot understand the figure for debtors, this appears to total 536,274. How could this be, given that our total sales amount to ú256,901?"

.

Then he mentions the suspense account and asks what it is.

And he goes on in the second last paragraph and he says

"The gap between income and expenditure is currently dramatic and clearly unsustainable. I note the plans and proposals on the income side. Presumably you are developing plans on the expenditure side. Taking the projected figures and ignoring the opening expenditure the average weekly cost for 17 weeks appears to be ú109,000.

Bearing in mind actual performance and projections and the expected reduction in advertising spend from Christmas.

Should you not plan to reduce this by up to twenty percent?"

.

I think you received a copy of this particular letter?

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A. Yes.

293 Q. And you did some work in relation to it; is that correct?

A. That would be correct, yeah.

294 Q. Did you have the same concerns as Mr. Crowley at that time
in relation to the expenditure of the company?

A. Yes, I did.

295 Q. Yes. Did you voice these concerns to the directors?

A. Yes, I did.

296 Q. And what was the reaction of the directors?

A. Well, I specifically recall, prior to the launch, asking
Mr. Stafford if we could curtail the expenditure to just a
small celebration.

297 Q. Yes.

A. And he assured me at the time that we, that they would.

298 Q. Yes.

A. But subsequently I think they decided --

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CHAIRMAN: I wonder might I intervene here? Ms. Hynes,
when you say you brought it to the notice of the directors,
did you ever issue a memoranda pointing out your thoughts
and concerns, or was it merely a verbal meeting with the
directors or otherwise and expressing your concerns to
them?

A. At that time any concern I would have had would have been
discussed with Michael Laffan while we were discussing the
figures. But I was, I remember attending a meeting with
the bank at one stage, on my way back - I remember and on
my way back, I remember saying that we really couldn't
afford a very elaborate launch. He said "Well, we won't be
having one, a very elaborate launch" that was all that was

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said. But subsequently we did spend a bit more on the launch than I thought at the time we should have.

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CHAIRMAN: No, I just wanted to understand how you were communicating your concern. That is all. I am not in any way criticising it or otherwise, I just want to know factually.

299 Q. MS. O'RAW: Other than the launch expenditures, did you raise your concerns about other expenditures of the company?

A. I can't specifically recall. We had fixed overheads at that stage, and we were all discussing how we were going to reduce those, and like everything else, when you bring people on board, very high powered people on board and very expensive people, there is an implication of cost reduction, you can't just let them go without a cost implication. It was a very delicate, a very delicate issue shortly after the station being set up.

300 Q. The position as at the 23rd of October of 1989, was that sales were considerably less than the projected amount in the Davy documentation, and the expected amount, and expenditure was much higher; is that correct?

A. That is correct.

301 Q. Yes.

A. That is correct.

302 Q. In relation to budgeted expenditure and actual expenditure, can you give us any indication of what the difference was, in relation to budgeted expenditure --

A. That would have been in the accounts at the time?

303 Q. Yes.

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A. That I would have been preparing?

304 Q. Well if we have a look at page 92, this is where you write back to Mr. Laffan and it is concerning Mr. Crowley's letter of the 23rd of October.

You say: "With regard to the points raised in the above letter:

1. No, we do not have a monthly balance sheet at present.

It is our intention to prepare a projected monthly balance sheet for the remainder of 1989 and for 1990. We hope to take this in as part of our budget exercise which we are working on at present.

2. Debtors. The sales figure of 256,901 is quoted in the letter it is inclusive of VAT. The VAT inclusive figure is 290,000. Added to this is the sundry debtors of ú245,000, (nearest thousand) details of which I attach. (see schedule I).

3. The suspense account relates to a cheque amounting to 26,250 (Copy attached reference schedule ii). I understand you mentioned this to Oliver Barry at your meeting with him on the 17th October, 1989, and he said he would discuss it with James Stafford."

.

At that stage you had obviously mentioned it to Mr. Laffan. Do you recall any information coming back to you at this stage about the 26,250?

A. Not at that stage, no. I didn't receive any, any explanation.

305 Q. At any point in time?

A. At any point in time while I was in that company, I received no explanation.

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306 Q. You never received any information about the €26,250?

A. I was never given any explanation.

307 Q. We have heard, during the course of evidence, that part of that monies, €26,250, was in relation to certain monies being paid for a second application in relation to a Dublin radio license; did you ever hear anything about that? Was that ever mentioned to you?

A. That was never mentioned to me.

308 Q. If there was such an expenditure, where would it have gone in the company's accounts or would it have had a place in the company's accounts?

A. If it was an investment it would have gone in as an investment, as an asset.

309 Q. Yes. And is there any reason why that should not have been incorporated into the company's accounts if this is an investment?

A. If I had been informed about it we would have, we would have put it in as an investment. I am sure that I would have been involved as well. I should have been involved. If it was a company investment I should have been involved, with Michael Laffan, in that transaction.

310 Q. Yes, yes. But you were given no such information?

A. We were given no such information.

311 Q. And can you think --

A. I was given to such information, no.

312 Q. And there are no difficulties in entering such investments, is that the case, in a company's accounts?

A. Absolutely, no.

313 Q. There would no reason --

A. If the directors had decided to make an investment, if the

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company had decided to make an investment, well then the executives should have been involved in that decision.

314 Q. Yes.

A. And the item then, the extra expenditure would have been posted to an investment account.

315 Q. Yes. If we move on then to November of 1989, the green tab please, page 6148? And this was a meeting that was held between Mr. Crowley, Mr. Stafford, Mr. Barry, Mr. Laffan, yourself, Mr. O'Neill, Mr. Story, Mr. Nolan, Mr. Davin-Power, Mr. Marren, and Mr. Fanning.

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Do you recall this meeting? This is one, I think, which particularly deals with the financial difficulties, or the financial position of Century at that time, and a discussion about proposed reductions. I think this meeting is with the heads of various departments, as well as that Mr. Crowley, who was the Chairman at the time, Mr. Marran and Mr. Fanning. Do you recall that?

A. Yes, I can recall a meeting, yeah.

316 Q. And at paragraph D, page 6150, one of Mr. O'Neill's contributions is that he says that: "The projected 2 million of revenue by the end of 1989 was over optimistic" and he gives a new revised projection of 1,050,863. Can you remember that figure, those figures being given?

A. Well, I can't specifically remember the figures, but I am sure at that stage Seamus O'Neill must have felt pretty bad about the fact that we weren't achieving our budgets.

317 Q. Yes.

A. When he had set the figure initially in the projections, he may have felt under a lot of pressure at that time, but you

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know, I can't specifically, I can't recall the discussions that were going on.

318 Q. In general, I think this meeting was about cost cutting in all of the departments; is that correct?

A. Yes, that's correct.

319 Q. I don't propose to go through the entire of the document. If we move on to page 6156 please? And this is a fax from Mr. Fanning dated the 9th of November 1989, to yourself and it is in relation to Section 40 of the Companies Act. He is notifying you of Section 40. He says:

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"At our meeting of the 7th of November, I mentioned to the Chairman and the Chief Executive, the potential impact of Section 40 of the Companies Act, 1983. The section potentially raises certain disclosure issues. It is to be noted that there is nothing in the Placing Agreement or the subscription agreement or the Articles of Century that oblige Century to furnish shareholders with financial information, other than such information which is to be provided under the Companies Act.

.
Section 40 of the Companies Act 1983, however, places a duty on the directors of Century to convene an EGM not later than 28 days from the earliest date of which they became aware of the fact that the net assets are half, or less than half of the amount of Century's called up share capital. This EGM must be held not later than 56 days thereafter. A copy of Section 40 is attached for your records".
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He goes on to ask: "The balance sheet as presented at the October 24th board meeting shows a particular figure for net assets. I would be grateful if you would ascertain if this figure is half or less than half of the existing paid up share capital. Perhaps you would be able to confirm this prior to the next board meeting".

Do you remember setting to work then looking at the share capital accounts and seeing what the position of the company was, in relation to that?

A. Yes I can, yes.

320 Q. Yes. And can you recall what the effect of that was?

A. Well, we had to look to see if it was correct first of all, and then the shareholders had to be notified, or the directors had to be notified.

321 Q. Yes.

A. And that was the difficult part, because, you know, I think I did it at the time, but it should have been really the Company Secretary that should have done it, technically speaking.

322 Q. Yes.

A. And that's so --

323 Q. What were your findings at that stage?

A. Our findings at that stage were that the, that the net assets were half, were less than half of the called up shared capital, and therefore there had to be an EGM, unless something was done in the meantime to raise the finance.

324 Q. Do you remember by how much under less than half they were?

A. I cannot recall, but it was serious enough to get something, to do something about it fairly quickly.

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325 Q. And did you notify the directors at that stage?

A. Yes, as soon as we knew we were correct in our findings then I sent out a note to the directors.

326 Q. Yes.

A. Explaining the situation to them.

327 Q. Yes. Well, I think Mr. Laffan wrote to Mr. Crowley on the 13th of November 1989, page 460 please? And he deals with Mr. Crowley's letter of the 23rd of October 1989, and answers the various queries you raised. He says, and I think this response to Mr. Crowley is based on the information that you provided to Mr. Laffan; would that be correct?

A. That was correct, yes.

328 Q. Again he discusses the balance sheet. He talks about the debtors and the suspense account, and you say: "The suspense" or Mr. Laffan says "That the suspense account relates to a cheque amounting to ú26,250 (copy attached - reference schedule two). I have already brought this matter to the attention of Mr. Stafford and Mr. Barry, who said that they would deal with it and revert to me accordingly."

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This was at the 13th of November, 1989. At this stage you had no information in relation to that figure; is that correct?

A. That is absolutely correct, yes.

329 Q. And was Mr. Laffan provided with any details?

A. Not to my knowledge.

330 Q. And pursuant to this particular letter, do you know if he was given any details?

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A. No, I don't know for sure, but he certainly never gave me an explanation.

331 Q. Yes. If we can turn to page 6158 please? And this is a note from you to Mr. Fanning, relating to company funding and replying to him in relation to his Section 40 query.

And you say: "With reference to the accounts for the month ended 29th of October 1989, it is now recognised by the directors that an amount will be required to be injected by way of paid-up share capital. The amount of the capital injection will be decided at the board meeting of Thursday the 16th of November, 1989. Assuming the directors wish to comply with Section 40 of the Companies Act, the funds required are 1.6 million pounds. If they do not wish to call in an EGM."

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I think that was to bring the share capital up to an amount that was not less than half the net assets; is that correct?

A. That's correct.

332 Q. Yes. And obviously then you had mentioned the matter to the Directors, and had you informed them that the amount that would be required was 1.6 million pounds?

A. Yes, I am sure I would have, at the time, yeah.

333 Q. Yes.

A. It was fairly material.

334 Q. Can you recall what the Directors said in relation to this requirement of an injection of funds to comply with Section 40?

A. Well, I know at the time, as far as I can recall that Mr. Stafford was fairly annoyed.

335 Q. Mr. Stafford was fairly annoyed, why was that? Or how did you perceive his annoyance?

A. Just the fact of the letter going out from me, out to the directors. It probably should have been gone out from the Company Secretary, but somebody had to send it out and I ended up doing it at the time.

336 Q. Why did you end up doing it?

A. Because there was no-one else willing to do it. It wasn't a very easy thing to do at the time. It had to be done quickly. I do recall at the time realising, after I had sent it out, that really it probably should have been coming from the Company Secretary.

337 Q. And that was the basis of Mr. Stafford's annoyance, was it that you had sent it out?

A. It may have been, at that time I think it was, if I can recall correctly.

338 Q. Did you perceive annoyance as a result of the amount of monies that were being sought?

A. No, I don't think so. I think it was more, we didn't have time to start having meetings and discussing what we were going to do. We just had to get on with it and send out the letter and he might have been a bit surprised, I don't know. I don't recall.

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CHAIRMAN: I think we might just break there for --

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MS. O'RAW: Certainly Sir.

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CHAIRMAN: -- For the morning break.

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

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339 Q. MS. O'RAW: Ms. Hynes, I think just before the break we were dealing with the document at page 6198, which was your note to Mr. Fanning of the 5th of November, 1989; which was a response to Mr. Fanning in regard to his Section 40 inquiry.

A. That's correct.

340 Q. And on the following page, 6159, I think this is your memo to the directors indicating to them the position in relation to Section 40. You notify them of what Section 40 says, and then you go on to say:

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"There have been no calls in relation to the shares acquired by the directors of the company. Accordingly the amount of share capital in the company which remains unpaid and uncalled should not be included, so as to establish whether an EGM is required to be held for the purpose of section 40. The covenants show that at the 31st of October 1989, the net assets of the company are 34.62 percent of the paid-up share capital of the company. Net assets at ú671,462. And a called up share capital of 1.9397 - 1.9397 million pounds"?

A. Yes.

341 Q. "Technically the implication of this is that unless funds are injected by the 12th of December 1989, to rectify this situation, an EGM must be called by the directors for a date not later than the 8th of January 1990 and the other shareholders must be informed of the situation. The

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implication of doing a rights issue is being investigated at present."

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That is your note to the Directors, is that the case?

A. Yes.

342 Q. There you are informing them of the amount of monies that have to be injected into the company, is that correct?

A. That's correct.

343 Q. You show them the difference between the net assets and the called up share capital?

A. That's correct.

344 Q. And the amount, in order to be able to comply with Section 40 then would be what? Can you recall from your memo here?

A. Well, it is the 1.939739 million to be injected.

345 Q. That is what you need to inject in?

A. Yes.

346 Q. I see. If we move on then to the 15th of December, 1989, page 6161 please? We have a memo from Mr. Laffan to Mr. Crowley, Mr. Stafford and Mr. Barry, and it is regarding the financial report as at end of November 1989, draft financial statements for the year end 1990. And he encloses there with the projected balance sheet, profit and loss account, and projected monthly bank covenants. If we have a look at page 6162? You have, or Mr. Laffan at the end of that, has the projections "assuming no additional equity input other than the ú134,999 due in December 1989." Can you tell me what that figure is in relation to?

A. The 134,000?

347 Q. Yes?

A. I think it may be the amount that was outstanding from the

shareholders at that time.

348 Q. Yes?

A. In relation to their share capital contribution.

349 Q. Yes. Would this go back to your memo in relation to Section 40?

A. It may, yes. There was a reference to it there, yes.

350 Q. I see. And the directors were due to put in, in December ú134,999, is that correct?

A. That's correct.

351 Q. In order to comply with Section 40, is that correct?

A. Well, it was the amount that was outstanding on their share capital.

352 Q. But there was still monies due then after that?

A. I think so, yes.

353 Q. In order to bring it up to the --

A. Yes, exactly. There was a larger amount. There was this amount and then there was the larger amount as well.

354 Q. There was the larger amount as well as this particular amount?

A. Yes, the 1.9 million.

355 Q. The 1.9 on top of the 1.34?

A. As far as I understand, yeah.

356 Q. Yes. If we move on then to the 8th of January 1989; sorry, your note actually is the 8th of January 1989. I think it should actually read the 8th of January, 1990. It is at page 6131, this is a memo from yourself to Mr. Laffan, it is re items outstanding for accounts for period 31st of the 12th, 1989.

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You say "I spoke to James Stafford last week. He confirmed

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that the year end will be the 31st of December, 1989. The audit would take place -" I think that should be "March 1990"?

A. It should, yes.

357 Q. "In relation to items outstanding in the accounts, the following is the situation. There is a suspense account in the debtors for ú26,250. This relates to a cheque from Century Communications Limited made payable to QUAM signed by Oliver Barry dated the 20th of June, 1989." Again this is the ú26,000, and I think at this stage you still don't have any explanations?

A. That's correct.

358 Q. In relation to it?

A. That's correct.

359 Q. "No. 2. According to our records, at the 31st of the 12th, 1989 there was an amount outstanding on the share capital of ú134,999. James Stafford informed me on the 5th of January 1990, that there were some invoices to go against this amount. This is the first I heard of this, and the implication is that if the invoice related to expense items, the net worth will be reduced by the amount of the expenses.

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I therefore cannot finalise the December 31st, 1989, accounts without having a reconciliation of this amount and all relevant back-up documentation. A lodgement of ú19,787 was made by O. Barry on the 5th of January, 1990, and I confirmed with O. Barry that this related to shareholder funds. This amount should reduce the ú134,999 outstanding at the 31st of the 12th, 1989. I have asked Oliver for

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relevant documentation, if any, on this lodgement?"

.

Now, first of all, this 134,999; this is the amount that Mr. Laffan has referred to in his previous document, which was an additional amount to the 1.9 million that you had notified the directors about?

A. Yes. As far as I understand that's the case.

360 Q. Can you tell me, in relation to that 1.9 million pounds, were those monies injected into the company, do you recall?

A. Not before I left. I think they may have been in the process of raising the finance.

361 Q. Yes.

A. While I was leaving the company, yes.

362 Q. Well, what was the level of urgency in relation to your Section 40 obligations?

A. Well, the money had to be - they had to have made a decision about what to do with the situation by a certain date. I think in December, I refer to it in the letter. They had to note that that was their decision and once they had done that, then they had to set about raising the finance. So --

363 Q. But none of these monies had started coming into the company yet?

A. As far as I am aware, they hadn't.

364 Q. In relation to the 134,999, you say that "J Stafford informed me on the 5th of January 1990 that there were some invoices to go against this amount." You had obviously met or had some discussion with Mr. Stafford on the 5th of January about the share capital account and the money outstanding.

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A. Yes, I must have, yes.

365 Q. Had you spoken to him before about the share capital account?

A. I may have, I can't specifically recall.

366 Q. Or about this 134,999?

A. I am sure I must have, but again I can't recall because I started putting it in memos afterwards, it may be because I didn't get any satisfaction from verbal requests.

367 Q. At this stage in January 1990, did you know as between Mr. Barry and Mr. Stafford what monies had been paid in?

A. No, I didn't. We always had difficulty in the Accounts Department in trying to, in trying to find out who paid what, and I can't recall distinctly, but I got the distinct impression that they didn't want us to know who put in what monies because an amount would appear in the balance sheet in the bank statement without me receiving a note of it.

368 Q. And from whom did you make these inquiries? Was it Mr. Stafford or was it Mr. Barry or was it both?

A. I can't really recall. It may have been both.

369 Q. Yes?

A. Because I wouldn't have known which of them had amounts outstanding.

370 Q. Yes.

A. You know?

371 Q. So you probably addressed both parties in relation to it?

A. I probably would have, because I didn't know who owed what. That was my problem at the time.

372 Q. Well, you had this meeting, or conversation of some nature with Mr. Stafford on the 5th of January. Do you recall having a similar conversation with Mr. Barry at the time?

00072

A. I can't recall.

373 Q. Yes. You say that "J Stafford informed me on the 5th of January that there were some invoices to go against this amount, and this is the first I heard of this."

Were you informed of the extent of the invoices or the amount on those invoices, or what the nature of the invoices would be?

A. I can't recall at that time whether I was or not, but subsequently information was submitted.

374 Q. Yes. And in relation to the 19,787 lodged by Mr. Barry, were you told why he was making a lodgement in that particular amount?

A. I can't recall. I can't recall whether he told me or not. We would have made an inquiry when we got the bank statement as to what it was about. Someone in the Finance Department would have made the request, but I can't recall whether a response was received or not.

375 Q. Yes.

A. It wouldn't have been myself who was dealing with this inquiry.

376 Q. Who would have been dealing with that?

A. It would have been the financial accountant at that time.

377 Q. Who was that?

A. I think it was Owen McDunphy.

378 Q. Owen McDunphy?

A. I think so.

379 Q. He was dealing with that, I see. You go on and you enclose a copy of the cheque of the ú26,250 for Mr. Laffan's attention. Then at page 6134 we have a memo dated the 9th

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of January, the following day, from Mr. Laffan to yourself and a copy of it to Mr. Crowley. And it is page 6134 please?

.
And it is re items outstanding on accounts for period to the 31st of the 12th, 1989. It says:

"I acknowledge receipt of your memo dated 8th of January 1990 on the above subject. I am copying my response together with your memo to Laurence Crowley, Chairman of Century Communications Limited. I confirm that at this point I have received no direct clarification from the Board as to the date of year end, or the date of commencement of audits.

.
With regard to the specific items which you raise, my comments are as follows:

1. In relation to the suspense account. I have already brought this matter to the attention of the Chairman. He has confirmed that he is not aware of the nature of this item of expenditure. In addition, at a meeting with Mr. Barry and Mr. Stafford in October 1989, I raised the issue of the payment and they undertook to discuss it between themselves and to revert to me with clarification. I have heard nothing since".

.
As of the 9th of January, 1990, had you heard anything in relation to the ú26,250?

A. I had heard nothing.

380 Q. Then at Point 2: "Outstanding share capital. The share capital outstanding and its amount has been brought to the

attention of the Directors on a number of occasions since September of 1989. Since return from the Christmas break, I have discussed this matter with the Chairman, and he is not aware of any plans in respect of same. I would seek clarification, through the Chairman, of what the promoter's intentions are in this regard at the earliest opportunity."

.

Did you understand in relation to this outstanding share capital amount, that it was only dealing with the 134,999 or was it also to deal with the 1.9 million, Section 40 obligation?

A. At this point in time I think it may have been just the 134,000, I think that is all. Because that is what is being referred to previously.

381 Q. Then at the 10th of January, 1989, page 6136 please? This is a memo from yourself to Mr. Laffan, re the accounts for the period ended 31st of December, 1989. And in the second paragraph you have: "Reconciliation of share capital. This was also mentioned in my memo dated the 8th of January, 1990. I need as soon as possible, a full reconciliation of the shortfall of 134,999, at the 31st of the 12th, 1989, with amounts paid in since then by the Directors, invoices which are to be presented by the Directors for offset against the outstanding funds, and the outstanding funds, if any, resulting from the reconciliation. I cannot finalise the accounts without this information."

.

Had you spoken directly to the Directors about providing you with this information to do the reconciliation?

A. I may have said something, I am sure I did, to the

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Directors, I can't specifically recall.

382 Q. Mm-hmm.

A. Obviously putting it in writing because I wasn't getting any responses.

383 Q. So we know from the December accounts, that the 134,999 was being sought. We are looking for, following a meeting from the 5th of January, between yourself and Mr. Stafford, you are looking for invoices. Here at the 10th of January you are still looking for information, is that correct?

A. That's correct.

384 Q. Yes. And then on the 29th of January, 1990, page 6138 please? There is a memo again from yourself to Mr. Laffan, and you say:

.

"Re: Accounts for period to 31st of December, 1989.

As requested on Friday the 27th of January, 1990, by O Barry I enclose the draft unaudited accounts which O. Barry and J Stafford want me to send Paddy O'Donoghue in Bank of Ireland.

.

The loss forward for the period is ú1,984,446.

The net worth is ú340,292 and for the covenants it is ú205,293. As the outstanding capital of 135,000 is reflected in this amount as not having been paid up.

.

In total approximately 1.4 million of total overheads for the period of 2.415 million related to costs incurred prior to 4th of the 9th, 1989, and promotion, PR, research and launch costs as well as legal costs relating to the setup of the station. You have already received an analysis of

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this expense."

That is the setup costs basically, is that correct?

A. That's correct.

385 Q. So set up costs before any income came in were in the region of 2.4 million pounds?

A. That's correct.

386 Q. Yes. This is also worth noting, that - sorry

"It is also worth noting that total overheads per the private placing document were 2.4 million and total actual overheads for per the draft accounts are 2.4 million.

.
In relation to the outstanding capital of ú135,000, I understand that the two Directors have invoices which can be set against this amount, but they have instructed me to complete the accounts for the banks and this matter can be sorted out later. When the invoices are processed they will have the effect of altering all of the financial figures in these draft accounts, and this must be notified to the bank. The accounts reflect an accrual of ú40,000 legal fees."

.
In relation to that closing off of the accounts for the bank's purposes of 135,000, had you reservations in relation to that?

A. Well, obviously I wanted the accounts to be accurate in every sense, and I thought it looked bad that there was ú135,000 due from the Directors when the company was in such a state.

387 Q. Yes.

A. It didn't reflect well.

388 Q. Well now, this is the end of January, 1990. We know in the December memo of Mr. Laffan, the 134 is calculated. At this stage what was the level of contact with the Directors? Trying to chase up the monies or chasing up invoices? Was it a daily or weekly thing?

A. It would have been a frequent one, but I don't know if it was daily. There was a lot of other things I was involved in, but I was certainly making on-going inquiries.

389 Q. Yes. And what was the reaction of the Directors to these inquiries?

A. Well, it wasn't, they didn't give us any satisfaction on it, obviously, and the money didn't appear. It came in in dribs and drabs later, as one can see, they were very slow in reacting.

390 Q. Did that surprise you?

A. It did. I didn't understand why, because the company was in a fairly bad state at that stage and I thought that they would have a willingness to pay up.

391 Q. If we move on then. By the 3rd of April, 1990 - page 96 please, this is at the green tab. There is a memo from yourself to Mr. Barry and Mr. Stafford. It is dated the 3rd of April, 1990, it is: Re share capital account. It says:

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"According to our books of account ú122,695 is outstanding on this account. Details are as follows" and you give the various lodgements which have been made in the account.

"Expenses paid directly by J Stafford ú12,304.

Amount outstanding is ú122,695."
.

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By this stage, the 3rd of April, what was the level of information that you had received from the Directors about the share capital account?

A. Well, I had received no more information than I had previously. I still didn't know who was putting what money in or what the breakdown was.

392 Q. And in relation to monies going in, we know on the 5th of January that Mr. Barry had put in 19,787 but was there any explanation at this stage about that nature of the 19,787?

A. I can't recall. I can't recall.

393 Q. But you had said in your note to Mr. Laffan that you had requested Mr. Barry to provide you with further information in relation to this?

A. Well, I can't remember receiving anything.

394 Q. Yes. Well, is it that you can't remember or did you not receive any information?

A. Well, I can't be sure. I certainly can't recall it.

395 Q. Yes.

A. I mean the reason we are putting, I am putting these memos to them is because I obviously wasn't getting information, otherwise I would just do a verbal request without putting it in writing.

396 Q. At this point in time you have the various different lodgements down, did you know who had put in these various different amounts of monies?

A. I remember at the time the lodgements were coming in, I remember vaguely that it would have been in the Accounts Department that would have dealt with the lodgements. I recall that they were having difficulties in ascertaining who actually made the lodgements.

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397 Q. So, still by the 3rd of January you weren't sure of who had put the monies in?

A. That's correct.

398 Q. I see.

A. This is why we put this memo which itemised everything, to make sure that at least we had the correct lodgements in there.

399 Q. Yes. Then by the 8th of May, 1989, sorry 8th of May, 1990, page 6168? It is date stamped, received the 8th of May, 1990. It was actually sent on the 7th of May, 1990, by Ruth Appleby, Mr. Stafford's Secretary. There she is enclosing some information in relation to expenses incurred by Mr. Stafford. I think that was to, taken into account in your calculations for the share capital account, is that correct?

A. That would have been correct, yeah.

400 Q. And then on the 8th of May, page 97 please, there is a memo from yourself to Mr. Stafford re the share capital account. And you say.

.

"For audit purposes the auditors require confirmation that the balance outstanding on the share capital account at the 31st of December '89, is ú120,225. Copy of letter dated 8th of May, 1990 attached. Could you please confirm this by signing below and return both sheets to me ASAP. Could you also confirm, if possible, the amounts outstanding by each Director".

.

This memo is to Mr. Stafford, did you also send a similar memo to Mr. Barry, do you recall?

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A. I can't recall. It would have been probably just to James Stafford, because he dealt with all the financial matters.

401 Q. Yes. Was he the main person who was dealing with the share capital account?

A. Yes, he was.

402 Q. Inquiries?

A. Yes, he was, yes.

403 Q. And had you brought to Mr. Stafford's attention the various lodgements that had been made?

A. We did, yes. We would have, yeah.

404 Q. And you say in your note --

A. As far as I am aware. I mean, I can't be --

405 Q. You attached the document which notes the various different lodgements?

A. Yes.

406 Q. You have in your letter "could you also confirm, if possible, the amounts outstanding by each Director."

A. Yes.

407 Q. Can you recall if you were given information as to the amounts outstanding by each Director?

A. I can't recall ever receiving that information.

408 Q. Do you think you were?

A. No.

409 Q. Provided with that information?

A. No.

410 Q. You don't think you were?

A. No.

411 Q. Then at the 8th of May, 1990, same date again, page 99 please. You have updated your memo by including lodgements of the 8th of the 1st, 1990, of 19,787. And then the first

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of the 5th, 1990, to include a lodgement of ú25,000. I think that was a lodgement made by Mr. Stafford. Were you informed that that was a lodgement by Mr. Stafford?

A. I can't recall.

412 Q. You can't recall?

A. I can't recall.

413 Q. But you were given, at this stage, no further breakdown?

A. I wasn't given any further breakdown. My aim was to find out exactly what was actually outstanding, so that the figure in my accounts was correct.

414 Q. So the initial figure of 133,449 that Mr. Laffan had identified in his note of December 1989, is now reduced down to 75,278, is that correct?

A. That's correct.

415 Q. And in relation to that, the difference, that is attributed, the difference between the 133,449 and the 75,278, that is the two lodgements and the various expenses of which you have been given information?

A. That's correct.

416 Q. All right. And you have been given information about expenses incurred by Mr. Stafford amounting to 14,934, that's correct, is it?

A. I must have been, it must be, yes.

417 Q. You have in your notes "expenses paid directly by J Stafford" were you given information about expenses paid by Mr. Barry?

A. I can't recall receiving figures from Mr. Barry.

418 Q. Do you think you were given that information?

A. If I had received it I would have reflected it in the accounts, so I musn't have received anything.

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419 Q. Yes. If we move on then to the 15th of the 8th, 1990.

This is a document at page 103, please?

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And there is a memo from yourself to Mr. Stafford, and it is regarding a meeting that you had with Mr. Gaffney. It is at the dark pink folder; sorry the dark pink divider.

It says "I met with Mr. Gaffney of Touche Ross this morning." Mr. Gaffney was the auditor, I think, of the company at the time?

A. That's correct.

420 Q. "Subject to his discussions with Oliver and you, he is happy with the figures. He wishes to discuss the following points with yourself and Oliver:

1. Pension.

2. Share capital amounts outstanding. See copy of my correspondence to you attached.

3. Nature of advance to Oliver Barry in June, 1989 or ú26,250."

.

So the matter of ú26,250 is still outstanding?

A. That's correct.

421 Q. And in relation to the share capital amounts, were you still waiting, at that time, the 15th of August 1990, information in relation to the share capital account?

A. Yes, I was.

422 Q. And can you recall what information you were still, was still outstanding? Were you provided with information by Mr. Barry about expenses incurred by him?

A. I am not sure. I don't know. But I obviously had queries on the share capital account outstanding at that stage. I

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can't be sure as to what exactly - it may have just been the confirmation out of the balance outstanding.

423 Q. Yes. And were you told at that stage the break down of the share capital account?

A. I wasn't. No, I can't recall. I certainly can't recall.

424 Q. Yes. On the 23rd of August, Mr. Gaffney wrote to Mr. Crowley, this is at page 104 please? And again he is raising queries at point 4 in relation to the share capital account. Did you ever see a copy of this letter, do you know?

A. That was shortly before I left the company.

425 Q. Yes.

A. It may have passed my desk at that time, yes.

426 Q. Were you in discussion with Mr. Gaffney about the share capital account?

A. I can't specifically remember being in discussion with him. It may have been discussion that he was having directly with the directors.

427 Q. Yes. He says:

"Note 14 indicates that the authorised share capital is divided into both Ordinary Shares and A Ordinary Shares. The copy of the articles which I hold does not make any such distinction. Merely stating that the authorised share capital is 5 million pounds Ordinary Shares of 10p each. I have asked Noreen Hynes to clarify this point with Eugene Fanning of Arthur Cox and Co.

.

B. At the 31st of December, 1989, ú120,225 of called up share capital had not been paid. James Stafford has indicated to me that the composition of this amount is as

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follows:

Terry Wogan - ú50,000.

Chris de Burgh - ú25,000.

James Stafford and Oliver Barry ú45,225.

Totalling - ú120,225.

.

At today's date the amount outstanding is ú75,278 which I understand to be made up of ú50,000 due by Terry Wogan and ú25,278 due by James and Oliver.

.

James has indicated to me that Terry Wogan will clear the balance due by him upon payment to him of a fee of ú45,000 which is to be in respect of broadcasting services. For the purposes of the draft accounts I have accrued the 45 mentioned above, but I am unsure as to whether the Directors would wish it to be apportioned as between 1989 and 1990.

.

It seems to me that any part of this amount which is charged in the accounts will need to be disclosed as Director's Remuneration. The draft accounts do not, at present, include such disclosure."

.

He goes on at point 5, he then mentions the ú26,250. In relation to the breakdown there of Terry Wogan - ú50,000, Chris de Burgh - 25,000, James Stafford and Oliver Barry 45,225. That information appears, according to the letter, to have been provided by Mr. Stafford to Mr. Gaffney. Were you provided with the same information?

A. Separately, I can't recall getting this information, no.

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428 Q. Yes?

A. I cannot recall having received this information.

429 Q. Do you think you were provided with that information?

A. I either can remember or I can't. I can't remember.

430 Q. Yes. And in relation to, "at today's date the amount outstanding is 75,278 which I understand to be made up by 50 by Terry Wogan and 25,278 due by James and Oliver." Do you recall being informed of those figures and that breakdown?

A. Well, I certainly wasn't informed of the breakdown at any point that I can remember. As to whether I may have seen this memo before I left, it might have passed my desk, but I wouldn't have paid a huge amount of attention to it at that stage.

431 Q. You left, I think, on the 30th of August, 1990?

A. That's correct.

432 Q. Is that correct? By that stage had you ever been given an explanation for the 26,250?

A. I had never been given that explanation.

433 Q. But you had sought the details about it?

A. Yes, I had.

434 Q. On a number of occasions?

A. On a number of occasions.

435 Q. From the time that it had been raised by Mr. Griffin?

A. Yes, correct.

436 Q. In relation to the breakdown of the share capital account, by the time you left, had you been given details on who had paid in what amount?

A. No. I can't recall ever having received that information.

437 Q. And can you recall being given details of the expenses

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incurred by the parties, by Mr. Barry and Mr. Stafford? I know we have this amount of 14,000 that Mr. Stafford has written off, or that has been written off as a result of expenses incurred directly by Mr. Stafford. Had you been provided with any details of expenses incurred by Mr. Barry, to the best of your knowledge?

A. I can't recall. It is not to say that one of the finance staff that would have been preparing the accounts, they could have received something, but I cannot recall.

438 Q. Yes. Well, having gone through the Century documentation, there doesn't appear to be anything on the files, you can't recall anything on the files?

A. No, I can't recall anything on the files.

439 Q. In relation to it?

A. No.

440 Q. I see. If we move on to page 3541 please? Sorry, could I just bring you back please, to the last document, page 105? We have "at today's date the amount outstanding is 75,278 which I understand to be made up by 50 due by Terry Wogan and 25,278 due by James and Oliver"; were you given any explanation as to why the amount now due by James and Oliver, is 25,278?

A. No.

441 Q. No. And we have a difference here of James and Oliver just in the column of figures above, 45,225 and then it becomes 25,278. Can you give any explanation as to the difference there?

A. No, I can't.

442 Q. Would those figures have to be reflected in the accounts of the company?

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A. The total figure would. The total amount outstanding, it is relevant for audit purposes in the accounts.

443 Q. That would be contained in the share capital account?

A. The correctness of that figure.

444 Q. Yes. And would it take into account expenses that may have been written off to bring the figure down?

A. Of course it would, yeah, if there were any expenses which the Directors wanted to treat that way, then it would, yes.

445 Q. Would that be clear in the accounts? That such expenses were being written off?

A. No, it wouldn't. It wouldn't appear on the actual face of the accounts at all.

446 Q. Yes.

A. It would be taken as a lodgement, treated as a lodgement and correctly posted to which ever expense account the expense related to.

447 Q. Yes, yes. If we move on to page 3541 now, please? This is the disclosure letter or an extract from the disclosure letter. It is only a draft of it. And this is in relation to the investment by Capital Radio. I think you were involved in the preparation of some of that disclosure letter; is that correct?

A. I prepared the schedule of contracts and agreements and would have submitted them to D Moran at that time.

448 Q. Could I ask you please to have a look at page 3541, and paragraph 2 at the bottom? It says:

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"The issued share capital is not fully paid up. Insofar as there is outstanding the sum of 75,278 in respect of the said shares, the outstanding sum is due as follows:

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Michael Terence Wogan - ú50,000.

There is a fee due to him in the sum of ú45,000 which when paid will be applied thereto.

And B: James Stafford and Oliver Barry 25,278. This outstanding balance is to be deemed fully paid by the advances made by the said James Stafford and Oliver Barry by way of loans to the company."

.
Were you involved in the writing of that particular paragraph?

A. No, I wasn't.

449 Q. Had you that information?

A. No, this is news to me. I certainly can't recall ever having been involved in that.

450 Q. Were you aware of loans made by Mr. Stafford and Mr. Barry amounting to 25,278?

A. I can't remember anything about that.

451 Q. I think there were loans made by Mr. Barry and Mr. Stafford to the company?

A. There probably would have been, yeah. There would have been.

452 Q. In relation to salaries, to cover salaries?

A. Yes. They opened up a bank account outside of the company to pay for salaries.

453 Q. Yes.

A. I do remember that.

454 Q. But had these loans been taken into account in the company's accounts?

A. I can't recall, I can't recall. I know there was a complication in the way they set them up.

00089

455 Q. Yes.

A. They took legal advice at the time.

456 Q. Yes. If we can have a look at page 3467 please? This is a second draft of the disclosure letter. Unfortunately we don't appear to have the final draft of the disclosure letter. We have already asked a number of parties if they would have a copy, but nobody appears to have a copy of it.

.
At page 3469, again the matter of the share capital is raised. It says "the issued share capital is not fully paid up" more or less the same thing "insofar as there is outstanding the sum of 75,278 in respect of the said shares. The outstanding sum is due as follows."

We have the same paragraph in relation to monies due and owing to Mr. Wogan.

.
Then paragraph B which dealt with the 25,278, appears to have been crossed out there, and there is a note relating to monies due to Mr. Barry and Mr. Stafford. It is a handwritten note. It is not very clear, but I think there is, that note is written more fully at page 3504.

.
And it says: "The amount of the loans advanced by James J Stafford and Oliver Barry amounts to" and there is a pound sign but there is no figure put in.

"This is not reflected in the management accounts. Since the preparation of the accounts in December 1989, and as of today's date, James J Stafford and Oliver Barry advanced, by way of loans to the company, the sum of" and again the

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amount is left blank. "The purpose of these loans were to enable the company to remain trading, and as such should have been fully reflected in the management accounts."

.
Can you assist us at all in relation to the amount of loans or the, this input here into the disclosure letter and what has been said in the disclosure letter in relation to monies due by Mr. Barry and Mr. Stafford of monies owing to Mr. Barry and Mr. Stafford?

A. I cannot, because I wouldn't have been involved in the preparation of this statement at all.

457 Q. Yes.

A. So I can't really add to it.

458 Q. Yes. So you are not aware then about the loan situation?

A. The only thing I am aware of is the fact that wages, I know at one stage they had to pay wages for a short period of time. As to how that was treated I can't recall, but I do recall that they may have had loans. I am not sure.

459 Q. Yes. You are not in a position to help in relation to the 25,278 either?

A. No.

460 Q. If we move on to a document at page 474 please? This is dated the 20th of December, 1990. And it is at the blue divide please.

.
Now, I know at this stage that you had long left the company, you had left on the 30th of August. It is just in relation to a particular amount of money, and I would like to see if you would be able to assist us at all.

.

00091

This is a memo from, sorry, a fax from Mr. Stafford to Mr. Patrick Taylor of Capital Radio. And it reads:

"Patrick, it is now over 12 weeks since the completion of the 27th of December and the payment of this ú40,000 has not yet been dealt with and I cannot finalise my own accounts until it is paid. Despite my requests, it seems to get deferred again and again to the point where I can only conclude that you are playing with us. A typical example was the fact that you and I agreed it would be dealt with this morning, and of course it hasn't been. I am satisfied that the ú40,000 is properly due and payable by the company, but to avoid any doubt whatsoever, I will want it as the first agenda item at the next board meeting on the 10th of January, 1990, when I expect it will be ratified and then paid without any further nonsense.

Furthermore, as it is costing me interest, I will expect interest from the 27th of December. I am satisfied that it was fully and properly disclosed between your own due diligence and the disclosure letter, and I have no intention of either writing it off or deferring settlement any longer. Any confusion there may have been may be traced back directly to the loss of Noreen Hynes, for which your own investigating accountants are solely responsible.

Both Oliver and I have already picked up the rights issue shortfall of ú118,000 not taken up by the existing shareholders, in addition to our full rights of ú825,000.

It is a pity that this ú40,000 should have become such an issue between us, but I am disappointed in the way it has

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been dealt with."

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Now, on the 21st of December, 1990, the following day, Mr. Taylor writes to Mr. Barry at page 748, please? In relation to this payment of ú40,000. He says:

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"I refer to the sum of ú40,000, which we again regretfully failed to resolve yesterday. May I say that there is absolutely no intention on our part to delay the resolution of this matter. I am sure you will agree with me that to defer a settlement can only damage our relationship, which is not in the interests of Capital Radio, which is certainly not evidenced by our discussion at our breakfast meeting yesterday, that there are other matters which take priority in our discussions at the present time.

.

It seems to me there are two stages to this matter. One is; is there a proper liability of the company? And B, if so, was the liability properly disclosed at the time of our investment, and if not what redress exists under the investment agreement?

.

As regards Item A I think it important that we deal with this matter as we would with any other provider of professional services. Would you please therefore let either myself or Colin have a detailed statement of the work that has been done by your colleagues for the company. The more detailed you can make it the better; what was the nature of the services? Were they provided on a regular or sporadic basis? From where was the work

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undertaken? Who actually provided the services? At what charge-out rate? Were there specific projects that gave rise to the work? Obviously we will also need to receive a VAT invoice from your company before payment can be made.

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As regards item B, I believe it may be better to leave Mark Ryan or Enda to discuss this matter and see whether they can establish whether or not there is a problem, and if so what the potential solution is."

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Now, on the 21st of December, the same date, there is a fax from Mr. Stafford to Miss McManus, and at page 750 please, it is Mr. Stafford says, a draft of suggested response to Patrick Taylor. He says:

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"Dear Patrick, thank you for your fax of 21st of December. I have already explained that these costs are my actual out-of-pocket expenses for the period during which I and my staff had to provide full-time management for the company.

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With regard to the costs which work out at €1,600 per week for 25 weeks, you will recognise that they have been heavily subsidised by me personally by reference to your own Consultancy Agreement.

.
There was never any question that these costs would be recovered from the company in the same way that the wages paid by James and myself would be, a point which can and will be confirmed at the January board meeting. After which I expect immediate settlement. I see no reason to

involve Mark Ryan or Enda Marren in this matter. Yours sincerely."

Can you recall Mr. Barry providing full-time management for the company at a rate of €1,600 per week?

A. No, I can't.

461 Q. Was there any such arrangement?

A. Certainly not that I knew about. I have no idea whether he was discussing it with James Stafford or not. He was working in the company almost full-time for a while.

462 Q. Yes.

A. But I certainly can't recall him having a discussion with me. Had he done so I would have obviously reflected it in the accounts.

463 Q. Yes. Well, I think Mr. Lamb may have contacted you. At page 6167 there is memo from Mr. Lamb to Mr. Walters. I think Mr. Lamb was the financial accountant who --

A. That's correct.

464 Q. He continued on after your departure. And his note says:

"I spoke with Noreen Hynes on the 9th of the 1st, '91, concerning services provided to Century Communications Limited by Oliver Barry. She informed me that there had never been any mention of a fee being payable in respect of such services. And that she had always understood that these were free of charge."

Is that a correct representation of what you had said?

A. Yes.

465 Q. And was that your understanding, that the services provided were free of charge?

A. Yes, it was, yeah.

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466 Q. "Noreen also stated that during her work on the letter of disclosure, she made the Directors fully aware of their responsibilities in ensuring that all known liabilities of Century Communications were fully disclosed."

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So had ú40,000 been mentioned as being due to Oliver Barry at any stage?

A. No.

467 Q. During the time of the preparation of the disclosure letter, did you indicate to the Directors that if there were any monies due to them, they would have to disclose this in the disclosure letter?

A. Yes, I would have, yeah.

468 Q. In what way did you make that known to them?

A. I can't recall at the time, I can't recall. Because when, I was preparing, I was involved in the preparation of this disclosure letter, but only to a limited extent, and it wasn't complete before I left.

469 Q. Well, to your - to the best of your recollection and knowledge, was there a sum of ú40,000 due to Mr. Barry for services he had --

A. To the best of my recollection, I was not aware of any ú40,000 due to him at that time.

470 Q. And it had never been mentioned?

A. I certainly cannot recall, and if it was mentioned to me I would have reflected it in the figures, in the accounts, of being a liability of the company.

471 Q. I see. Do you ever recall either Maeve McManus or Miss Patricia Cooney, working with Mr. Oliver Barry for Century Communications?

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A. Yes, they were there. They were in the offices, whether they were working on Century work or on Oliver Barry's personal work, I don't know, but they were there, and we would have a certain amount of interaction with them.

472 Q. Yes. Well, what did that interaction involve?

A. Well, it may have been just letting us know, if we were looking for Oliver Barry where he was and that sort of stuff. I wouldn't have been interacting with them on a daily basis in regard to business of Century.

473 Q. If you had a query about the share capital, would you have gone to Miss McManus or Miss Cooney about it?

A. Highly unlikely, no. I wouldn't have.

474 Q. Did you discuss any of the financial matters with Miss Cooney?

A. I can't recall having any discussions with them, I can't recall.

475 Q. Yes?

A. Yes.

476 Q. And around about what period were they in the offices of Century or working on Century business?

A. I think it was shortly after Michael Laffan left the company, shortly after that I think they came in with Oliver.

477 Q. Yes. I think Mr. Laffan left on the 1st of February?

A. Yes, around then.

478 Q. Yes. And they came sometime after that?

A. Sometime after that, yeah.

479 Q. And what was their level of presence? Were they there everyday from morning to night?

A. I can't recall. They were there quite a bit, but I can't

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recall whether they were there all day every day.

480 Q. Do you recall any specific duties performed by them on behalf of Century?

A. Well, I can't really, no.

481 Q. Do you know if they were providing any?

A. They may have been, because I mean Oliver Barry dealt with all the operational end of the business, which I wouldn't have been involved in. So I cannot say.

482 Q. Yes. And approximately when do you think these ladies left, or were they still there when you left?

A. I can't recall when they left or whether they were there when I left or not.

483 Q. MS. O'RAW: Yes. I have no more questions but if you remain there please, there may be others who would. Thank you.

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CHAIRMAN: Does anybody want - any party or person involved want to ask this good lady any questions?

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MR. KEANE: Sir, there are no questions on behalf of RTE.

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CHAIRMAN: Thank you.

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MR. O'CONNOR: Sorry Sir, I just have two questions.

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CHAIRMAN: Certainly.

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THE WITNESS WAS CROSS EXAMINED AS FOLLOWS BY MR. O'CONNOR:

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484 Q. MR. O'CONNOR: Ms. Hynes, when you were discussing with

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counsel the memo of the 8th of May, 1990, I think you stated in your own words that Mr. Stafford dealt with "all financial matters", is that correct?

A. Mr. Stafford was the person I interacted with mostly on financial matters, yes.

485 Q. And indeed I think on legal matters, whether it was the lawyers or the accountants?

A. Yes, yes.

486 Q. On a day-to-day basis it was Mr. Stafford that you dealt with?

A. After Michael Laffan left the company.

487 Q. Fine. And just one other issue; turning to the meeting of the 7th of November, 1989, which largely dealt with the issue of the budgets, and in particular the advertising budgets. I think you may have been, you may have minutes of that meeting?

A. Yes.

488 Q. There was some discussion at that meeting as to the actual reasons for the disappointing revenue stream?

A. Can I just open that section? Which section?

489 Q. Page 6150.

A. In which?

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MS. O'RAW: It is actually at the green tab, the second green tab?

A. Yes, I have it, yes.

490 Q. MR. O'CONNOR: Just very briefly, if we might refer to those reasons. I think the first reason was that coverage which the Century signal enjoyed was not as extensive as had been hoped; is that correct?

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A. Yes, that's correct. There was discussion about that, yes.

491 Q. And the second issue which arose was that the signal was uneven and indeed very poor in certain areas?

A. Yes, that's correct. There was discussion about that as well.

492 Q. And the third issue was that RTE's marketing tactics were stronger than expected. This included extensive advertising in national magazines and aggressive pricing?

A. Yeah. There would have been discussion with regard to that as well, yes.

493 Q. And I think in today's parlance aggressive pricing would possibly be termed as "predatory pricing", would you agree with that?

A. I wouldn't agree or disagree because I was certainly no expert on the radio business at that time. I had just joined the company from a distillery company and didn't have the experience to form a lot of opinions on it.

494 Q. Very good, no further questions.

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CHAIRMAN: Thank you very much.

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MR. KEANE: Excuse me Sir, I am afraid, arising out of that question, I now find myself obliged to ask a single question, if it please the Tribunal?

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CHAIRMAN: Certainly.

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THE WITNESS WAS CROSS EXAMINED AS FOLLOWS BY MR. KEANE:

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495 Q. MR. KEANE: I wonder could I ask you to confirm, Miss

Hynes, you would have no personal knowledge of any of the matters referred to, and would not be in a position to comment on the merit or lack of merit in respect of any of the assertions concerned. Would you accept that?

A. Yes, I would accept that in the sense that I wasn't involved on a day-to-day basis in the operational areas of the business. I would have only observed those at meetings with the other Heads of the Departments and the Directors.

496 Q. Thank you very much Ms. Hynes.

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THE WITNESS WAS RE-EXAMINED AS FOLLOWS BY MS. O'RAW:
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497 Q. MS. O'RAW: Sorry, Ms. Hynes just in relation to the difference between aggressive pricing and predatory pricing. Are you aware of the difference that exists between the two?

A. At that time I certainly wasn't. I just heard the comments made at meetings, but I had no first hand knowledge of it when I was in Century.

498 Q. But specifically - but they are specific legal definitions of what predatory pricing actually is. What would you understand to be "aggressive pricing"?

A. In relation to --

499 Q. In relation to marketing or advertising?

A. Well, I would regard aggressive pricing as discounting, heavily, pricing to the public, yes.

500 Q. Yes. Mm-hmm. And in relation to predatory pricing, what would you understand that to be?

A. Perhaps that is almost "under cost", "under cost pricing".

501 Q. I think the courts would agree with you. Thank you Ms.

Hynes.

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MS. DILLON: That is the last witness for today Sir. Mr. Laurence Crowley, I should at this time, state for the record, was to have been taken as a witness this afternoon, but we had late notice yesterday evening that he is unavailable today and will be available to the Tribunal tomorrow.

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CHAIRMAN: Is he? Good. First of all, Ms. Hynes, thank you very much for coming down. Thank you very much for your very valuable assistance and you are free to go.

Thank you very much.

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THE WITNESS THEN WITHDREW.

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CHAIRMAN: In relation to tomorrow, half past ten?

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MS. DILLON: Yes Sir. Half past ten. Thank you.

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THE HEARING WAS THEN ADJOURNED UNTIL THE FOLLOWING DAY, THE 22ND OF NOVEMBER 2000 AT 10:30 AM.

