

THE HEARING RESUMED ON THE 5TH OF DECEMBER, 2000, AS

FOLLOWS:

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CHAIRMAN: Good morning everyone. My apologies for being somewhat late.

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MR. HANRATTY: Good morning Sir, Mr. Barry please.

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MR. OLIVER BARRY RETURNS TO THE WITNESS-BOX AND CONTINUES TO BE EXAMINED BY MR. HANRATTY AS FOLLOWS:

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MR. WALSH: Sorry Sir, before Mr. Hanratty proceeds. I wonder if he had an opportunity, overnight, to look at the transcripts for the two days Professor Hills was in evidence, and for the relevant date I mentioned yesterday, when Mr. James Stafford was giving evidence, where I alleged there were some factual inaccuracies? If it is not an appropriate time to deal with it --

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CHAIRMAN: To be quite honest with you, I personally didn't do it because I was otherwise engaged last night.

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MR. WALSH: I am not criticising that, for a moment.

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CHAIRMAN: We will check the matter.

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MR. HANRATTY: Sorry, there are two issues left over from yesterday, Sir. The first one was in relation to the capital account which Mr. Barry said he would prefer to leave over until he had time to consider it. I was

proposing to deal with that first.

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The second matter were the transmission charges, where as I understand it, Mr. Walsh asserted that Mr. Hills had given evidence that he had in fact produced the figure of 375.

As I understood it, Mr. Walsh was going to direct our attention to the portion of the transcript where he said that.

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MR. WALSH: I can do that.

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MR. HANRATTY: Well, we can deal with that when we come to deal with the transmission charges. If I may, Sir, deal firstly with the first matter that was left over from yesterday, which is the capital account.

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MR. WALSH: The second thing, My Lord, was the question of the capital account, if that is going to be dealt with, the ú40,000 --

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CHAIRMAN: I understand that it is going to be dealt with today.

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MR. WALSH: Very well. It is just that we have the transcript references, we can deal with it, if necessary.

1 Q. MR. HANRATTY: Yes.

Mr. Barry, you will recall when I was asking you about the capital account and the investments that were being made again by the original subscribers at the time of the agreement with Capital Radio. Now the agreement with

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Capital Radio, I understand, was on the 27th of September of 1990; is that correct?

A. I can't remember the specific date, but it was September '90.

2 Q. There is some indication in your documents that you made a capital investment of ú54,000 odd on the 4th of October. So it is possible that there was some matter outstanding, but as we understand that, the agreement was actually on the 27th of September?

A. I would take that as being so, yes.

3 Q. Now, if we can just take the starting point on the capital account. I am afraid I am going to have to be slightly tedious about this Mr. Barry, because we really do have to get to the bottom of the capital account?

A. Yes.

4 Q. The original idea, I think, was that the issued share capital was going to be 1,800,000 shares, of which I understand 100,000 were to be allocated to Mr. Terry Wogan and ú50,000 to Mr. Chris de Burgh?

A. Yes.

5 Q. 1,650,000 then were to be allocated to yourself and Mr. Stafford on behalf of yourself, Mr. Stafford and Mr. Mulhearn?

A. Yes.

6 Q. In other words 550,000 each?

A. Yes.

7 Q. These were 50 pence shares, isn't that so?

A. I believe they were, yes.

8 Q. So that the initial share capital to be put up for the 1,800,000 shares was to be ú900,000?

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A. €900,000.

9 Q. Yes. Of which 825,000 was to be put up by yourself, Mr. Stafford, Mr. Mulhearn, and 75,000 by Mr. Wogan and Mr. De Burgh; isn't that right?

A. That is correct, I believe, yes.

10 Q. I think €50,000 from Mr. Wogan and €25,000 from Mr. De Burgh?

A. That is correct, yes.

11 Q. Now, if we look at Noreen Hynes' memorandum of the 8th of May of 1990, at page 99? We can see the actual capital contributions which came in. And it is apparent from that, is it not, that you made the first capital payment in of €33,333.33 on the 15th of March, 1989?

A. That's correct.

12 Q. Can I ask you, in relation to that particular sum, what account did you bring that money in from?

A. I am sure it was the QAM account.

13 Q. Sorry?

A. I am sure it was the QAM account.

14 Q. The QAM account?

A. Yes.

15 Q. Is that account No. 6328?

A. I wouldn't have that recall.

16 Q. Sorry, could we have page 6328 please?

That is a statement of the QAM account?

A. Yes.

17 Q. And there is a debit on that account, on that date, of 33,333.33, is that --

A. Yes.

18 Q. That appears to be that capital injection, isn't that

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right?

A. Yes.

19 Q. The second capital injection was in the sum of ú66,667 on the 31st of March 1989, which we understand was Mr. Mulhearn's contribution, is that so?

A. That's correct.

20 Q. Did that come from Mr. Mulhearn at that time or did it come from somebody else?

A. Oh, it must have come from Mr. Mulhearn.

21 Q. Yes. If we could have page 3637 please? It appears that it came out of the QAM account in the first instance. Did you make this contribution on behalf of Mr. Mulhearn?

A. No, not to my recollection, no.

22 Q. Well, then there is a debit on the 3rd of April for - sorry, there is a debit on the 31st of March, which is the date of Mr. Mulhearn's capital contribution, of ú66,667 on the QAM account and there is a corresponding credit on the 3rd of April, which suggests that you may have paid out the money on behalf of Mr. Mulhearn and that he subsequently reimbursed you or QAM?

A. That is a possibility, yes.

23 Q. The next capital injection was made on the 15th of June of 1989, and we understand that that was made by Mr. Stafford?

A. That was the 250?

24 Q. Yes?

A. Yes. I thought - did I not put in another 33 at some stage?

25 Q. Sorry, on the 12th of April 1989, there was 33,333. Again did that come out of the QAM account, page 6329 please? This in fact is the Frank Sinatra account, isn't that

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right?

A. That is the QAM account, yes. That would be the figure, yes.

26 Q. Yes, what appears on that account, as we have seen the 4th of April, credit for ú66,000. Sorry the debit for ú66,000, but on the 12th of April there is a credit of 33,333. Can you assist us with why it would appear as a credit when one would presume it would be a debit if it is being money taken out of the account to be put into Century?

A. I can't explain that, but I am sure we will come back to it.

27 Q. Perhaps we might just leave that point and make a note of it?

A. Yes.

28 Q. But the next capital injection you make then is on the 11th of July, 1989, in the sum of ú148,334?

A. That's right.

29 Q. And you have already told us that the reason that you put that particular figure in is that it is a balancing figure, to bring up the total of your contribution to ú250,000, having taken credit for the ú35,000 you paid to Mr. Burke?

A. That is correct, yes.

30 Q. So in fact, in terms of actual cash put in to the capital account of Century, the total amount of cash that you put in was 215,000 up to this point in time?

A. Yes, plus the 35, yes.

31 Q. That wasn't - the 35,000 wasn't cash put into Century?

A. No, it was expenses incurred.

32 Q. I am focusing on what actually came into the company at this stage?

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A. Yes.

33 Q. The next figure which came in was on the 18th of August, 1989, ú233,333.33, came in from, we understand, from Mr. Mulhearn?

A. That's correct.

34 Q. In what manner did that come in, did that come directly from Mr. Mulhearn?

A. I am sure it did, but I am sure I can clarify that for you. That was the source of the money.

35 Q. Yes. On the 1st of May 1990, ú25,000 came in. Now I understand that that 25 in fact was from Mr. Chris de Burgh, is that correct?

A. The 1st of May 1990?

36 Q. Yes?

A. Was that not Jim Stafford's 25?

37 Q. Well, originally we were given to understand that it was, but it appears from one of the documents which you have given to the Tribunal, if I can - if you just bear with me until I find it, it may assist you.

A. I would --

38 Q. Yes, page 225.

A. Are we talking about 1990, Mr. Hanratty?

39 Q. Yes?

A. I am sure Chris de Burgh put in his money before 1990.

40 Q. Well --

A. I might be wrong.

41 Q. Do you see page 225 on screen here? This is a list where you have broken it down under headings "C de Burgh", "Oliver Barry", "Jim Stafford" and "joint"?

A. Yes.

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42 Q. If you look at your column you will see the figures that we have just spoken about including the 35,000 and subsequently the 5. If you look down Mr. De Burgh's column under the heading of the "1st of May, 1990" there is an entry of ú25,000.

A. Could I see the full sheet, please?

43 Q. Yes. (Document handed to witness.)

A. Yes. Certainly I am a bit surprised at that, because I thought Chris de Burgh put in his money earlier, but --

44 Q. So that would appear to be Mr. De Burgh's money that came in on the 1st of May, 1990?

A. Certainly on that sheet it looks that way, yes.

45 Q. So that as of the date of this memorandum, which is the 8th of May of 1990, the total sums which actually had come in in cash, are 809,778, isn't that right? That is the total of the actual cash input into the company?

A. Where does the 800 --

46 Q. Sorry, page 99 again?

A. Oh, sorry.

47 Q. This is Ms. Hynes' memorandum where she sets out the capital input?

A. Oh, yes, yes.

48 Q. And in fact it is, if you disregard the figure of ú213 for the air ticket, it is actually ú810,000. For convenience I think we will work in round figures?

A. Yes.

49 Q. So the actual amount of cash that had come in by that date was approximately ú810,000, isn't that right?

A. That's right.

50 Q. So that in respect of the paid-up share capital there was a

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shortfall, a shortfall that is by reference to the paid up figure of ú900,000, a shortfall being the difference between 900 and 810 of ú90,000, isn't that so?

A. That looks like, yes, that looks like what Noreen Hynes has found --

51 Q. That seems fairly clear. That is undoubtedly the state of the capital account as of that time?

A. Yes.

52 Q. That there was ú90,000 yet to come in?

A. Yes.

53 Q. Now, I appreciate that yourself and Mr. Stafford were both taking credit for expenses which you respectively incurred, but if we just look at it in terms of the actual cash from the company's point of view at this point in time. We know that Mr. Wogan, for example, hadn't yet put in his ú50,000, isn't that right?

A. Yes.

54 Q. So ú50,000 of the ú90,000 shortfall is accountable by reference to Mr. Wogan's investment, isn't that so?

A. Yes, that would appear so, yes.

55 Q. That would leave a ú40,000 shortfall to be accounted for?

A. Yes.

56 Q. We know that Mr. Stafford had not yet put in his second tranche of ú25,000, isn't that right?

A. Certainly on what I have seen today that looks to be the case, but I thought that it may have come from Jim Stafford, I could be wrong.

57 Q. We do know, for example, as appears from this page, that Mr. Stafford was taking credit for ú19,834 expenses or, as it were allocating that or those expenses, which he said he

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had incurred as part of his capital contribution?

A. That is news to me, because I thought that Jim Stafford put in the 25,000, but I am going on memory here.

58 Q. Yes. It does appear from the monies that we know came into the company, that \$25,000 does not appear to have come in from Mr. Stafford at this point in time?

A. Yes. Not according to this documentation, yes.

59 Q. So if we look at the \$810,000 which we know did come in, and in the individual ingredients of which we are aware from where we came in, and add to that the contribution which was yet to come from Mr. Stafford of \$25,000; the \$40,000 for which you have taken credit, and I know that you have given us an explanation for that, and the \$50,000 yet to come from Terry Wogan you get a total of \$925,000, isn't that right?

A. We have --

60 Q. We know that Mr. Mulhearn made 25,000 over and above 275?

A. Over, yes.

61 Q. That brings it back to 900, that as it were balances the books, isn't that so?

A. Yes.

62 Q. So what you did in the case of your capital contributions, is that you did not, in fact, for the reasons you told us yesterday, put in a full 275, but you took credit for 30,000; and subsequently for 5,000 and also \$213, isn't that so?

A. I took credit for 215 plus 35.

63 Q. 213?

A. 215.

64 Q. Well, it is recorded in your own records as "213". In any

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event it is the same figure, it is the airline ticket,
isn't that right?

A. I thought I had put in 215 plus the credit that I was
claiming for the 35.

65 Q. Sorry, €215,000 was the figure that you actually put in in
cash?

A. Yes.

66 Q. That is, as far as you were concerned, equivalent to your
€275,000 investment, having taken credit for the 35,000 to
Mr. Burke, the €5,000 to Fianna Fail and the €213 airline
ticket?

A. Yes.

67 Q. Yes?

A. And I put in €19,787.

68 Q. The €19,000 was put in in January of 1990?

A. That's right.

69 Q. And the reason that it shows as €19,787 is because, from
your perspective, you were putting in the balance of your
investment of 275, namely €25,000?

A. That's right.

70 Q. From which you deducted the €5,000 that you paid to Fianna
Fail?

A. No, to RTE.

71 Q. To RTE, I see. So you were deducting €5,000 that you said
you paid to RTE in August of 1989?

A. Yes.

72 Q. And the €213 for the airline ticket?

A. Yes.

73 Q. That is where the figure of €19,787 comes from?

A. Yes.

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74 Q. So again this is a balancing figure?

A. Yes.

75 Q. To bring your contribution up to the, to the company up to 275, taking credit for sums or expenses which you say you had incurred?

A. Yes.

76 Q. Similarly, as appears on that page or second last line on that page, Mr. Stafford allocated a sum of £14,934 expenses, which he said he had incurred by way of a contribution to the capital account, isn't that so?

A. That is correct.

77 Q. But from the perspective of somebody looking at the actual money in the account it is short by that amount, isn't that right?

A. I assume so, yes.

78 Q. In the bank account I mean?

A. Yes.

79 Q. Now, when the time came for Capital Radio to make its investment, as I understand the position, the original subscribers - sorry, the sum of £1.2 million was to be put up, again by yourself and your colleagues, is that right, and institutional investors?

A. Yes.

80 Q. And how much was Capital bringing in, was that 1.5 million?

A. It must have been, yes.

81 Q. If I could refer you to some of the documents which are the original documents which you produced to the Tribunal, starting at page - we will start at page 224, I think.

This is the debit note for £35,000?

A. Yes.

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82 Q. Which we know was debited to the Frank Sinatra account on the 26th of May of 1989, isn't that so?

A. That is correct, yes.

83 Q. Then if we move to page 225, the next page, which is the document that we have already looked at, and you have a hard copy in front of you. You set out there under your own column "OB", not only the cash contributions that you actually put into the company, but also the expenses in respect of which you were claiming credit as a capital contribution to the company, isn't that so?

A. That's correct, yes.

84 Q. And your total at the end of the column, therefore, is ú275,000?

A. That's correct.

85 Q. Could I draw your attention to the fact that the ú5,000 there under the 15th of June, 1989, is not to RTE but in fact to Fianna Fail?

A. That was the FF payment.

86 Q. You just told us a moment ago that when you came to make your second investment of ú25,000 in January of 1990, you took credit for the airline ticket of ú213 and ú5,000 for RTE?

A. That's correct.

87 Q. But the ú1,000 here that you are allocating against the capital account is described as Fianna Fail, "FF"?

A. But it was Fianna Fail. There was two, I gave ú5,000 in in the bank draft that we saw yesterday. I have an explanation for the bank draft that I will come back to in a minute. That was the ú5,000 that I gave to Fianna Fail. I put that together with the ú21,250, which I gave to Mr.

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Taggart, and that was 26,250.

88 Q. Yes?

A. Which I paid out, I believe in '88, and it was paid back into --

89 Q. Well, you paid out the ú21,250 on, we think the 28th of December, 1988?

A. That's correct.

90 Q. And --

A. And the 5,000 --

91 Q. And you gave the 5,000 to Fianna Fail --

A. In May or June 1989, and I put the two of them together --

92 Q. In the following month, June of 1989, you received a cheque for ú26,250 from Century?

A. Which was the ú21,250 to Pascal Taggart, plus the Fianna Fail ú5,000.

93 Q. Yes. But then why are you allocating ú5,000, or claiming ú5,000 credit against the capital account in this document?

A. I hadn't received the 26,250 back from Century on that date.

94 Q. When was this document produced?

A. I don't know, around the same time.

95 Q. What time is that?

A. I wouldn't have a - I wouldn't really remember when it was, but I can assure you that the 26,250 came back into QAM, I believe towards the end of June. So I would feel that I was still owed the ú5,000 at that point.

96 Q. Well, clearly from the document itself there is one transaction, for example dated either the 11th or the 17th of May of 1990, or perhaps the 7th of May 1990; so clearly the document had to have been produced after that date?

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A. I am not sure when the - yes of course yes, yes. After that date, yes.

97 Q. So it must have been, obviously, after the middle of 1990 that you produced this document?

A. It looks like that, yes.

98 Q. And therefore at a time when you had already received reimbursement from Century. To be fair to Mr. Barry, we know that the €26,250 which contained the €21,250 and the 5,000 that you paid to Fianna Fail?

A. Yes.

99 Q. Were reimbursed by QAM to Century in January of 1990. And they were repaid back out to you again in December of 1990?

A. That's right. So I would have been put out-of-pocket, that €5,000 at that time in June, I would have claimed credit for it, I presume.

100 Q. I understand that. So at the point in time when you produced this document, whenever it may have been, you had decided that you were going to allocate - the €5,000 in respect of which you were going to claim credit of the €5,000 that you had actually paid to Fianna Fail, not the €5,000 that you say that you paid to RTE, isn't that right?

A. The €5,000 I paid to RTE was associated with the €19,787, when I brought up my initial investment to 275, that was the RTE payment. The €5,000 to Fianna Fail became associated with the €21,250 to Mr. Taggart, and it became 26250, which I paid out to Mr. Taggart in '88, plus the €5,000 to Fianna Fail in June; and I believe I got the 26,250 back into QAM at the end of June in 1989. I paid it back out again to Century, as we said yesterday, in January of 1990.

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101 Q. Yes.

A. And I got refunded then from Century in December of 1990.

102 Q. Yes.

A. So that is the sequence of events for the 26,250.

103 Q. Yes.

A. So at that point, maybe on the 11th of June - on the 11th of the 6th '89, I hadn't been refunded the 26,250, I believe until the end of June, so I probably figured I was still out-of-pocket the ú5,000.

104 Q. You weren't claiming the two. You were always only claiming one, so on this occasion you just put "FF" against it rather than "RTE" in effect, is that really --

A. Sorry Mr. Hanratty. You see this one? That couldn't have been the RTE one because I didn't pay the RTE one until August, until August of '89.

105 Q. Yes. But at the time this document was produced, well depending upon when it was produced. I mean, can you first of all tell us what was the context in which this document, or what was the purpose of this document?

A. The purpose of this document was obviously to keep a running total of where I stood with my investment and my expenses incurred in Century, and also keeping a running total of my partners' investment in Century.

106 Q. Yes. Well, given that the last transaction recorded on the document was in May of 1990; would it be fair to infer that this document was produced in or around May of 1990?

A. It must, it could have been around or subsequent to --

107 Q. Well, the state of play at that point in time would have been that you were still to receive the ú5,000 in respect of Fianna Fail and the ú5,000 in respect of RTE?

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A. No, because you see I hadn't paid the RTE money until August of '89.

108 Q. Well, I am talking about 1990 when this document was produced.

A. When this document was produced. I had taken credit for the ú5,000 to RTE in my original investment of the 275. So I wasn't due the RTE money.

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CHAIRMAN: Sorry, would you mind repeating that? You paid the ú5,000 to RTE out of the original investment, is that what you said?

A. What I said, Chairman, is that I made my original ú275,000 up by the RTE payment plus the 19,787.

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CHAIRMAN: I follow.

A. That is how I made the ú25,000 up.

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CHAIRMAN: I misunderstood you.

A. Pardon me, Chairman.

109 Q. I don't think we need dwell too much on it. The fact is, in respect of your ú275,000, you did take credit for a figure of ú35,000; did you take credit for a figure of ú5,000?

A. No, I took a credit for - yes, yes.

110 Q. For a figure of ú5,000, and for a figure of ú213?

A. Yes.

111 Q. Yes; and perhaps we might return in due course to what the precise ú5,000 label should be?

A. Well, I am perfectly clear on it Mr. Hanratty, that is the RTE label for that.

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112 Q. I don't think anything particularly turns on it, Mr. Barry?

A. I am trying to be helpful Mr. Hanratty.

113 Q. Undoubtedly. Could we go to page 226?

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Could I ask you first of all to explain to the Tribunal what exactly is this document and who produced it and in what circumstances or context was it produced?

A. This is a document that Mr. Stafford produced as his understanding of the state of play between all of us involved on the day of the rights issue.

114 Q. On the day of the rights issue?

A. Well - or maybe subsequent to the rights issue.

115 Q. Well, presumably - was there any discussions between yourself and himself at this point in time about the state of play as between you?

A. No, I think it was Mr. Moore, I think represented Mr. Stafford on the actual day, and we - it was an exciting day, obviously, with Capital Radio coming in and putting in a lot of money. We put what was necessary on the day.

116 Q. We know that Mr. Stafford wasn't in the country on the day, he was in France?

A. I don't know where he was.

117 Q. This was the day that you persuaded Mr. Moore, according to his evidence, to pay an extra £28,000, and that it would be reimbursed to him?

A. I have no recollection of that.

118 Q. I understand that. Undoubtedly Mr. Moore, according to him, attended at the closing statement on behalf of Mr. Stafford, and Mr. Stafford wasn't present himself?

A. That is correct.

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119 Q. Did you receive this document from Mr. Stafford before or after the closing with Capital on the 27th of September?

A. I can't remember, I can't remember. I am sure I would have received it - I am not sure --

120 Q. Yes.

A. I don't remember when.

121 Q. Well, what was the object, or the purpose of the document?

A. The objective - the object of the document was outlining where we all stood at the rights issue time; where the three of us stood financially vis-a-vis each other and vis-a-vis our investment.

122 Q. But not vis-a-vis Capital?

A. Well, obviously Capital had to be satisfied as well.

123 Q. But from Capital's point of view there was another $\text{£}1.2$ million coming into the company, apart from their own investment of 1.5; isn't that right?

A. I think there was --

124 Q. If we just look at the figures in this document?

A. 1.2. I see it, yes.

125 Q. The document is headed "September 1990, rights issue."

A. Yes.

126 Q. It appears an analysis of the various constituents of the money coming in - shall we call it the "Non-Capital Radio side"?

A. Yes.

127 Q. Isn't that right?

A. Yes.

128 Q. And there are two columns on the left-hand side of the vertical line?

A. Yes.

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129 Q. And perhaps if those figures could be enlarged on the screen? Yes. Now, under the heading "requirement" it says "institutions: ú3,000"?

A. Is that right? I think that was our expectation.

130 Q. It was the expectation. Were these the same institutions that had previously invested in the company?

A. I can't remember that. That would be Mr. Stafford's area.

131 Q. Anyway, it was envisaged that ú300,000 would come from that source, is that so?

A. Yes, that was his prediction at the time, yes.

132 Q. It appears to have been envisaged that Mr. Wogan would put in another ú50,000?

A. Yes. That was his assessment, yes.

133 Q. Mr. De Burgh would put in 25,000, and Messrs. Barry and Stafford; which is in fact Messrs. Barry, Stafford and Mulhearn: 825,000?

A. Yes.

134 Q. In fact the original investors were going to put up the same amount again?

A. Yes.

135 Q. But as is indicated in the next column, the actual subscription by the institutions was ú222,000?

A. Yes.

136 Q. Showing in the following column a shortfall of 78,000?

A. Yes.

137 Q. And Mr. Wogan only put in ú10,000?

A. Yes.

138 Q. Showing a shortfall of ú40,000?

A. Yes.

139 Q. And therefore the total shortfall is ú118,000. Isn't that

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right?

A. Yes.

140 Q. And going back to the middle column, as it were, under "O. Barry and J S" it shows a figure of ú943,000 to be brought in by the three of you in fact, isn't that so?

A. That's correct.

141 Q. And that figure is made up of what was originally intended, namely the ú825,000, plus you had to pick up the shortfall of 118. If you add 825 and 118 you get the 943 which is entered against your names?

A. Yes, yes.

142 Q. Now in the next section of the document we see how that figure is made up. Sorry, in the middle section of the document under the heading "OB/JS" you see there under "Guarantee: ú690,000"?

A. Yes.

143 Q. And in respect of that particular aspect of your investment each of you were to put up a guarantee, or a cash backing to a cash guarantee of 230,000, isn't that so?

A. That's correct, yes.

144 Q. And then at "B: Cash on closing, ú253,000."

A. That's correct.

145 Q. Which, when divided by three, would mean an individual contribution by each of you of a further cash payment of ú84,000 odd, isn't that right?

A. Yes, that's correct, yes.

146 Q. So each of you had to come up with 230,000 plus 84,000?

A. Cash - Well, as you say, the 230 could have been cash or bank guarantee, but that is what we had to commit to.

147 Q. Well, the 230 had to be cash, or it was intended to be

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cash, and in fact both Mr. Mulhearn and Mr. Stafford did in fact put in cash, isn't that right?

A. That's correct.

148 Q. While it was intended that you would, you didn't put in cash at the time; perhaps because you may not have had it readily available?

A. That's correct.

149 Q. And you made an arrangement with your bank that they would provide your portion of the guarantee, notwithstanding the fact that you had no cash backing. But in the event that you would be liable for that 230 and the guarantee would be called in, and in fact the guarantee was called in?

A. Yes.

150 Q. And the guarantee was in fact called in, this is a guarantee to the Capital Radio itself?

A. Yes.

151 Q. The 690,000?

A. Yes. Oh, yes the 690.

152 Q. Yes. Then coming to the 84,000 cash, did you in fact put in 84,000?

A. I believe so, yes.

153 Q. Because we have been unable to find any evidence of a payment of 84,000. Did you pay it in installments?

A. No, we must have, I had to come up with the money on the day, I believe.

154 Q. Well, did Mr. Stafford put in 84,000?

A. I believe he did, yes.

155 Q. And did Mr. Mulhearn put in 84,000?

A. I believe so. Cash to close, yes.

156 Q. Well, if that is the case, if each of the three of you put

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up your 230 in the manner we have just described, and if each of you subsequently, or then, put up ú84,000, each of you were, in effect, fulfilling all of your commitments vis-a-vis the agreement with Capital to bring in new investment, isn't that right?

A. That's right.

157 Q. And in that way the ú1.2 million requirement in the agreement with Capital was met?

A. Yes.

158 Q. And, therefore, no adjustment as between, at least yourselves and Capital was made in respect of any prior state of the capital account as between yourself, Mr. Stafford and Mr. Mulhearn, isn't that so?

A. I think Capital required the money on the day and they - everything had to be on the table before the deal was signed.

159 Q. Yes. So that both before and after the point in time when you made your investments into the company, in the context of the Capital, the Capital Radio investment, the capital account, as it stood on the date of the Capital Radio investment, remained unchanged?

A. Would you repeat that, Mr. Hanratty?

160 Q. On the day of the capital investment. The 27th of November, 1990, the capital account, as it stood, prior to the bringing of any further money, either from yourselves or Capital, remained unchanged?

A. That is not true, because if you go down to the O. Barry please, in the next piece of that sheet? You see I was credited by Mr. Stafford with 85,000.

161 Q. Yes.

00024

A. He was credited with ú120,000; and John Mulhearn was credited with 105,000.

162 Q. Yes. Well, could we start with Mr. Stafford's and Mr. Mulhearn's credit, then we will come to yours? What is the credit of ú120,000 that Mr. Stafford is claiming in this document?

A. I don't have that explanation at hand, but I am sure I can help you if you give me two minutes maybe, or three minutes. I can --

163 Q. Yes.

A. Thank you.

164 Q. MR. HANRATTY: Sir, the witness has indicated that he requires a little bit of time --

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CHAIRMAN: I was just going to say to you that we might take the break and combine the two operations in one period.

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MR. HANRATTY: Indeed, thank you Sir.

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CHAIRMAN: Thank you.

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

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165 Q. MR. HANRATTY: Mr. Barry please?

Mr. Barry, we were on page 226?

A. Yes.

166 Q. In this document, which was sent to you by Mr. Stafford in or around the time of the agreement with Capital Radio?

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A. Yes.

167 Q. And we were on the bottom part of the document, where Mr. Stafford has done a calculation in respect of each of the three investors?

A. Yes.

168 Q. And in each case he has provided for a figure which he describes as a "credit"?

A. Yes.

169 Q. I was asking you if, in the first instance, what is the credit of ú120,000 which he has put against his own name?

A. I believe now - I am sorry, I didn't have that, but that was money that the three of us funded the company with during the period when it was in financial trouble. Wages, etc.

170 Q. Well, we know that there was, in or around May of 1990, a joint account established from which you were paying wages?

A. Yes.

171 Q. And into which you put two tranches of ú20,000, which were separately dealt with, isn't that right?

A. Yes, but this is --

172 Q. Is this a further additional --

A. Obviously it is, yes. This is Mr. Stafford's sheet, of course, and it was credits that we put into the company individually during the bad times.

173 Q. Yes. There were two sums of ú60,000 put in to the joint account, I think by Mr. Stafford, so that would add up to ú120,000, is that what that represents?

A. I am sure it is, yes.

174 Q. Well, in the case of Mr. Mulhearn: ú105,000, what is that?

A. That is obviously the same thing. That was the funding

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that the company needed to keep going during the financial difficulties.

175 Q. And did Mr. Mulhearn in fact put up €105,000?

A. I am sure he did. As I say, it is Mr. Stafford's sheet, so I have no reason to believe that he didn't.

176 Q. And did he put it into this joint account? Joint, that is in the name of yourself and Mr. Stafford?

A. I don't know where he put it, but it went to funding the company.

177 Q. Essentially the funding we are talking about here is wages, isn't it?

A. I am sure there was others, probably expenses as well.

178 Q. Perhaps, but as we understand it, when the company was in dire financial circumstances in the first half of 1990, it got to the point where it had no money to pay the wages of such staff as were left, after the redundancies?

A. Yes.

179 Q. It became necessary for you and Mr. Stafford to pay wages directly out of your own resources, because the company didn't have any money?

A. Yes.

180 Q. So that while there may have been other expenses, the principle drain or principle demand for money was the week-to-week pay packets of the staff?

A. That was the most urgent thing, yes.

181 Q. Well --

A. As I say Mr. Hanratty, these are not my figures, these are Mr. Stafford's. I believe that is why he credited the three of us.

182 Q. Leaving aside the figures for the moment, the logistics

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were, as we understand it, a joint account was set up in yourself and Mr. Stafford's name at some point, we think in May, into which you and Mr. Stafford put money and out of which wages were paid?

A. Yes.

183 Q. And it was not a Century account?

A. It was not a Century account, no.

184 Q. Well, is it the position that Mr. Mulhearn put money into this account?

A. I am sure - whether it went into that account - I am sure he put into it, into the company to keep the company going, because he wouldn't have got credit for 105,000 unless he put it in.

185 Q. You were the person acting as Chief Executive at this time, isn't that right?

A. Yes.

186 Q. So what were the mechanics of it in terms of paying staff?

A. I think we had to pay the staff, obviously when their wages were due.

187 Q. Yes. Well, were you writing cheques on this account, for example, and giving them cheques?

A. I believe we were, yes.

188 Q. Yes. And are you not aware then whether Mr. Mulhearn put money into the account?

A. At this point I am not. As I said, they are Mr. Stafford's figures. I am sure the money did come in, otherwise he would haven't given credit for it.

189 Q. There doesn't appear to be any indication that Mr. Mulhearn put in 105,000 to this account. Is it possible that he may have contributed to the staff wages in some other way that

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we are not aware of?

A. I can't recollect that Mr. Hanratty, but I am sure there was money that he put in to keep the company going during dire circumstances.

190 Q. Well, I take it, he wasn't himself going around giving out money to staff?

A. No.

191 Q. In whatever way they were paid, it was paid through you?

A. Yes. If you are asking me can I give you an explanation as to when and where and how Mr. Mulhearn put in that 105,000 I couldn't. I am sure Mr. Stafford can.

192 Q. Let's move --

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MR. GAVIGAN: Sir, Sir?

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MR. HANRATTY: Let's move to your figure for credit.

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MR. GAVIGAN: Mr. Stafford is actually here and is willing to give an explanation of the document, if you require it.

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CHAIRMAN: Just a moment, let's complete this and I think we will move on then. I am already having one difficulty here with this document.

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MR. GAVIGAN: I appreciate that, Sir. If you wish, and when you wish, he is here and --

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CHAIRMAN: We won't complicate things at this moment in time.

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MR. GAVIGAN: May it please you, Sir.

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CHAIRMAN: Do you agree?

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MR. HANRATTY: I think so, Sir. Mr. Stafford will be recalled, as you are aware, for a number of issues. That may be the time to deal with it. I just want, as far as possible, to ascertain the position from this witness, as far as he knows it, in relation to this document.

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There is a figure which Mr. Stafford has allocated by way of credit to you as well. It looks like £85,000, although it is crossed out. Do you see that figure?

A. Yes.

.

CHAIRMAN: Where is that? Up at the top, I see it at the top, yes. It is 141,250 written in on top?

A. I obviously didn't agree with that figure, because I believe I was also due - I wasn't credited with the initial £35,000 and the £21,250 which I paid to Mr. Taggart. There is a difference of 56,250 between the 85 and the 141,250.

193 Q. Well, first of all do you understand the basis on which Mr. Stafford calculated the 85,000?

A. Not offhand, no.

194 Q. You took the view that it was short?

A. I took the view that it was short because I reckoned that my expenses were running at, or that my credit should be £141,250.37.

195 Q. Yes?

A. I can give you a breakdown of that figure, I think.

00030

196 Q. If you would please?

A. Can I help you with it? I have a sheet on it?

197 Q. Is that a document that we already have?

A. No, it is one that I just, that I just drew up.

198 Q. Yes, by all means. Is this a document that you have produced in consultation with Mr. Stafford?

A. Oh gosh no. Mr. Stafford doesn't - my relationship with Mr. Stafford is not good, there is no chance of that happening.

199 Q. Whatever explanation you can give us about these figures, if you wouldn't mind?

A. The explanation I can give you is, on January the 8th --

200 Q. Of what year?

A. Of '89.

201 Q. Yes.

A. I refunded 26,250 to Century.

202 Q. Yes.

A. On May the 17th of '89, I invested, I lodged to Century's bank 12,500. On June the 30th --

203 Q. Sorry, could we just pause at the 12,500 for a moment? Was that into this joint account or was it to Century?

A. I am sure it was a joint account.

204 Q. Yes. This is for, for what we have been talking about, staff wages and so on.

.

CHAIRMAN: That was May 17th, 1990?

A. 1990. 1990, yes.

205 Q. MR. HANRATTY: If I am not mistaken, the account was not set up at that stage?

A. Maybe I lodged it to Century bank. I am not sure which

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bank I lodged it to. It is a credit that I am claiming of
ú20,000 on June the 30th.

206 Q. Yes?

A. It was for wages. On July the 31st I also lodged ú20,000.

207 Q. Yes. Could I assist you, Mr. Barry, by looking at page
240, where you appear to have actually listed these
yourself in a document which you have provided to the
Tribunal?

A. Yes, I will make up the 141 if you allow me to continue Mr.
Hanratty?

208 Q. Well, if you would like to finish then what you are doing,
then we will go to that?

A. There was miscellaneous expenses, like expenses that I
incurred on behalf of Century of ú5,020. There was a bill
to Clinton's of 2,560. And there was a bill to Lisney's of
2000. And then on September the 8th, I put in 52,420 to
close. So, the lodgements and the closing came to 104,920;
and the expenses I incurred on behalf of Century and the
co-investors was 36,330, and those two figures make
141,250.

209 Q. I understand you have that in writing, or written down on a
kind of a list that we have made. Could we have a copy of
that please?

A. Yes, no problem.

210 Q. We might just take photocopies of it. While we are waiting
on the copies, if we look at page 240, where reference is
made to the various cash inputs which you made, there was
the original 33; and 33 again; the 148; the 19,787; then
there is this payment of 12,500 which you have just
mentioned?

00032

A. Yes.

211 Q. Which is on the date you mentioned, the 17th of May, which may predate the setting up of the joint account, but nonetheless was put into Century by you, is that right?

A. Yes.

212 Q. Then there is €20,000 and another €20,000 which did go into the joint account, isn't that so?

A. Yes.

213 Q. And then there is the 54,420, which I think is probably a typographical error, because it should read 52,420, is that right?

A. That is what I have in my note, I have just given you the note.

214 Q. Yes. Now, the 12 and a half thousand and the two 20's were undoubtedly monies you had put in over and above your €275,000 as it were, isn't that right?

A. That's correct, yes.

215 Q. But what I am still trying to figure out is the credit, the figure in respect of which Mr. Stafford gives you credit in this document is €85,000; and I appreciate that you say it is short, and I appreciate the basis upon which you say it is short. But what I want to understand is what is the €85,000 for which he is giving you credit? If you take the 20 and the 20 and the 12,500, that only gets us up to 62,500?

A. I will have to rely on Mr. Stafford to give that evidence Mr. Hanratty. I can't recollect.

216 Q. You don't know?

A. No.

217 Q. Right. But while you don't know the figures, is it the

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position that the figure for which you were being given,
was monies which you put into the company while it was
short of funds during this period in 1990?

A. That is my understanding, otherwise I wouldn't have been
given credit for it.

218 Q. Yes. Out of what account did these monies come? Did they
come out of Quality Artistes Management accounts?

A. I can't recall. I think things were pretty low at that
stage.

219 Q. Well, in any event you say that it was short by ú56,000 and
you say that that ú56,000 there is an adjustment of the 85,
it is crossed out. You have written in 141,250. Am I
right in thinking that is your handwriting?

A. No, it is not my handwriting. It is the handwriting of a
member of my staff.

220 Q. Which one?

A. Patricia Cooney.

221 Q. Presumably that was written on your instructions?

A. Yes.

222 Q. The handwriting on the right-hand side, is that your
handwriting, this is page 226?

A. No, no it is not.

223 Q. Is that Ms. Cooney's handwriting?

A. It is.

224 Q. But presumably done on your instructions?

A. Yes, on my instructions, yes.

225 Q. The difference between the ú85,000 for which Mr. Stafford
was giving you credit, and the figure for 141,000 odd for
which you were claiming credit, is ú56,000 odd?

A. That is correct.

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226 Q. And you say that is made up of 26,250 which at that stage you had refunded, and therefore --

A. No, I am saying that it is made up of $\text{ú}21,250$.

227 Q. $\text{ú}21,250$?

A. $\text{ú}21,250$ and the 35 that I wasn't given credit for, the original 35,000 that I had got credit for in the initial investment and I didn't give credit for it at this point.

228 Q. You hadn't got credit for it in this document, but you had taken credit for it in the sense that you hadn't paid that money into the capital of the company, isn't that right?

A. I had taken credit for it in June/July of '89.

229 Q. Yes. By making a payment of 148 instead of --

A. Yes.

230 Q. So you had got the credit in physical terms?

A. At that stage now, it was withdrawn.

231 Q. But your problem was, as it were, that Mr. Stafford was not giving you credit for it in this document, is that right?

A. That's correct.

232 Q. So you add the 35 to the $\text{ú}21,250$?

A. Yes.

233 Q. And you claim credit for the larger sum then of $\text{ú}141,000$, isn't that right?

A. That's correct.

234 Q. And in each case, as you can see from the writings on the side which you have just told us were done by Miss Cooney, on your instructions, you divide the 40,000 - which is the 35 plus the 5 - into three tranches of 13,333?

A. That's correct.

235 Q. Between the three investors?

A. That's right.

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236 Q. So what you are effectively doing here is saying:

"I am entitled to be paid back the 35,000, or given credit for the ú35,000 that I paid to Mr. Burke, and then in working out the apportionment between the three investors, each of us should be attributed their proportionate share of one-third of the ú40,000"?

A. That's correct. There is just one small point, it is probably relevant. I believe that I overlooked the fact that Mr. Stafford had given me credit for the ú5,000.

237 Q. In the 85?

A. No, in - you see the 35 and the 21?

238 Q. The ú21,250 was the one that you added to the 35?

A. That's right, but I got paid back 26,250 in December of that year, because I obviously had overlooked the fact that Mr. Stafford had given me credit for the ú5,000.

239 Q. Well, is it possible that the reason that that is not in this document is because this document was produced between September and December of 1990, which is the point in time when you were actually paid back?

A. That is Mr. Stafford's document.

240 Q. Yes, I know that, but we also know that you were paid the 26,250 the second time, in December of 1990?

A. Yes.

241 Q. So it would appear. Correct me if you disagree, that this document was probably produced by Mr. Stafford, either immediately before the agreement with Capital or some time between the agreement with Capital and the payment to you of 26,250 in December; and that would explain why you haven't, in this document, been given credit for the ú5,000 which you were subsequently paid in December?

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A. I don't quite follow that.

242 Q. We know that the \$26,250 that you got paid in December?

A. I think that I should have only got paid back \$21,250 in December.

243 Q. Yes.

A. But I got refunded 26,250.

244 Q. But why should you only have been paid \$21,250?

A. Because, because --

245 Q. Is it because the \$5,000 was included in the 85 for which Mr. Stafford did give you credit?

A. That's a possibility.

246 Q. It seems to be the only possibility?

A. Yes, that is a possibility, yeah.

247 Q. It is not credited in any other part of this document, isn't that so?

A. Well, no, I don't see it credited any place. But I am jumping to conclusions here, I am not one hundred percent.

248 Q. We might depart that. Undoubtedly Mr. Stafford will explain what his \$85,000 figure is. Just for the record, I believe that 89,000.70, which is in the right-hand column, just to the left of your handwritten calculations --

A. Yes.

249 Q. -- should in fact be \$28,985.70, isn't that right?

A. I think there is a mistake in the tot there.

250 Q. Yes, in fact that 28,985.70 is the sum of money that Mr. Stafford subsequently sued you for, isn't that so?

A. That's correct, yes.

251 Q. And do you understand why Mr. Stafford sued you for that particular sum?

A. I always disputed that, because I --

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252 Q. I know that you disputed it, Mr. Barry, do you know what basis he was claiming that you owed him that particular sum, calculated in that particular way?

A. I don't have all of that information just in my head at the moment, but we had a surplus, he had a surplus at that stage.

253 Q. But why would he claim his surplus exclusively against you? Why wouldn't he claim your proportionate share or perhaps sue both yourself and Mr. Mulhearn?

A. I am not one hundred percent sure of the reason. I can't recall that fully, but I am sure it is in documentation, Mr. Hanratty.

254 Q. Yes. Now, just if we could turn, for a moment, to page 239? I think you have it in hard copy in front of you as well, Mr. Barry, I believe. The pagination is in the top right-hand side of the page?

A. Yes. 239, yes.

255 Q. Now, I think this document was produced by you?

A. Yes.

256 Q. And this was your response, I understand, to Mr. Stafford's document, the one we have just been looking at?

A. I think that's correct, yes.

257 Q. And in effect, what it is, is a retyping of the same document, but incorporating the adjustments which are shown in Mr. Stafford's document in the handwriting of Miss Cooney?

A. Yes.

258 Q. In other words, incorporating your adjustments?

A. Yes, claiming my credit.

259 Q. And just to be clear, if we look at the bottom - the top

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part is virtually identical to Mr. Stafford's workings,
down to the last section, isn't that right?

A. Yes, that's correct.

260 Q. And if we look at the last section, we see that you make
your adjustment upwards of the credit figure to
ú141,250.37, isn't that so?

A. Yes.

261 Q. The one-third cash closes the same, then you build in the
ú13,333.33, which in the document is expressed to be
one-third of the 40,000 - being ú35,000 plus ú5,000?

A. That's correct.

262 Q. Did you send this document then to Mr. Stafford, having
received his --

A. I am not sure of that. It is possible that we - I am not,
I have no proof of that. I am not sure whether I did or
whether he saw it.

263 Q. What was the purpose of it?

A. The purpose of it was see my position and the position of
the other people vis-a-vis me.

264 Q. So his position was as set out in his document?

A. That's correct.

265 Q. Your position was as set out in this, your amendment of his
document?

A. That's right.

266 Q. Did you ever reach agreement with Mr. Stafford on it?

A. No.

267 Q. Subsequent to the collapse of Century, Mr. Stafford sued
you for 26 odd thousand, the figure that we have just
mentioned?

A. Yes.

268 Q. That matter never was resolved?

A. Yes.

269 Q. There matters lay, and still lie?

A. There matters lay and still lie, yes.

270 Q. So far, therefore, as the capital account is concerned, if we can just recap, looking again at Ms. Hynes' document at page 99. The figures, in terms of capital contributions such as they were, at the date of the agreement with Capital Radio, or the day before, remained unchanged from this document here, isn't that right?

A. Which one are we looking at, Mr. Hanratty.

271 Q. This is page 99. You have it in hard copy in front of you there?

A. Yes.

272 Q. Sorry, you may not have that particular page. If you look at it on the screen. The first document that we looked at this morning?

A. Yes.

273 Q. That is the position as it was on May the 8th, 1990; isn't that right?

A. Yes.

274 Q. That is the position which pertained right up until the agreement with Capital. In other words, no further sums were put into the capital account?

A. That looks correct, yes.

275 Q. And just to be clear about that, as you can see the figure indicated on that document as the amount outstanding on the capital account on that date is ú75,278, isn't that so?

A. That's right, yes.

276 Q. If I could just refer you to the disclosure document, which

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was the disclosure document to Capital Radio when they were coming in? By way of explanation, you understand the disclosure document is a document where in every matter that might materially affect the judgement of a potential investor, it has to be honestly and frankly disclosed by the company in which the investment is being made, isn't that right?

A. That's right, yes.

277 Q. And in this disclosure document all aspects of the company's business are dealt with, including the position on the share capital account?

A. I am sure it was, yes.

278 Q. And if I can refer you to page 3541? Under the heading "constitution of the company" it refers in the first paragraph to the allotted share capital of the company. In paragraph 2 it deals with the issued share capital of the company. It says: "The issued share capital is not fully paid up in so far as there is outstanding the sum of 75,278 in respect of the said shares."

That is the same figure in the document that we have just looked at from Ms. Hynes dated May of 1990, isn't that right?

A. That's right, yes.

279 Q. That would appear to confirm that the position on the share capital account, at least, had not changed in any way between May of 1990 and the date of the disclosure document?

A. It is the same figure, yes.

280 Q. However, if you look at the explanation given for the shortfall on the capital account, it says: ; "Michael

00041

Terence Wogan: ú50,000. The outstanding sum is due as follows: 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".

In other words, that is accurately recalling or recording the fact that Mr. Wogan had not yet put in his original investment of ú50,000 and that he was owed ú45,000 for services which were going to be set against that, isn't that so?

A. That looks like that, yes.

281 Q. But in paragraph B, it says: "James Stafford and Oliver Barry - 25,278", that is the balance deducting Mr. Wogan's ú50,000 from the outstanding capital of 75,278, leaving a balance of 25,278, isn't that right? What it says here, "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"?

A. That is what it says, yes.

282 Q. Why does it say that?

A. I wouldn't have drawn up this document, James Stafford would --

283 Q. I understand that you didn't. Were you aware that this was what Capital were told?

A. I wouldn't have been into the detail on that, Mr. Hanratty, no.

284 Q. It doesn't, for example, tell them that Mr. Mulhearn put in, not just 275,000, but that he overpaid by 25,000, isn't that so?

A. I would be - I wouldn't have been involved at this level, and I am sure that Mr. Stafford can account for that, Mr.

00042

Hanratty. It is out of my area.

285 Q. It doesn't inform them that you withheld ú35,000 for one item and ú5,000 for another item, and indeed ú213 for yet another item, isn't that so?

A. It doesn't which, Mr. Hanratty?

286 Q. It doesn't inform Capital that these are elements in the shortfall in the capital account?

A. I can't answer that question, because I don't know what the

--

287 Q. Well, when we started this morning, I think we were all in agreement that ú900,000 was to be the paid-up share capital?

A. Yes.

288 Q. We were in agreement that the actual amount of share capital put in, in cash terms, was ú810,000, isn't that so?

A. Yes.

289 Q. We were in agreement that ú50,000 of that was accounted for, so that therefore the shortfall was 90,000?

A. Yes.

290 Q. We were in agreement that ú50,000 of that was accounted for by the fact that Mr. Wogan hadn't yet put in his 50?

A. Yes.

291 Q. That the remainder of that was accounted for by the fact that you had withheld credit in the sum of 30 - say ú40,213; that Mr. Stafford had not yet put in his ú25,000 and that Mr. Mulhearn had overpaid by his ú25,000. The books balanced; if you remember we had that this morning?

A. Yes.

292 Q. None of that was disclosed. I am drawing your attention in the disclosure document to capital, and that is in fact the

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reason for the shortfall on the capital account?

A. Well, as I say it is news to me. I wouldn't have been, come across this. This is an area that Mr. Stafford and the accountancy people would have specialised in. I wouldn't have been close to that, Mr. Hanratty.

293 Q. I see. And you had no input into this document at all, did you, or at least into this part of this document?

A. No.

294 Q. And were you not aware then what was being told to Capital Radio about the reason for the shortfall on the capital account and the make up of that shortfall?

A. I wouldn't have been up to speed with all of that. This was a matter that Jim Stafford and the legal people were handling. I wouldn't have been across that, no.

295 Q. Well, would you agree with me that the explanation there in relation to the capital account is, to say the least of it, incomplete?

A. Well, you see --

296 Q. Well, you see what it says. "James Stafford and Oliver Barry - 25,278 278. 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"?

A. I am sure Mr. Stafford had a good reason for saying so. "I don't know" is the answer, Mr. Hanratty.

297 Q. Going back then to your own documents, Mr. Barry, the bundle that you have a hard copy in front of you of. The next document is page 227. That simply records in the first three items, the three items in respect of which you did in fact take credit in 19 --

A. Which? 227?

00044

298 Q. 227, yeah.

A. Yes.

299 Q. That just records the three items in respect of which you have told us already you did take credit on the capital account.

.
So, we know that at the time that Ms. Hynes wrote this memorandum on the 8th of May of 1990, which it appears did not change in any way up until the agreement with Capital.

The position was that you had put in what is recorded in that document, Mr. Stafford had put in what is recorded in that document?

A. 227, you say?

300 Q. No. No, Ms. Hynes' document. 227 simply indicates the three items in respect of which you already told us you took credit. Then going back to 99, Ms. Hynes' document appears to accurately records the position --

A. Can I see Ms. Hynes' document?

301 Q. Yes. We will get you a hard copy of that one as well, I think, Mr. Barry, because we will keep coming back to it, I think.

.
To, as it were, summarise the position vis-a-vis the capital account and leaving aside any calculations that either you or Mr. Stafford did in your various documents; the actual position was that the cash that you put in by way of capital investment, up to the time that Capital Radio came in, was as recorded in Ms. Hynes' memorandum of the 8th of May, isn't that so?

A. The cash --

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302 Q. The cash investment?

A. Not including the 35. Is that what you are saying to me?

303 Q. The actual amounts of cash that you brought into the company and put into the account of Century Communications Limited are accurately recorded in that document there?

A. They would total 215, I presume.

304 Q. Yes.

A. Yes. Oh no, they would total - because the 19,787 is it - they would total 240.

305 Q. 240? 215 plus the 19,787?

A. Yes.

306 Q. And the actual cash contributions of Mr. Stafford up to the date of the agreement with Capital Radio are also recorded in that document?

A. 200 - yes.

307 Q. And the fact that Mr. De Burgh has put in ú25,000 that was still the situation when the time came for Capital Radio to make its investment. Isn't that right? In other words, he didn't put in any more money since then, between that date and the date of the agreement?

A. No, he didn't.

308 Q. Yes.

A. But he did put in extra money --

309 Q. No. After, as part of the agreement, but I am talking about the position --

A. No, Chris de Burgh only made two lodgements.

310 Q. Yes. And after the agreement was entered into, or at the time of the agreement being entered into with Capital Radio, you have told us that each of you have put up, each of the three investors that is, put up their ú230,000 in

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the manner which you have told us in the case of Mr.

Stafford; Mr. Mulhearn in cash; and in your case in the

initial period at least, by way of an arrangement with your

bank.

A. That's correct.

311 Q. You told us already that you each paid your respective

ú84,000?

A. No, I am withdrawing that, Mr. Hanratty.

312 Q. I see.

A. Because we were credited, we had credits which Mr. Stafford

gave us.

313 Q. I see.

A. And the ú84,000 that I was due, I think was deducted from

the credit.

314 Q. I see. So you are now saying that you didn't, that each of

you did not put in 84,000, is that right?

A. I am saying that - yes. I am saying that. That we had

credits coming to us on that sheet, and the 84,000 - what

we were due each, I think, the third each, was deducted

from that credit.

315 Q. Are these the credits in respect of the --

A. The 85.

316 Q. The monies that you had put in, the paying of wages and so

on?

A. Yes, that is what I believe they were, yes.

317 Q. Well --

A. It is back in Mr. Stafford's sheet, I think.

318 Q. What was deducted from your 84?

A. I had a credit, I think, of 85. And the 84 was --

319 Q. Mr. Stafford was giving you a credit of 85. You said it was

short, and you brought it up to 141?

A. Yes.

320 Q. And of course if you had a credit of 141, not only would you not be paying 84, but you would actually be owed money?

A. Well, there was a surplus, if you remember.

321 Q. Well, which document would you like to refer to? Are you going back to page 226?

A. 226, yes.

322 Q. What do you say about the relationship that the calculations on this document bear to the credit that you took out, of 84, which you subsequently put in pursuant to the agreement with Capital Radio?

A. Mr. Stafford gave me a credit of 85. I was due to put in 84,323 on the day, therefore I had a surplus. Mr. Stafford was due to put in 84 on the day, he credited - he had a credit of 120 plus 6,681 - I don't know why that was. I don't know what that figure was. He deducted his 84 from those two figures, then he deducted the 84 from Mr. Mulhearn's credit of 105. So each of the three of us had a surplus at that stage.

323 Q. Well --

A. Except that I --

324 Q. Can you draw attention to which figure, by reference to which figure on this page, if any, did you make a deduction from the 84 that you were supposed to invest?

A. No, I didn't. I didn't make deductions from the 84, Mr. Hanratty. I deducted the 84 from the credit that I was due.

325 Q. You deducted the 84 from the credits that you were due?

A. Yes.

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326 Q. And did what?

A. That obviously satisfied Capital on the day that we did the deal.

327 Q. Well, does that mean that this document, as altered by you, was agreed by Mr. Stafford?

A. No, not all, no. Mr. Stafford gave me - it is Mr. Stafford's figure of 85. He gave me a credit of 85.

328 Q. Yes.

A. And the three of us had to put in 84,323 on the day and what --

329 Q. Capital had to see cash of ú84,000 multiplied by three. It had to be ú252,000?

A. I said that earlier, I got that wrong.

330 Q. I see.

A. Obviously the credits that Mr. Stafford allowed each of the three people stood well with Capital on that day, and that must, our credits must have satisfied Capital for the 84,323.

331 Q. You say they are your "credits" Mr. Barry. You didn't agree with Mr. Stafford, he was only giving you credit for 85 and you were claiming credit for 141?

A. Obviously on the day of the settlement with Capital, let's say when we had to put all our respective monies --

332 Q. Can I put it another way? On the day of closing with Capital, did you hand over a cheque?

A. No.

333 Q. You handed over nothing?

A. I think I handed over a cheque of 52,000, is that correct?

334 Q. 52,420?

A. Yes.

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335 Q. In fact it was 52,000 and some smaller figure, if I could just refer you to your --

A. I think I gave you that sheet. Did you give it back to me? Yes. On September - 52,420.

336 Q. There is a debit on your Oliver Barry No. 1 Current Account of the 27th of September of 1990, in the sum of ú52,040.37. Now, it appears that you were claiming a figure of expenses in the sum of ú380 which is separately dealt with. That would bring it up to approximately ú52,420?

A. That is what I have here in my figures, yes.

337 Q. Well, what I am trying to understand, Mr. Barry, and please forgive my obtuseness, I am trying to understand whether there is a relationship between this balancing document which was produced by Mr. Stafford and the amount of money that you paid in to Capital on the 27th, sorry to Century by way of capital contribution on the 27th of December of 1990. Now, obviously you did some calculation to arrive at a figure of ú52,420, isn't that right?

A. Off the top of my head, did I not put in some money for Chris de Burgh and Terry Wogan on that date?

338 Q. I don't know. Are you telling us that you did?

A. I think that's possible.

339 Q. And are they included in this 52,000 and --

A. Mr. Hanratty, I am not one hundred percent sure here, but I think that all monies that Capital, they demanded all monies on the table that day. I think I got a refund of monies from Chris de Burgh and Terry Wogan. It may be included in that 52,420, but I will check it for you.

340 Q. There is a reference in two documents. I am afraid that we

are going to prevail on you, Mr. Barry, to solve the riddle we do need to know?

A. I am sorry I can't be more helpful.

341 Q. There are a number of documents which perhaps I might refer you to, which may assist you in resolving the matter. If you just bear with me, I will try and identify those documents.

.
Yes, if we just look at page 240 for a moment? It is in that bundle that you have. We have looked at that one already, briefly Mr. Barry, because it contains a list of your cash contributions, if we might put them like that?

A. Yes.

342 Q. And the total lodgement, you have total ú341,707.66. Yes, now beneath that you have under the heading "Less reimbursement of lodgements from T Wogan and C de Burgh."

A. Yes.

343 Q. Against Mr. Wogan's name you have ú15,000 and against Mr. De Burgh's name you have ú25,000?

A. Yes, that's right, yes.

344 Q. Now, what was the context in which this question of reimbursement of lodgements from these individuals arose?

A. I must have - my guess at the moment is that on the day when we were doing the deal with Capital, I probably bridged them for that, for their two sums.

345 Q. Mr. Moore, that is Mr. Stafford's accountant, in his evidence said that one of the reasons which you gave him for asking him to make up a shortfall between ú201,000 which Mr. Stafford was then putting in, and ú230,000 which Mr. Moore says he was persuaded to put in by you, was that

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you had to make up a shortfall because of Mr. Chris de
Burgh and Mr. Wogan not having yet put up their cash?

A. He said that?

346 Q. Yes.

A. Well, that could be the case, yes.

347 Q. Well, did you have a discussion with Mr. Moore? Obviously
you had a discussion with Mr. Moore on the closing day?

A. I don't remember, Mr. Hanratty.

348 Q. Do you remember discussing the question of Mr. Wogan and
Mr. De Burgh's money not yet having come in?

A. I don't.

349 Q. It says: "Less reimbursement of lodgement from Mr. Wogan
and Mr. De Burgh." We know that under the arrangements in
the documents we looked at earlier this morning, Mr. De
Burgh was to put in another 25 and Mr. Wogan was to put in
another 15?

A. Yeah. I don't think, I think they came up with less, there
was a shortfall with them as well.

350 Q. Was it a shortfall on both of them or on one?

A. I am not too sure, Mr. Hanratty.

351 Q. Well, do you know how much - did you have the money that
they were bringing in?

A. Did I --

352 Q. Who brought their money in, or did they attend themselves?

A. No, they didn't. As far as I remember I put it in on the
day for them, knowing that I would get it back in a very
short time, for both of them.

353 Q. How much did you put in for each of them?

A. It must have been the 25 and the 15, because that is what I
got back, I believe, from each of them.

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354 Q. So were these reimbursements - they appear to be reimbursements to you because you have deducted that figure from the total capital input that you made?

A. Yes.

355 Q. Then you come up with a balance of 301,707?

A. Yes.

356 Q. Yes. Mr. Moore, in a letter which we have already had, it is on page 3898, we can scroll up to the second paragraph of that page.

.

If we could enlarge that large paragraph in the middle?

Yes? It says: "He explained" that is you he is referring to "That the principle reason for this", this is why he wanted you to put difference between 201 and 230.

"Was the failure of Mr. Chris de Burgh and Mr. Wogan to subscribe their funds on time, and that he would be obliged if I could accommodate him. Since I understood that the monies were being paid into a guarantee account and on the basis of his undertaking to me to refund the balance of 28,986.20 within two to three days, I agreed to facilitate him."

Do you remember that conversation with Mr. Moore?

A. I have no recollection whatsoever of it. In fact I think there was a dispute between us over that.

357 Q. Well, Mr. Moore was saying, if you look at the beginning of that paragraph, "About three to four days prior to the closing meeting on the 27th of September 1990, Mr. Barry telephoned me at my offices and confirmed and acknowledged that I was to provide the agreed amount of ú201,013.80. A day or so later I was telephoned again by Mr. Barry who

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asked me to subscribe ú230,000 so that he could deal with some last minute adjustments which had arisen and that it would take a few days to refund the balance of ú28,986.20."

So do you remember telephoning Mr. Moore on two occasions prior to the closing date, in relation to the balance that he should pay?

A. I have no recollection of it whatsoever. I am not saying that it didn't happen, but I have no recollection of it, Mr. Hanratty.

358 Q. Well, Mr. Moore has positively testified that he has a recollection and that these telephone conversations did take place, and he produced this letter which he wrote to Mr. Synnott, that is Mr. Stafford's solicitor, on the 21st of March 1994. So it does appear, the letter that is, does appear to confirm what he has said in his evidence?

A. All I can tell you is my memory isn't very clear on it, but I know there was a dispute between Mr. Moore's report on the events. We were at variance in respect of it.

359 Q. In what respect?

A. We were at variance over sums of money.

360 Q. What was the dispute about?

A. It was over sums of money.

361 Q. Well, was it over balance which Mr. Stafford was supposed to pay?

A. I can't fully recall.

362 Q. Or was it over the balance that you were supposed to pay?

A. I can't fully recall, Mr. Hanratty. There was a dispute. I think it was later in the litigation between Jim Stafford and myself.

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363 Q. There is another document, Mr. Barry, if you wouldn't mind, perhaps when we break for lunch in due course, you might consider them and see if you can provide us with any assistance as to the make up of this figure of 52,420 which you did pay, in particular on the question of whether included within that figure are those two figures from Mr. De Burgh and Mr. Wogan.

A. Yes, I am sure I can help you on that.

364 Q. I am just trying to locate, if you bear with me, another document which appears to be an account which you set up within QAM, having paid this money - these are documents which have not yet been scanned in, but which we will provide you with a copy of. It does appear that when you paid out the 52,040.30 and then the ú380 expenses making a total of ú52,420.37, you put it into a suspense debtor account in QAM; and in due course credited against that figure, repayments of three sums which you received; one in the sum of 15,000; one in the sum of, on the 4th of October 1990; one in the sum of ú28,113 on the 8th of October, 1990; and one in the sum of 10,000 on the 18th of October 1990. Making a total of 53,113.

.
So there was actually a slight surplus on that account by the time you were finished, which would suggest there was no net input whatever from you to Century by way of second investment, apart from the arrangement that you made with the bank for your ú230,000 bank guarantee, isn't that right?

A. Because I was in credit with Century.

365 Q. Yes. What I am actually trying to find out, Mr. Barry, as

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you will appreciate, is --

A. I don't appreciate, Mr. Hanratty.

366 Q. Well, we know that you were to put in €230,000 plus
€84,000. That was the calculated liability for each of the
three, to pick up firstly their own agreed investment with
Century, but also to pick up a shortfall on the
institutional investors and on Mr. Wogan?

A. Yes, I fully accept that.

367 Q. We know that Mr. Stafford sent you a document which appears
to be some kind of a balancing document around the time of
the closing with Capital Radio?

A. Yes.

368 Q. We know that you disagreed with Mr. Stafford's document in
a number of respects, two principle respects. The one
being that he hadn't given you credit for two items which
you said you were entitled to credit for?

A. That's right.

369 Q. Giving rise to a difference between €85,000 and 141,000?

A. Yes.

370 Q. Secondly, you wanted to allocate one-third of the €40,000
to each of the three investors, which he had not also done?

A. That's right.

371 Q. You produced an adjusted document incorporating what you
said should have been incorporated?

A. Yes.

372 Q. You didn't, in fact you have now told us, pay in the
€84,000 that you, that it would appear on the face of it
that you were obliged to pay in?

A. I don't think I was obliged to pay it in at all.

Mr. Stafford or Mr. Mulhearn didn't pay it in, as I told

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you, we had credit.

373 Q. What I am trying to understand is what is the nature and basis of the credit that you took against the \$84,000. Do you understand what I am saying?

A. Mr. Stafford, I am sure, will help you with that.

374 Q. You are the one that got the credit, and it appears that you didn't in fact make any further cash investment over and above the 230,000, isn't that right?

A. It appears that, yes.

375 Q. So what I want to know is - the bottom line that I want to know is --

A. Yes?

376 Q. What did you credit against the \$84,000? That it appears in your own documents would have been due from you before any credits would have been applied to it?

A. You better repeat that one for me, the last piece, I am with you up until the last piece.

377 Q. Perhaps we might just go to one of your own documents, Mr. Barry?

A. Yes.

378 Q. Yes, if we just go to the document we have been looking at first, 226?

A. Yes. That is not my document now.

379 Q. No, it is Mr. Stafford's document that you subsequently adjusted?

A. Yes.

380 Q. And in which you agree to in all respects, except, with the exception of adjustments?

A. Yes.

381 Q. Under that heading "OB/JS". Under subheadings A and B were

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the two sums that the investors were to make up, making a total of ú943,000?

A. Yes.

382 Q. So ú943,000 had to be come up with, isn't that right?

A. Yes.

383 Q. Before any credits are allowed for?

A. I don't - no, I don't know about --

384 Q. The figure of ú943,000 - we have been through this already this morning - is the ú825,000 which --

A. Why do you say that figure is before any credits are allowable, Mr. Hanratty?

385 Q. Well, on the basis of the calculations at the top of the document, ú1.2 million has to be brought in by the non-Capital Radio investors, isn't that right?

A. Yes.

386 Q. It was originally envisaged that you would get ú300,000 from the institutions and ú50,000 from Mr. Wogan?

A. Yes, there was a shortfall.

387 Q. A shortfall amounting, in total, to ú118,000?

A. Yes, we had to bring in --

388 Q. As a result of which, that 118,000 had to be added on to your own investment with Mr. Stafford of 825?

A. Yes.

389 Q. Making a total of 943?

A. Yes.

390 Q. The 943 was to be produced by way of guarantees in the sum of ú690,000, that is ú230,000 each?

A. Yes.

391 Q. We are all agreed that you all, in one way or another, came up with the ú230,000?

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A. Yes.

392 Q. But you are now telling us - and that left then the figure of ú253,000?

A. Yes.

393 Q. Isn't that right?

A. Yes.

394 Q. Which divided by three comes to ú84,333?

A. Yes.

395 Q. You are now telling us that, did you not in fact pay in that 84,333, and as I understand your evidence, the reason is that you say you were entitled to some credit which you credited against it, is that right?

A. That's what Mr. Stafford says at the time and - yes, yes.

.

CHAIRMAN: Never mind what Mr. Stafford says, what do you say, that is what we want to know?

A. Well, I mean if I - if there was a credit due to me of ú85,000, I am sure that Mr. Stafford can verify that, I can't verify that figure for you just now. I can verify the 141,250 for you, which I have done.

396 Q. MR. HANRATTY: Yes, but Mr. Barry, I know that you didn't, in fact, on the closing day, according to your evidence, as I understand it, pay ú84,000, or indeed any other sum?

A. I don't think any of the other two gentlemen did either.

397 Q. Can we just be absolutely clear about this? Is it the position that you did not hand over any money of your own to Capital Radio on the closing, on the 27th of September?

A. Well, I did. I handed over the 52,420, I think.

398 Q. Right. Well now, you seem to have indicated that that included certain shortfalls in the contributions of Mr. De

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Burgh and Mr. Wogan?

A. That's - I will double-check that, Mr. Hanratty.

399 Q. Yes. But that still doesn't make up the full 52?

A. No, I will come back to you with - I will come back to you with the additional money and that, whatever it was for.

400 Q. MR. HANRATTY: I really think we should leave it at that, Sir.

.

CHAIRMAN: I was going to say that if we rose now, and even though it would be somewhat longer, if we sat again at say twenty past two to enable, to try and sort this thing out?

A. Yes, Chairman.

.

CHAIRMAN: Because we must get it sorted out to, at least an explanation, whether it is acceptable or not, is another matter.

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MR. HANRATTY: Yes.

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CHAIRMAN: An explanation must be forthcoming.

Right, we will sit again at twenty minutes past two.

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THE HEARING THEN ADJOURNED FOR LUNCH.

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THE HEARING RESUMED AS FOLLOWS AFTER LUNCH:
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401 Q. MR. HANRATTY: Mr. Barry please.

.
Mr. Barry, are you in a position to throw any light on
either of these two credit figures credited to you in this
document at page 226?

A. I think we have given you some explanation, Mr. Hanratty,
as to how the 85 was arrived at, but we might need a bit
more time, if that's possible?

402 Q. You need more time?

A. We certainly need more time about the cheques you asked us
about.

403 Q. Yes. Well, I think perhaps it might be appropriate that
you should have some time.

.
Can we just explore a few more items on the capital
account, it may well be in the course of your researches
you can deal with these items as well.

A. Yes.

404 Q. You are aware that we would like to know if you can assist
us with an explanation for the ú85,000, it might be that
Mr. Stafford can assist us on that either, I am not sure.
In either event, we would like the figure of how the
ú85,000 is calculated, that's the original credit figure to
which you made some additions?

A. Yes.

405 Q. The credit figure for Mr. Stafford we believe are two
lodgements of ú60,000 which he made to the joint account,

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but we would like confirmation of that. And in the third case, the credit which is attributed Mr. Mulhearn of ú105,000. We have literally no information whatsoever about that, and we would like whatever information there is. Where did the money come from? When it was put in? In what manner it was put in and how it was applied?

.
That's Mr. Mulhearn's credit.

.
Now, can I direct your attention then to page 229?

A. Yes.

406 Q. This is, I take it this is your own document, is it?

A. It is.

407 Q. And what you do here is you set out all of the items you have incurred by way of, as you describe them in the heading "Expenses", isn't that right?

A. Yes.

408 Q. It includes 1988. The second heading should be 1989 and 1990?

A. Yes.

409 Q. And it has the December 27th figure of "ú21,250 - Mr. Taggart." It has the airplane ticket of ú213 in April 1989. It has the, as you describe it there, the deposit of ú35,000 on the 26th of May. It has ú5,000 to Fianna Fail on the 15th of June, and ú5,000 to RTE on the 25th of August, isn't that right?

A. Yes, yes.

410 Q. And in 1990 it has this Lisney figure, the Clinton's figure and miscellaneous expenses of ú5,020.39, in respect of which you have already provided vouchers, isn't that so?

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A. Yes.

411 Q. And you have a total figure there of expenses which you claim of €76,542.71?

A. That's right.

412 Q. And that figure includes all of the items that we are aware of, including the 35, the two fives and the 21,250 and the aeroplane ticket?

A. It looks like that, yes.

413 Q. Moving then to page 233. You see at the bottom of the page, if we can just start there?

A. Mmm.

414 Q. You have done an exercise, a balancing exercise. I take it this is your document as well?

A. It is.

415 Q. And you have done it under the three headings again of "Oliver Barry", "James Stafford" and "Joint", meaning Mr. Mulhearn?

A. Yes.

416 Q. And in your own case, under the heading "Total Expenses" that figure of 76,542.71 that we have just referred to appears?

A. That's right.

417 Q. So for the purpose of the exercise on page 233 the €35,000 to Mr. Burke, the €5,000 to Fianna Fail and the €5,000 to RTE, and the €213 air ticket are included and factored into that figure of €76,542?

A. That's correct, yes.

418 Q. Now, just taking again from the top of the page, 550,000 shares, and this is of course the one-third each, isn't that right?

00063

A. Yes.

419 Q. $\text{ú}275,000$ each. Then you have 125,733 units at $\text{ú}2.50$, and that comes out at $\text{ú}314,322.50$, isn't that so?

A. Yes.

420 Q. And that comes to a total of 589,332.50?

A. Yes.

421 Q. To which you break up the 40,000, being 35 plus 5, into three again and add it on, and you come up with a figure of $\text{ú}602,685.83$, isn't that so?

A. Yes.

422 Q. Am I correct in thinking what you are saying here is this is the amount that each of the three investors should have, if everything was one hundred percent correct, should have put in, 275,000, 314,000 being a third of the 943,000 and the one-third of the 40, isn't that right?

A. The total of 602, yes.

423 Q. So the 602 is where each person should be at?

A. Yes, between the first and second investment.

424 Q. Yes.

A. Yes.

425 Q. Although it doesn't actually take account of the 230,000, isn't that right?

A. Mmm.

426 Q. I think that's dealt with on the next section.

A. Okay, yes.

427 Q. In fact you describe it in the next section as "First investment - 275,000."

A. Yes.

428 Q. "Guarantee - 230,000."

A. Yeah.

00064

429 Q. And "One-third cash to close - 84,000."

A. Yes.

430 Q. Coming up with a sub total of 589,333?

A. Yes.

431 Q. And again you add the one-third figure of ú13,333.33?

A. Yes.

432 Q. Again coming up with the same total?

A. Yes.

433 Q. Now, the only difference between the first section and second section is that the ú314,000 is broken down into two constituents, that of a guarantee figure of 230 and one-third cash to close, isn't that so?

A. That's it, yes.

434 Q. So if everything was in an ideal world, those are the figures as they should be if balancing wasn't required. Is that essentially what you are saying there?

A. That's my position.

435 Q. Each of the parties should have put in between the first and the second round, if we can call them rounds, ú602,666.33, isn't that so?

A. Yes.

436 Q. Now then, at the bottom of the page you do a comparative analysis, and you come up with a balance from each of the three parties, isn't that so?

A. Yes.

437 Q. And looking across the first line first. The first line is for "Guarantee" and it is ú230,000 in each case, that's straightforward?

A. Yes, yes.

438 Q. But then we come to "Total Lodgements", and you have

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yourself down as having made lodgements in the sum of
ú339,707.66?

A. Yes.

439 Q. Now, where did that figure come from and what is it made up
of?

A. I don't have a breakdown of that, but I can get it for you,
Mr. Hanratty.

440 Q. Well, would you mind adding that to the list of --

A. Yes.

441 Q. -- items that we would like to be explained, if you
wouldn't mind?

A. Yes.

442 Q. And while we are on that same line, you have Mr. Stafford
down as ú370,000 and Mr. Mulhearn down as ú300,000?

A. Yes.

443 Q. Could I just draw your attention to the fact, Mr. Barry,
that on the basis of counting up all the sums that you
actually put in, in cash, you put in 234,000, that's the
two 33,000s odd, the 148,000 and the 19,000, that comes to,
on my reckoning, about 234,000, isn't that so?

A. If you say so.

444 Q. But, so what we are really interested in is how do you make
up the difference between that figure which is the cash you
put in and the 339,000 which is shown there?

A. Will you repeat that question please? The 234 --

445 Q. You have yourself in, describe yourself as having made
total lodgements of ú339,707?

A. Yes.

446 Q. The only actual lodgements that we can find from you, are
your capital contributions which were 33,333 twice?

00066

A. Mm-hmm.

447 Q. ú148,000 odd?

A. Mm-hmm.

448 Q. ú19,787 odd?

A. Yes.

449 Q. Those were your capital contributions amounting in total to ú234,000. You also appear to have put in two, ú20,000 by way of loan, if I might call it that - no, the joint account to pay the staff?

A. Yes.

450 Q. Plus a further ú12,500?

A. Yes.

451 Q. If you add up those figures that's 52,000. If you added it to the 234 it is still short of the 339, if you know what I mean?

A. I will come up with an explanation for that for you.

452 Q. If you wouldn't mind. Similarly with the total expenses figures entered under Mr. Stafford and Mr. Mulhearn?

A. I don't think I have any difficulty in explaining that, yes.

453 Q. Have had. Good, perhaps we will leave that over as well?

A. Yes.

454 Q. Then you have total expenses, the figure we mentioned of 76,542.71?

A. Yes, mm-hmm.

455 Q. You have total expenses for Mr. Stafford of ú18,318.90?

A. Yes.

456 Q. Now, where did you obtain that figure from?

A. I think I have a running sheet there where Jim Stafford --

457 Q. If you look at page 234 - no, perhaps it is page 235.

00067

A. I think there is a more, there is a better sheet than that there.

458 Q. Page 237.

A. 237 - I mean that might give it to us.

459 Q. Yes. And is it the position that that figure of expenses for Mr. Stafford was extrapolated, as it were, from page 237 or from the information contained in page 237?

A. Well, it was either given to me by Mr. Stafford or else we probably got it from this page, I am not sure Mr. Hanratty.

460 Q. But what - this page is 237, it appears to be a long list of expenses in chronological sequence with the date of the expenses, the identity of the person to whom it was incurred?

A. Yes.

461 Q. The initial of the person who incurred it?

A. That's right.

462 Q. The amount, isn't that right?

A. Yes.

463 Q. Now, as it appears from a perusal of the column of the initials you include yourself in it, Mr. Stafford as "JS"?

A. Yeah.

464 Q. And in some cases "JNT" for Mr. Mulhearn or "Joint"?

A. Yes.

465 Q. Obviously you have specific information about expenses incurred by Mr. Stafford?

A. Yes.

466 Q. You obviously obtained that information from Mr. Stafford?

A. I am sure I did, yes.

467 Q. Well, can you remember seeking or requesting information from Mr. Stafford relating to his expenses?

00068

A. Not at all, Mr. Hanratty.

468 Q. Or instructing your staff to do so?

A. No, at that time - that was 1988/89, relationships and trust was --

469 Q. Clearly it was in 1990?

A. Well, it is after 1988.

470 Q. The expenses include items up to the 25th of April, 1990, on this page. So presumably it was some point in time after that that you obtained this information?

A. Well, where is Mr. Stafford's last --

471 Q. Well, I don't know where Mr. Stafford's last one is, but you make this list up until - as you can see the last item on the page is 25th of April, the last item for Mr. Stafford is actually the 3rd of April?

A. Yes.

472 Q. The "Le Coq Hardi - ú182.82."

A. Yes, I am sure we had some evidence of those from Mr. Stafford, yes.

473 Q. It is very detailed information and specific information?

A. It is.

474 Q. It is clearly not the kind of information to carry around in your head?

A. Absolutely.

475 Q. You obviously, or your staff, obtained this information from Mr. Stafford?

A. Yes, it must have been, come in some paper verification of it I am sure.

476 Q. And presumably when you calculated the figure on page 233 of ú18,318.90 you calculated it from information which had been provided to you by Mr. Stafford?

00069

A. I am sure I did, yes.

477 Q. There are no expenses entered against Mr. Mulhearn because it would appear he didn't incur any?

A. That's right.

478 Q. So you then come up with a figure, taking all of these three elements into account, for each of the three investors, isn't that right?

A. Which page are we on now, Mr. Hanratty?

479 Q. 233.

A. Sorry, yeah. 233, yes, yes.

480 Q. In your case it is €646,250.37?

A. Yes.

481 Q. In Mr. Stafford's case, €618,318.90?

A. Yes.

482 Q. And in Mr. Mulhearn's case it is 610 - and the rest of it is obscured, isn't that so?

A. Mr. Mulhearn's is which?

483 Q. It is partly obscured, but 610,000?

A. 610,000, yes.

484 Q. Yes. The only thing is though, in relation to Mr. Mulhearn he doesn't appear to be given credit here for the over-payment of €25,000, isn't that right?

A. I can't answer that offhand.

485 Q. Well, we know that he did put in 300 and, 275 and that is clearly not reflected in this document?

A. Would you repeat?

486 Q. It is not - the fact he put in 300 instead of 275 --

A. But his total lodgement is 380, maybe it is within that 380 would it be, joint, total lodgements?

487 Q. You think it may be included in the 380?

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A. I am sure it is, yes.

488 Q. Well again, could you add that figure - well I have already asked you in respect of the three figures for total lodgements, if you wouldn't mind coming up with whatever you say they are made up of and we will leave that over then?

A. Yes, okay.

489 Q. Now, going down to the second last line on the page, you have a slightly puzzling description of the line, you say "Shares/one-third of ú40,000", and you - right across the page for each investor you have the same figure which is at the top of the page, ú602,666.33. Could you just explain what the exercise is that you are doing here?

A. Am I subtracting ú40,000?

490 Q. Well, you are obviously calculating the difference between the ú602,666.33 which is at the top of the page, from the figures which you have already calculated as having been put in.

A. Oh, yes, yes.

491 Q. And you are coming up with a sort of a balance.

A. Yes.

492 Q. In your own case you come up with a surplus of 43,50.04, and in Mr. Stafford's 16,257, and a very small surplus in the case of Mr. Mulhearn, isn't that so?

A. Yes, yes.

493 Q. The second last line of 602,666, we know how you have arrived at the 602,666, I am querying why do you describe it as "shares/one-third of ú40,000."? Is the purpose of this exercise to come to an apportionment between all three investors on the basis of taking into account the ú40,000

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which you paid out?

A. It certainly looks like that to me, but I will clarify that. It is a bit confusing I will admit, "shares/one-third" - I will come back to you on that, Mr. Hanratty.

494 Q. Yes. I mean, it is quite clear from the workings on the bottom section of the page, that you take complete credit in your expenses figure for the figure of ú35,000 that you paid to Ray Burke, isn't that so?

A. Give me that again?

495 Q. In the ú76,542, that's your own expenses figure?

A. Yes.

496 Q. You claim that back in full?

A. Where do I claim it back?

497 Q. The 35,000 to Mr. Burke is included in that 76,000 figure, isn't that so?

A. It is.

498 Q. We have had that page where you calculated that figure?

A. Yes, yes.

499 Q. So you are claiming at that point a complete refund of that figure?

A. Well, I am putting it down as my expenses.

500 Q. As an expense?

A. Yes.

501 Q. And then further down the page, you are dividing the figure between the three on the basis that each has to contribute as to one-third, isn't that so?

A. Mmm, that 602,000 - I have given you a breakdown on that at the top there.

502 Q. It includes an apportionment of the 40,000 into

00072

three-parts?

A. It does, that seems fairly clear from that document.

503 Q. Now, what did you do with this document, obviously you prepared it for some purposes?

A. It is an internal document in our own office as to where I stood.

504 Q. It wouldn't have much point unless you gave it to somebody or agreed it with somebody?

A. I am sure it was just drawn up as an internal document to clarify my position.

505 Q. I see.

A. It may have gone to somebody, I have no recollection of sending it to anybody, but it looks to me as if it is something we would have done in our own office for my own --

506 Q. Well, assuming for the moment that it is a valid document, the surplus that it shows you having as of this date is ú43,584?

A. Yes.

507 Q. Making full allowance for the fact that you had incurred an expense of, among other things ú35,000, isn't that right?

A. It looks right, yes.

508 Q. And if that was the true state of play as between the three investors as of the date of closing with Capital Radio, you would presumably have been entitled to take credit for that sum or that surplus, isn't that so?

A. I am not sure when the date of that document, when that document was drawn up, Mr. Hanratty.

509 Q. Assuming it was drawn up, and I fully accept that it may have been drawn up afterwards, but for the moment, if it is

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correct and if it was drawn up prior to the closing of the deal with Capital Radio, it would imply, if it is correct, and other parties may or may not agree that it is or not?

A. Honestly, Mr. Hanratty, I think this is too serious to be engaging in assumption, if you want me to come back and clarify this document I would do so.

510 Q. I would very much like you to do that. Can you assist at this stage as to when it was prepared?

A. I can't I'm afraid, there is no date on it so I can't remember but I will --

511 Q. It does appear it was prepared for some particular purpose.

A. I would say, well my - my best recollection of it is that it would be prepared within our office to clarify my own position, again vis-a-vis the other two partners.

512 Q. Yes. The most important clarification that you would presumably have required would be how much do you need to pay, if anything, on the closing date with Capital Radio, isn't that so?

A. Well you see, I don't know is this document related to that or not?

513 Q. I understand that it is, and I understand you are going to try and find out more clarification about this document in due course, but would you not agree with me that the most important consequence of any balancing exercise is to determine what, if any, sum of money you need to pay over to Capital Radio on the closing date?

A. That would be of importance, absolutely, yes.

514 Q. I mean, the position as of the closing date is, as we know so far as capital contributions are concerned, set out in

00074

Miss Hynes' letter of the 8th of May that we had this morning?

A. Yes.

515 Q. But over and above that there were expenses which had been incurred both by you and Mr. Stafford, and it would appear Mr. Mulhearn, which also needed to be taken into account vis-a-vis Capital, isn't that so?

A. That's so, yes.

516 Q. Whether they be treated as directors' loans or whatever way they be treated, certainly there were monies paid by you, Mr. Stafford and perhaps Mr. Mulhearn personally to Century Communications Limited to get it out of its difficulties?

A. Yes.

517 Q. And which would be regarded as an indebtedness of Century to each of you respectively for the amounts you put in?

A. That's correct.

518 Q. Consequentially there would be a necessity on the day of closing to determine, and indeed before it in the disclosure letter, to determine how much Century Communications owed you, owed Mr. Stafford and owed Mr. Mulhearn?

A. That would be the case, yeah.

519 Q. In fact the indebtedness was calculated, I think, as an indebtedness to yourself and Mr. Stafford and there was no mention of Mr. Mulhearn, isn't that the case?

A. I thought --

520 Q. Mr. Taylor wasn't told about Mr. Mulhearn?

A. That's right, yeah.

521 Q. And to the extent Mr. Mulhearn might have put in, as Mr. Stafford has given him credit for ú105,000, as between

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yourself and Mr. Stafford you would have been dealing with that particular item I take it?

A. Not - not to my memory, Mr. Hanratty, but --

522 Q. Well, was Mr. Mulhearn not to be given credit as it were, for his expenditure?

A. Oh, yes he was.

523 Q. By some mechanism, I mean I appreciate it appears to be the case that Mr. Taylor was not in fact told about Mr. Mulhearn?

A. I don't think that Patrick Taylor knew anything about John Mulhearn's involvement.

524 Q. Be that as it may, if Mr. Stafford's document was correct Mr. Mulhearn put up ú105,000 over and above his capital investment of ú300,000?

A. That's right, yes.

525 Q. And presumably he would have been entitled to credit for whatever he was owed against his further capital investment, just as you and Mr. Stafford would be?

A. It would be, certainly would look like that, yes.

526 Q. How was that dealt with?

A. I couldn't, I can't remember that, Mr. Hanratty. I am sure I will be able to assist you in that. As I say, that was a document that was drawn up by Mr. Stafford, he was very much involved in the whole financial deal with Capital among a lot of other professionals, and it was something that I was, I won't say I wasn't fully aware, and welcomed it at the time, but I wouldn't --

527 Q. I take it you would have been aware of the necessity to ensure that such credits as Mr. Mulhearn was entitled to would be attributed to him by whatever mechanism, given

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that his identity or involvement was not being disclosed?

A. I would have trusted Mr. Stafford and Laurence Crowley totally in that regard.

528 Q. I see. Well, perhaps you might just see if we can find any information in relation to what mechanism was used to give credit to Mr. Mulhearn?

.

Can we come back to your own situation. We know that on the date of closing we had a situation where your capital investment was going to be 230,000 plus 84,000, but subject to any credits to which you were entitled in respect of the monies which the company actually owed you, isn't that right?

A. Yes, I think I was credited by Mr. Stafford with 85,000.

529 Q. Yes, you were going to get us the explanation of how that figure was calculated in due course?

A. Yes, yes.

530 Q. Can I draw your attention to the fact that the state of the Tribunal's knowledge at this stage is that, apart from the investment figures that you put into the capital account, which amounted to ú234,000 approximately --

A. Yes.

531 Q. -- and the ú220,000 which you put into the joint account, and the further ú12,500 that you put in, we don't appear to have any information about any other money that you put in.

A. That I personally put in, Mr. Hanratty?

532 Q. Yes.

A. Okay, well let me see if I can help you there.

533 Q. That's one of the matters you are going to come back to us

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on?

A. Yes.

534 Q. Could I also draw your attention to the fact that when one looks at the joint account which was in fact set up, it is page 6398, when it was set up in the first instance --

A. I'm afraid I don't have that.

535 Q. You don't have it, there it is on the screen.

A. Sorry.

536 Q. Most of it is not directly relevant, in that most of it deals with the debit column, but it appears it was set up by way of overdraft or loan account in which debits were incurred while there was no funds in the account in the first instance, isn't that so?

A. That looks so, yes.

537 Q. That presumably was done by arrangement with the bank?

A. Yes.

538 Q. And if we go to the second page then, 6399, we can see payments being made out on an on-going basis, the - we can look at the month of June here, more and more payments are paid out which we understand are mostly to do with staff wages, is that right?

A. I am sure that's correct, yes.

539 Q. Page 6400 is again moving further into June, and the same thing applies. Now, the first cash injection is page 6401, where there is a credit of ú60,000, and it is against the name of Mr. Thomas Moore which is Mr. Stafford's accountant. Presumably indicating that that is the first ú60,000 which Mr. Stafford put into this account, is that right?

A. That looks right, yes.

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540 Q. Moving onto the next page of 6402, we see that there is an account transfer credit on the 3rd of July of ú60,000 and a further credit against the name of Century for the same date for ú60,000. Can you assist us with what those are?

A. I can't at the moment, I am sure I can come back.

541 Q. It seems possible that the first ú640,000 on that account, given that it is an account transfer, may well have come from Mr. Stafford?

A. I couldn't answer that, Mr. Hanratty, but I am sure we can find that out.

542 Q. Sorry, I am told that Mr. Stafford's second ú60,000 actually comes later, so if that is the case have you any idea where that ú60,000 came from?

A. It either came from Mr. Stafford, John Mulhearn or myself, I presume, or else we --

543 Q. Well, if it came from yourself, presumably you will be able to check that fairly quickly?

A. I thought I put in two 20s, sorry, into that account?

544 Q. They come later, there is 60,000 on the 3rd of July?

A. Two 60s on the 3rd of July.

545 Q. One of which is a credit but attributed to Century itself, and it does seem unlikely that Century was paying money into this account?

A. Yes.

546 Q. Its employees were the recipients of the account, but I don't think Century itself was putting it in?

A. I am sure we will come up with a satisfactory explanation.

547 Q. If you wouldn't mind an explanation for both of those credits.

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Again if we move to the next page, 6403, which indicated a debit to the staff. Similarly page 6404, 6405 --

A. Do I see 60,000 on the last page as a matter of interest, debit?

548 Q. Sorry, I beg your pardon, 6404 there is a debit of ú60,000?

A. Yes.

549 Q. Which may refer back to one of the credits that we have just before been referring to on the 2nd, sorry on the 3rd of July?

A. Is that not one of the 60s?

550 Q. Perhaps, if I might say so, you tell me if you wouldn't mind?

A. Okay, it looks a figure, we weren't paying anybody that kind of money at that time, so it was obviously a transfer from one account to the other.

551 Q. It would appear that perhaps the ú60,000 was credited twice in error or some reason like that, and this was the corresponding debit to adjust the books, but again I am sure that's readily checkable.

.

Then going to page 6406, we see on the 31st of July, and I think on the 2nd of August, two credits of ú20,000 each, and as we understand the position, those are two payments into this account from you, is that right?

A. I mean I can't remember offhand but if you say so, I don't - if you say so, Mr. Hanratty, yes.

552 Q. Well, I am saying so on the basis purely that that's our understanding, and purely on the basis that you record in your own books that you put in two 20s, but we have no direct information or documentation connecting --

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A. As to where they came from?

553 Q. Exactly. So, whether or not each of these two payments came from you, would you be in a position to assist the Tribunal by ascertaining where they came from?

A. Yes, yes, I will.

554 Q. And if they didn't come from you, what source they came from?

A. Yes.

555 Q. If they did come from you, from what account they came?

A. Yes.

556 Q. Then page 6407, which takes us further into August, is all monies going out on the debit column, 6408, 6409, and then 6410. And in 6410 we have an obscured date which may be the 14th of September, "ICC - ú60,000"?

A. Yes.

557 Q. How would ú60,000 have come from the ICC? Would that be Mr. Stafford's account?

A. It certainly wasn't mine. It could have been Mr. Stafford's or Mr. Mulhearn's, I am not sure.

558 Q. Yes, well subject to correction, we will proceed for the moment on the assumption that it came from Mr. Stafford and that it was in fact the second ú640,000 that Mr. Stafford put in. Do you remember?

A. Yes, he claimed for 120. He gave himself credit for 120.

559 Q. It does appear on two occasions somebody put ú60,000 into this account?

A. Right.

560 Q. It does appear that Mr. Stafford was claiming credit for ú120,000?

A. Yes.

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561 Q. So perhaps you might just verify that that in fact did come from Mr. Stafford. Perhaps he might well be able to do it himself?

A. How do you expect me to do that, Mr. Hanratty?

562 Q. Well, it came from the ICC?

A. Yes.

563 Q. This money came into an account which was a joint account in the names of yourself and Mr. Stafford?

A. Yes.

564 Q. So presumably you will have some means of checking where the monies came from that came into your joint account?

A. I hope so. Okay, if you say I have that power I will certainly --

565 Q. Well, it is possible I suppose that it might have come in from Mr. Mulhearn?

A. I think - I will deal with it best I can, Mr. Hanratty, yes.

566 Q. I mean, am I correct in thinking that the only people who ever put money into this account were yourself, Mr. Stafford and Mr. Mulhearn?

A. That's my belief, yes.

567 Q. So it shouldn't be too difficult to sort out which of the lodgements or credits in this account are attributable to you, which are attributable to Mr. Mulhearn?

A. That should be easy, just the source of it that's bothering me.

568 Q. The source and the account source?

A. You didn't hear me, Mr. Hanratty, it should be very easy for me to - you are asking me a slightly different question. I am saying to you I have no difficulty in, I

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would say, saying which of the three of us paid what. If you ask me what was the source of the other gentleman's funds, that might prove difficult for me.

569 Q. May I put it to you this way, Mr. Barry: Obviously at this point in time in the company's history there was a very serious cash crisis?

A. There was.

570 Q. You were the unfortunate person at the helm?

A. Yes.

571 Q. And you were the one that had to deal with this great crisis on a daily basis?

A. Yes.

572 Q. You were the one that had to find --

A. I think you are misunderstanding me, the only point I am making is if Mr. Mulhearn or Mr. Stafford had a statement in the ICC, I can't ring up the ICC and ask for proof of such a thing, that's the point I am making.

573 Q. I understand that.

A. That's all I mean.

574 Q. I am sure your solicitors can sort it out between themselves. There are indications that this may well have been Mr. Stafford's €60,000?

A. Pardon me. Yeah.

575 Q. In the absence of any suggestion to the contrary we will proceed on that assumption.

A. Okay.

576 Q. But the points I was making to you, Mr. Barry, is that given the very serious cash crisis that existed in this company, and the fact that you were acting in the capacity of acting Chief Executive, and given that you were

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confronted literally on a weekly basis?

A. Daily.

577 Q. On a daily basis, of where the money was going to come from to keep the ship afloat, as it were.

A. Yes.

578 Q. Obviously there would have had to have been discussions between the three investors as to who should pay in what and where the next lodgement was going to come from?

A. It was purely to keep the ship afloat, when the money was required let's get it in quick fast.

579 Q. Were there not discussions - "I put in ú60,000, it is time you put in some now."?

A. There would have been that, we were pretty friendly, if there was 10, 15, 20 grand between the three of us.

580 Q. There was a real sense in putting the money in, you might well have been putting money you would never see again, depending on --

A. Mr. Hanratty, this arrangement between John Mulhearn, Jim Stafford and myself, three friends, was based on a gentlemen's agreement. We were not into that type of detail with each other, working in perfect harmony together, we ran into difficulties and we all helped.

581 Q. Mr. Barry, I am quite certain it was a gentlemen's agreement, but presumably the agreement was that each of you would on an on-going basis contribute in equal shares to the cash found?

A. But it was a rolling situation. If one fellow was behind 10 or 15 grand for two months and, the others would make it up. There was no, say everybody must be equal all by the 31st of August, it didn't operate like that.

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582 Q. I understand that, but nonetheless there would be a general gentlemen's agreement or understanding that everybody would pay their due share in due time?

A. Yes.

583 Q. And not put any of the others in a position of having to put in money, one of the others not having made his contribution when he ought to have done, not by any particular date. I am simply saying, for example in the circumstances which prevailed at the time you would not like to have been in the position, I suggest, of having to put in your contribution one month, then to have to put it in again the next month because neither of the others had put in a contribution?

A. It was trust between us, if one was behind a couple of months you had to come up with it, I was the weak link, the other two gentlemen I am sure had much more funds than I had at the time.

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MR. GAVIGAN: Sir, I have instructions in relation to this figure of ú60,000. I don't know if you wish me to assist?

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CHAIRMAN: As I understand, you are going to be invited to perform, if I might put it that way.

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MR. GAVIGAN: If it is of any assistance to the Tribunal?

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CHAIRMAN: Thank you very much, but performance is going to be called for.

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MR. HANRATTY: If My Friend wishes to confirm that it was

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in fact Mr. Stafford's?

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MR. GAVIGAN: I can do that.

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MR. HANRATTY: He was indicating he would assist with this transaction, and for the present purposes that's helpful.

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MR. GAVIGAN: Mr. Stafford has indicated he did have an account in ICC and that was his lodgement.

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584 Q. MR. HANRATTY: Right so. We know about that one, that's one item you can remove from your list, thank you Mr. Barry.

A. Right.

585 Q. That I think appears to be the, well at least until - yes, that appears to be, so far as contributions to this account are concerned for the purpose of paying the staff, that appears to be the end of the contributions or am I wrong about that?

A. Well, I think the investment came in in September then.

586 Q. Well, if we move further into the account, we are on 6410 going into 6411. There are more debits, and again on 6412, then we come to 6413 but we are now at the point where the investment is being made and the agreement is being reached with Capital Radio, isn't that right, and we see ú460,000 coming into the account, isn't that right, 6413?

A. Yes.

587 Q. There is --

A. How did that come to that account?

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588 Q. Sorry?

A. I wonder why --

589 Q. An account transfer of ú460,000, a credit. Unfortunately the date is obscured.

A. I don't understand how the 460 would go into that joint account, that must have been a mistake of the bank or something. I don't understand why that large sum of money would go in there.

590 Q. Well, it is obviously 230,000 multiplied by two?

A. Sorry, yes. Yes, but surely that - should have gone to Century, no --

591 Q. Well, we are inquiring.

A. Right.

592 Q. As you can see, the ú460,000 was credited twice, perhaps in error, because there is a contra debit against one of them?

A. Yes, it looks to me --

593 Q. So what appears to have come in there is in fact ú460,000 net. There is a net credit, in other words of ú460,000, isn't that right --

A. There is a debit.

594 Q. -- on the first three transactions on that page.

A. If you take the first four transactions.

595 Q. Well, just take the first three, assuming one of the 460s is an error of some kind.

A. I will have to check that out, Mr. Hanratty, but it looks wrong to me, I don't know why it is - that account was just a temporary account that we set up to, as we say, keep the ship afloat, and I believe we all took credit for what we put in. Why that sum ever went into that account, I don't know.

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596 Q. Yes. But presumably it wasn't out of that account and that would be indicated by the first debit of ú345,000.

Perhaps it is not the same account, no the same account.

If you look at the heading on page 6412 it describes itself as a current account. The account number is 16803967.

Yes. And it is a different account number, so it is - this - did you set up a separate account then to receive the guarantee sums of ú230,000?

A. I don't recollect, it just doesn't sound right to me, Mr. Hanratty. I am sure I can come back to you on it.

597 Q. Well, if we look at page 6416? This is the same current account that we have been looking at with all of these debits to staff, isn't that right? But here again we have lodgements of ú230,000. If we can just sort of go through the account looking at the credit column first. There is a 5,000, a 25,000, and a 200,000. They amount, those three credits amount in total --

A. Yes, Jim Stafford and John Mulhearn put in ú230,000 in cash.

598 Q. The first three credits I understand are Mr. Stafford's 230,000?

A. The only part that puzzles me is I don't know why they went into that.

599 Q. You don't know why they went into this account?

A. Into that particular account, because I believe that was just a temporary account, "Barry and Stafford", that was just a temporary account, a current account to pay the wages. Why those sums went in there I just don't know, but I am sure I will come back with some explanation to you.

600 Q. Well, perhaps you might inquire as to what the purposes of

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that was, because clearly they did?

A. They went back out again?

601 Q. And they went back out again, yes?

A. Well, they went in and back out, so what's --

602 Q. What I am really drawing your attention to, Mr. Barry, by having gone through those particular accounts is that the amounts, leaving aside the 230,000s which were lodged which we know about, the amounts that went into that account do not appear to reflect the credits which either Mr. Stafford or yourself had given you, the three of you, including Mr. Mulhearn on the various documents that we have just been discussing?

A. As I said, I am going to come back and clarify that for you. We are back to that point again.

603 Q. Essentially --

A. Okay.

604 Q. Yes. But I was specifically drawing your attention to the fact that the explanation does not lie in the joint account which was set up. Do you know what I mean?

A. Yes, in other words you don't see that it is my 85,000 going into the joint account, Mr. Stafford's 120 going into the joint account or 105, so we have to come up with an explanation --

605 Q. Yes.

A. I am sure we can. As I say, that's something that I wasn't really involved in, but I am, we will do, we will give it our best shot.

606 Q. Well, there is obviously an explanation for it?

A. I am sure there is.

607 Q. Unfortunately we don't have it.

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A. I am sure Mr. Stafford's evidence will help you there, maybe we can sort it out between ourselves hopefully, if you will agree to that?

608 Q. Yes, by all means. Could you just look at page 244 for a moment, I think it is in the bundle which you have. This is one of the series of documents which were produced in your office and which you list out the various capital investments and expenses which you incurred, and these documents, while they to a substantial extent duplicate each other, some have more transactions in them than others, which indicates perhaps that they were produced at a different point in time?

A. Yes.

609 Q. This document, is this document in the hand of Maeve McManus?

A. It is.

610 Q. And presumably she would have produced this document on your instructions?

A. Yes, with back-up information.

611 Q. Yes.

A. Yes.

612 Q. And as we can see, the last transaction recorded on that document is the 10th of October of 1990?

A. Yes.

613 Q. And the last two items in that document are credits, one for €15,000 against the name "Terry", which I take to be Terry Wogan?

A. Yes.

614 Q. And the second one, €25,000 against the name "Chris", presumably Chris de Burgh?

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A. Yes.

615 Q. And that would appear to indicate that on the 4th and 10th of October, respectively, you received sums in those respective amounts from each of those two gentlemen, is that correct?

A. That's correct. And I think, I think the reason for it was because I paid those sums in on their behalf on closing with Capital.

616 Q. Yes. Well, this document quite clearly was produced after the closing, because it contains transactions which occurred after the closing?

A. Yes.

617 Q. And in fact contains a closing transaction, if you look at the third-last item on the page, it says "Closing - 52,420"?

A. Yes.

618 Q. So it is quite clear that in fact at the closing you are not correct in saying that you didn't pay over any money, you did pay over in some form, a sum of ú52,420?

A. Yes, but that wasn't on my own behalf, it was on behalf of --

619 Q. Well, the two figures for Mr. Wogan and Mr. De Burgh only come to ú40,000?

A. There is a deficit of 12,240, we will have to explain that.

620 Q. Again, would you mind if you could explain to us what represents the difference? Obviously there is an explanation, but again it is simply the case that we don't have it.

A. Yes, yes.

621 Q. But, does that document indicate to you then that the only

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sum that you paid over on closing was €52,420?

A. It certainly looks like that, yes out of my own - that would be me, "OB".

622 Q. Yes, looking from the top of the document down, it contains what we know to have been your capital investments, if we might call them that?

A. Yeah.

623 Q. It contains the Dublin 1 payment, it contains what is, you describe as the deposit of €35,000, the 5,000 for Fianna Fail, the 5,000 for RTE, the aeroplane ticket?

A. Mm-hmm.

624 Q. And then it contains the payment which you received on the 20th of June from Century in the credit column, of €26,250, isn't that right?

A. That's right.

625 Q. And that is compositing the 21,250 and the Fianna Fail payment?

A. That's correct.

626 Q. For 1990 then, it contains the first capital injection you made on the 5th of January, of €19,787. It contains the, what you there describe under the 17th of May as the loan of €12,500?

A. Yes.

627 Q. The 17th of May loan of €12,500, how did that arise? Was that the first of these payments that you put in to try and provide cash to run the company on a daily basis or was it some specific purpose for that sum?

A. I am not sure it should show up on the joint account between Jim Stafford and myself.

628 Q. It doesn't in fact.

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A. Does it not?

629 Q. The first lodgement of the joint account which we have just been through, came through sometime, sometime after I think, either the 8th or 28th of June, and it was a ú60,000 payment against the name Mr. Thomas Moore?

A. Well, I will check where that went to for you.

630 Q. If you wouldn't mind?

A. Yes.

631 Q. In any event, you describe it there as a loan, and then on the 30th of June, you have two - sorry, on the 30th of June and 31st of July two further loans, in each case the sum of ú20,000, isn't that so?

A. Yes.

632 Q. I notice that you have the first loan dated the 30th of June at ú20,000, albeit that it would appear that the first loan to reach the account or to be credited to the joint account didn't reach it until the 31st of July, over a month later?

A. I will check that for you, yes.

633 Q. Yes. And the second one, which is dated the 31st of July, in other words the one that's shown is the 31st of July.

A. That might be an error in the date, I am sure the cheques will show that.

634 Q. It may be. Then you have these miscellaneous expenses of ú5,020 which have accounted for the Clintons expense, the Lisney's expense?

A. Yes.

635 Q. And then you had to refund the ú26,250 again, so you have that again as a debit?

A. Yes.

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636 Q. "D1 and FF", Dublin 1 and Fianna Fail?

A. Yes.

637 Q. So that goes back to the debit column, yes?

A. Yes.

638 Q. Yes. You are in the fifth column of the page, the second last one from the right, keeping a running balance, aren't you?

A. It looks like that, yes.

639 Q. And if you look at the first item, it is actually ú215,000.66 pence odd?

A. Yes.

640 Q. That appears to be consistent with capital investments and rational of the capital investments as you explained to us this morning?

A. Yes.

641 Q. And you have kept this running balance, with each new transaction a further running balance is calculated, isn't that right?

A. Yes.

642 Q. And if we just look at the point where they were, January of 1990 when you had to pay back the ú26,250?

A. Yes.

643 Q. The running balance there is ú236,8307, so your calculation at that point in time is that you are out, as it were, ú336,830, is that right?

A. That's correct, right.

644 Q. Now, what I just want to ask you, is that --

A. Is there a typewritten version of this note I wonder, Mr. Hanratty?

645 Q. There may be.

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A. Let's stick with this one.

646 Q. There is a typewritten version on page 247.

A. Is it the same one? It is.

647 Q. It is not the same document, no, and doesn't keep the running balances in the same way.

A. Right. Okay. Okay.

648 Q. But can I just draw your attention to the running balance, as it were, as of that date in January of 1990, which is ú336,830?

A. Yes.

649 Q. If we just turn for a moment to page 233? Which is the document we started discussing this afternoon, and in which you give yourself credit for a particular sum.

A. Yes.

650 Q. The sum for which you give yourself credit, in this document at least, is ú339,707.66. Do you see that?

A. Yes, yes.

651 Q. Not quite the same as ú336,830, but is it possible that that is essentially the same figure?

A. I couldn't, I wouldn't have a clue.

652 Q. In any event, that figure of 339, on page 233, is one of the items which you are going to try and ascertain?

A. Yes, yes.

653 Q. Yes. I notice that on the 28th of November of 1990, the miscellaneous expenses figure is credited, meaning that it was paid out again. Can you explain why that happened? You see it is further up the page as a debit?

A. I can't explain that, but I am sure I will come back with a satisfactory explanation for that to you, "Miscellaneous Payments".

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654 Q. In any event, on the 12th of December we see the "D1" and "FF" coming back to you, in the sense it is a credit column?

A. Yes.

655 Q. Then you have this closing figure of ú52,420?

A. Yes.

656 Q. So, as far as we know, so far and subject to a number of items which you are going to try and clarify for us, you put in ú234,000 by way of capital investment; you put in two 20,000 sums into the joint account which you characterised as a loan; you put in a further 12 and a half thousand pounds which you also characterised as a loan; you have the specific expenses which are referred to in this page; and quite separately you were paid the ú26,250, albeit having got it out, having to put it back in again and ultimately getting it out again a second time?

A. Yes.

657 Q. And as you can see we are trying to reconcile in particular the state of affairs as of, say the 26th of September of 1990, which is the day before the closing.

A. Sure.

658 Q. In other words, we want to know the state of play on the capital account the day before the closing ceremony with Capital Radio.

A. Yeah, well it is back to where we were --

659 Q. Yeah. Now, I should also perhaps draw your attention to the fact that the, the figures on closing in the disclosure letter were the subject of correspondence between Mr. Gaffney and Mr. Marren who was then acting - if we can have page 2589?

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This is, we understand, an attendance note by Mr. Marren in respect of a telephone conversation which he had with Brian Gaffney, being the auditor in Touche Ross, of the company?

A. Yes.

660 Q. And he was involved with the disclosure document and in general in the context of the closing with Capital, isn't that right?

A. I can't recall.

661 Q. And it says at paragraph one: "Amounts due to O Barry and J Stafford. You are sending us a letter tomorrow. There would appear to be a discrepancy between the ú302,000 disclosed in the disclosure letter and the information available. You can only come up with ú260,000 plus another 26,250 and you do not know whether the ú260,000 include the 26,250. If it does, then the discrepancy is ú42,000. If not, then it is in the order of 14 to ú16,000."

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So obviously the, firstly the figure that was disclosed as being due to yourself and Mr. Barry, sorry Mr. Stafford and I presume Mr. Mulhearn, albeit that it wasn't disclosed, that part of it to him was ú302,000, isn't that right?

A. I wouldn't be up to speed in this.

662 Q. Well, what it is recording is that he does record as a fact that the figure disclosed in the disclosure document as being due to you and Mr. Stafford is ú302,000, in other words that's what --

A. If it is in the document Mr. Mulhearn would be a third of it, I presume.

663 Q. It is not an equal third because you are each getting different figures for credit, isn't that right?

A. Yes, of course.

664 Q. You are going to tell me that, I take it, in due course.

But the figure in the disclosure document which is stated to be due to yourself and Mr. Stafford is ú302,000. We know that. And what Mr. Gaffney is saying to Mr. Marren is that appears to be a discrepancy because he can only account for 260,000. And that is followed up by a letter dated the 26th of September of 1990 from Mr. Gaffney to Mr. Marren. At paragraph two of which he says: "Despite intensive inquiry we have been unable to establish the composition of the figure of 302,094.16 noted in the disclosure letter as the total amount which James Stafford and Oliver Barry have jointly advanced to the company in the period 1st of January to 11th of September, 1990. The amount verified is 260,857.98. Oliver Barry is aware of the shortfall arising, and has told me that until James Stafford returns it will not be possible to reconcile the two figures.

.
Patrick Taylor has agreed that we should separately include the Oliver Barry suspense account of ú26,250. It is not clear as to whether this may have been included in the figure of 302,094.16."

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And we presume it hasn't. We know it was subsequently paid out to you in November.

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CHAIRMAN: I wonder can we have the reference for that?

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665 Q. MR. HANRATTY: Sorry, I beg your pardon, it is 2588.

Now, just considering that paragraph for a moment. Firstly there appears, from what he says, that there were intensive inquiries on his behalf to try and understand the figures in the disclosure document, and it is quite clear from the latter part of the paragraph that you were involved in those inquiries and that he would have been discussing them with you, isn't that so?

A. I have no recollection of that at all, Mr. Hanratty.

666 Q. Yes.

A. I have no reason to disbelieve it.

667 Q. Yes.

A. Touche Ross certainly wouldn't be saying things unless they were, so I am pleased to accept --

668 Q. Obviously whatever figure is stated to be due to yourself and Mr. Stafford is of importance because that affects the amount of cash that you have to put your hand in your pocket for, doesn't it, on the closing?

A. Yes.

669 Q. The starting position being you have to come up with two sums, 230,000 plus 84,000?

A. Yes.

670 Q. The 230 has to put up because it is a guarantee or backing figure for a bank guarantee?

A. Yes.

671 Q. But the ú84,000 cash is a figure against which credit can be taken for monies due?

A. Yes.

672 Q. And if you are owed, for example ú84,000 by Century and you

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are due to make a capital investment of ú84,000, then you write one off against the other and don't actually end up paying any money?

A. That would sound correct, yes.

673 Q. We know you put in ú52,420, part of which it appears was attributable to Messrs. De Burgh and Wogan, part of which was not, and you are going to find out that information for us. What we are really trying to find out is what is the basis of the remaining credit you took against the 84,000, which is also one of the items you are going to look into overnight, isn't that so?

A. Yes.

674 Q. What Mr. Gaffney is saying here is that the monies which you jointly advanced to the company between the 1st of January to the 11th of September of 1990 - sorry - that the monies you advanced to the company were advanced between those dates, in other words between the 1st of January and 11th of September, isn't that so?

A. If he says so, yes.

675 Q. Isn't that the fact? I want to be clear about this, if you disagree with it say so. But it does appear that the advancements which he is referring to were made during that period, because it was the period in which the company was in great financial difficulty?

A. Yes, before the rights issue.

676 Q. And in particular it had a serious cash shortage?

A. Absolutely, yes.

677 Q. Which necessitated money coming in from somewhere, either that or the company collapsed?

A. Yes.

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678 Q. And while he draws the margin fairly wide, by making reference to the 1st of January of 1990, it wasn't until much closer to the middle of the year that you actually started making these payments?

A. Well, the joint account shows that.

679 Q. So it would appear, unless perhaps the ú12,500 might have been at a slightly earlier point in time?

A. Yes, might have gone directly into the company, but we will check that.

680 Q. Yes. If you just bear with me for a moment, Sir.

.

Mr. Barry, I don't propose to explore the question of the capital account any further, because I don't think we can until we have the information which you are so kindly going to get for us, if you can, overnight. So if you don't mind we will leave over the question of the capital account until we have that information. And then we will revisit that in due course when the information has been received.

A. Mr. Hanratty, I will make my best endeavors to do everything possible overnight or as soon as possible in the morning.

681 Q. Yes. There is one matter that I would like to deal with now, quite separately although related to the capital account, and that is one of the sums to which reference has been made, which was the ú5,000 which you say you paid to RTE in August of 1989?

A. That's right.

682 Q. The context of this payment, as I understand it, is that while under the terms of the contract of July of 1989 with RTE, there was a schedule, a roll-out schedule for the

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transmission of service to Century. There was no provision for any transmission services in that contract for 1989, and it was necessary for RTE to provide temporary transmission facilities to get you up and running by September?

A. My recollection of that wouldn't be 100 percent but if you say so.

683 Q. Certainly the contract of schedule provided for under Clause 7 has no provision for any transmission?

A. I'm afraid I wouldn't be familiar with that contract.

684 Q. Yes. In any event, I take it you were aware that they did in fact provide temporary transmission facilities and had you on air, as it were, on the 4th of September?

A. They did indeed, yeah.

685 Q. That involved a considerable amount of work between the date of the signing of the contract and the start-up date?

A. Yes, it did.

686 Q. Principally on the part of the transmission staff, technical staff on the ground?

A. That's right.

687 Q. We have been given to understand by witnesses from RTE that you were satisfied and expressed yourself to be satisfied with their work up until the 4th of September?

A. Absolutely.

688 Q. And in fact you congratulated them or somebody did at the opening ceremony?

A. Yes.

689 Q. We have been told by Mr. Branigan of RTE that he was in receipt of a payment from you in the sum of either $\text{ú}1,600$ or $\text{ú}1,700$?

A. Mmm.

690 Q. And his evidence to the Tribunal was to the effect that you wished to give a token of your gratitude to the staff for what they had done, by making them an extra payment or a bonus payment, and he said that there was a difficulty about that because it gave rise to all kinds of tax questions and that they would have to be taken into account in the computation of their taxes, and generally speaking it was turning out to be rather complicated. And he said as a result of that, that it was decided instead that you would provide some entertainment to the staff in due course?

A. I can't remember all that detail, other than the fact that I gave --

691 Q. This is what Mr. Branigan has said.

A. Yes.

692 Q. And he said that on one occasion therefore, in August of 1989, he arranged to go up and visit Century and be shown around Century by you, and was in fact shown around the place by you. Do you remember that?

A. I don't.

693 Q. He says that after --

A. I am not disputing it, I am just saying I don't remember.

694 Q. I appreciate that. After that happened you retired to Mother Redcap's pub and had some drinks with some other persons who were there from Century?

A. I have no recollection of it.

695 Q. And he said that in that premises you gave him a parcel or envelope containing 16 - containing cash which he subsequently ascertained to be approximately 16 or ú1,700?

A. That's not my recollection. The sum that I gave to Mr. Branigan and Mr. McGrath or Mr. Branigan or Mr. McGrath was 5,000. I am not sure whether I gave to one or the other or both, I can't remember, but the sum that I gave them was  5,000 in cash because I think I withdrew it out of the bank on that day.

696 Q. Well, there is no doubt that you made a withdrawal from the account on that date in August of  5,000?

A. Yes.

697 Q. And it appears to have been in cash?

A. Yes.

698 Q. But Mr. Branigan is quite clear that the only sum which he received from you was 16 or  1,700?

A. I certainly didn't given two different sums, I gave the one sum but there was two gentlemen. My recollection, as I say I am not perfectly clear on it. There was two gentlemen who were involved, that's my recollection.

699 Q. There were two gentlemen?

A. Yes.

700 Q. And who was the other one?

A. John McGrath.

701 Q. Was he the Head of Technical Services in RTE at the time?

A. He was one of the gentlemen who helped Ray Hills in his visits around the country. We had, we were in fairly close contact with Mr. McGrath.

702 Q. Yes. Well, Mr. Branigan says he was unaccompanied on the occasion that he received 16 or  1,700 from you, and Mr. McGrath has told the Tribunal and will, if required to do so, give evidence to the Tribunal that he did not receive any money from you at all?

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A. Well that's not my - I won't say "recollection", I simply gave €5,000 to RTE. When I say "to RTE", to Peter Branigan or John McGrath or Peter Branigan and John McGrath.

703 Q. Well, obviously you had to make an arrangement first of all to withdraw €5,000 in cash. You were then carrying it on your person?

A. Yes.

704 Q. And I take it that when one is carrying a sum of €5,000 in cash on one's person, one is conscious of having it?

A. Yes.

705 Q. And perhaps of the risk of being, of it being taken away. It is not something that you would lightly do, walking around the streets of Dublin with that kind of cash on you, isn't that so?

A. Yes, in that instance, seldom you would have it on.

706 Q. You - I take it, it is not something you do on a regular basis?

A. No.

707 Q. So I take it that you would recall the events surrounding the withdrawal of this money and having it on your person until such time as you gave it to whoever you gave it to?

A. The best, I am not sure here, Mr. Hanratty, because it is a long time ago, but the venue where I thought I gave the money over to the two gentlemen was not in Mother Redcap's, I thought it was in the Old Dublin Restaurant, but I am not adamant about this.

708 Q. Well, do you not remember to whom you actually handed the envelope?

A. I genuinely don't.

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709 Q. Do you remember who was present when you handed over the envelope?

A. As I say, it was either one or both of them. Either of them or both of them. Either one of them or both of them.

710 Q. Well, does that mean that you are saying you can't remember who was present?

A. Well, I can remember it - it was --

711 Q. But, Mr. Barry, either you remember it or you don't remember?

A. I don't remember it then.

712 Q. If you don't remember it you can't say that it was either of them or it was both of them, do you know what I mean?

A. Well that's - there was no third person there, that's the point I am making.

713 Q. Was there a second person there?

A. My recollection is that there was two of them there, whether the two of them were there when the money was passed over or not I am not 100 percent sure. I mean, I have a lot of respect for Mr. Branigan, I know him for a long time and I am very sorry that we have a conflict of evidence about it.

714 Q. Well, you know Mr. Branigan was in the unfortunate position in that he was suspended from his employment while the matter was being investigated by RTE?

A. I feel very sorry for that, it shouldn't --

715 Q. Indeed he was subsequently reinstated, RTE having concluded their investigation.

A. I am very happy to hear that.

716 Q. The fact remains, Mr. Branigan has given unambiguous testimony of his clear recollection that he was alone and

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certainly not accompanied by Mr. McGrath on the occasion when he was given money by you, and that the amount of the money --

A. If you push me hard enough I will have to say I don't remember. I can only give you my best recollection of it.

717 Q. Well, if Mr. Branigan is correct and if Mr. McGrath is correct, if Mr. Branigan is correct in saying he met you alone in Mother Redcap's, albeit that he had a drink with other people from Century but was unaccompanied by Mr. McGrath and that the sum which he received was either 16 or $\text{£}1,700$ or thereabouts, and if Mr. McGrath is correct in his testimony that he received no money whatsoever from you, then it begs the question what happened to the remainder of the 5,000?

A. I am definitely then at variance with them. I am definite that I gave $\text{£}5,000$.

718 Q. But you don't know who you gave it to?

A. I don't know which of them or both of them I gave it to, but I am definite I gave $\text{£}5,000$. 16 or $\text{£}1,700$ is not a figure that you would, how would you arrive at an odd figure like that? I wouldn't. I got $\text{£}5,000$ out of the bank, why would I take $\text{£}5,000$ out of the bank unless I had a purpose?

719 Q. Mr. Branigan says he gave a thousand of that to Mr. McGrath, which he subsequently spent at buying drinks for various locations for various groups of technicians around the country who had been involved in the roll-out of the temporary transmitters up to the opening of Century?

A. Maybe he did, yes.

720 Q. And he says that he himself spent the remainder of the

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money down the country to other groups for other, the purpose of buying drinks for those groups?

A. I have no difficulty at all about what he did with the money. The only point I am adamant about is the fact that the sum was ú5,000.

721 Q. Do you recall there being a question when the matter was first being discussed between yourself and Mr. Branigan and/or Mr. McGrath, that while it became apparent that it was getting too complicated to pay them a bonus, there was a suggestion that they might be invited to the opening?

A. I don't have a recollection of that.

722 Q. And that was ruled out for two reasons, one being that there weren't sufficient spaces or tickets; and secondly, that logistically it would have been impossible because they are all scattered around the country?

A. I have no recollection of that, it would have been a rather unusual thing, maybe - I can't remember, but I think it would be an unusual thing for, to have so many RTE engineering personnel at a Century opening who were opposition to RTE, if you like, but I have no --

723 Q. Well, it has been told to us as a suggestion which emanated from RTE but did not find favour with Century?

A. I have no recollection of that suggestion at all, Mr. Hanratty.

724 Q. Yes. Mr. McGrath is absolutely clear he received no money whatsoever from you?

A. I am only giving you my position.

725 Q. But the difficulty with that Mr. Barry is that you are unable to say to whom you handed ú5,000?

A. If I could wouldn't it be helpful for me to say so, but I

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can't. I am being frank and telling you what I know about it.

726 Q. Yes. You know that in the course of Mr. Stafford's evidence he made criticisms of RTE in relation to the coverage which they provided?

A. The coverage they - I think I would agree with Mr. Stafford, yes.

727 Q. Well, why were you paying money to thank them for what they had done?

A. We didn't know what coverage we were going to get in August, we didn't know until we went on air in September.

728 Q. What coverage did you think you were going to have by September?

A. We thought we were going to have Dublin, Cork and Limerick.

729 Q. Yes, which you did.

A. Which we did, yes.

730 Q. You had one transmitter in each.

A. I don't know how many transmitters we had in each.

731 Q. Yes.

A. Can I just, I might be able to give you some assistance here, Mr. Hanratty, because obviously I did read about this in the newspapers. Century Radio at that time were in a pretty difficult position, we were between a rock and a hard place. It is my recollection that the IRTC, before they allowed to us go on air, insisted, because they were the national station that they wouldn't allow us go on air unless we had coverage of at least 60 percent of the country.

732 Q. Does that mean that you told them that you did?

A. I would doubt very much, I am sure the IRTC could have

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checked this out with RTE themselves, that's not something we would do. On top of that, our sales people, and they were pretty high-powered sales people we had, Seamus O'Neill from the Irish Times, and he was highly regarded in the industry, and he went out and sold advertising on the basis that we were going to have 60 percent coverage.

I think our rationale behind that was if you had the greater Dublin area, greater Cork area and greater Limerick area, you would have approximately two-thirds of the population, and I think it was on that basis that we proceeded.

733 Q. Well, as you are aware, the Tribunal has heard --

A. I have heard --

734 Q. -- fairly extensive evidence --

A. Yes.

735 Q. -- from a number of witnesses in RTE in relation to the roll-out of coverage, particularly Mr. Curley who was the Head of the Engineering Section I think at the time.

A. Mr. Hanratty, I can't get engaged in a technical argument here about RTE. I am giving you what I believed was the case at the time. Our sales people told us this.

736 Q. Yes.

A. I believe it hasn't been mentioned I think, but the IRTC put some stipulation on us, that we couldn't go on air unless we had a minimum of 60 percent.

737 Q. Right. May I take it from that that you are not in a position to comment one way or the other on the evidence from the RTE witnesses as to the level of coverage?

A. One piece of coverage that I am very certain about is

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Limerick.

738 Q. Yes.

A. Because I happened to be in Limerick and I was furious that when I - I believed we had coverage in Limerick, and I drove over the bridge at Jurys Hotel and we lost the signal.

739 Q. Yes.

A. If that's what RTE call Limerick coverage.

740 Q. Is that part of your complaint then against RTE?

A. I am not complaining, it is all over.

741 Q. I understand that. Is it part of the criticism to which you lend support from Mr. Stafford of RTE?

A. Look, Mr. Hanratty, at this point it is dead in the water. I have some very good friends in RTE, I have always had good friends in RTE, I am sure they did the best they could at the time. It was a competitive business.

742 Q. Mr. Barry, I fully understand your present sentiments and regret to have to embroil you in this controversy again, but unfortunately from the Tribunal's point of view it is important because the Tribunal has heard evidence that on the 19th --

A. What's the point in going back? I am saying to you that I believed, all of us believed in Century, that we were going to have 60 percent coverage, population wise.

743 Q. Yes.

A. I believed that we had that obligation to the IRTC.

744 Q. If you permit me to explain the relevance from the Tribunal's perspective. The Tribunal has heard evidence that on the 19th of December of 1990, on the basis of certain complaints made by Mr. Stafford, in relation to

RTE, including primarily we understand coverage and alleged practices, predatory pricing or whatever they were called, Mr. Burke gave an instruction to a civil servant to cap RTE's advertising. The Tribunal is concerned to understand was there any basis for those criticisms, and therefore was there a basis for capping, do you understand what I am saying to you?

Now, what I want to know is: Are you in a position or are you not in a position to comment one way or the other on the evidence which we have heard from RTE, firstly as to what the level of coverage actually was on start-up, and as to what the level of coverage was supposed to have been on start-up?

A. The level of coverage was supposed to have been 60 percent minimum on start-up.

745 Q. On what basis do you make that statement?

A. On the basis we were going to have Dublin, Cork and Limerick, and the population of those three centres would give you 60 percent.

746 Q. All right. Did anybody in RTE tell you that you were going to have 60 percent coverage?

A. I wasn't involved in RTE at that level, our sales people, we had high-powered sales people, Michael Laffan in as Chief Executive, it was - they were dealing with RTE and sold advertising.

747 Q. May I take that as a "no", you are not in a position?

A. Pardon?

748 Q. Sorry, that you are saying that nobody in RTE told you that it would be 60 percent?

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A. I can't recall anybody in RTE telling me it was 60 percent
but --

749 Q. We know Seamus O'Neill who has given evidence was himself
told by somebody it was going to be 60 percent?

A. My memory, I am not infallible, my memory is fallible in
matters of 11 years ago. I believe the IRTC put an
obligation on us to have 60 percent coverage.

750 Q. Was this in your contract?

A. It - I am not sure whether it was in the contract, but I
remember that at the time that the national radio station,
there was a lot of local radio stations and the major way
of differentiating was that a national station needed to
have about two-thirds coverage of the country.

751 Q. Well, you mentioned --

A. We were between a rock and a hard place with the IRTC and
RTE.

752 Q. Perhaps we will be able to check whether it was a specific
condition of your contract, but if it was a precondition to
you going on air it would appear to follow that the IRTC
were told by somebody in Century that they did in fact have
60 percent?

A. Or told by somebody in RTE, wouldn't you think, two
Semi-State bodies?

753 Q. RTE has nothing to do with the IRTC.

A. Two Semi-State bodies, you want a guarantee before you go
on air, this station must have two-thirds of the country.

754 Q. You can take it from me there is no such document and no
such guarantee, I am proceeding on the assumption, unless
you are in a position to tell me otherwise, that if the
IRTC were of the belief that on start-up date Century had

60 percent coverage they could only have got that information from Century?

A. Well, I wouldn't totally accept that now.

755 Q. You wouldn't?

A. I wouldn't. They may have got it from RTE as well.

756 Q. You have no reason to think that they have?

A. I think that the IRTC were a very responsible Semi-State body, and why would they take the word of Century, double check it?

757 Q. Perhaps we will get back to the original point that we were discussing, Mr. Barry, which is the question of your belief that the coverage was going to be 60 percent on Day 1?

A. Yes.

758 Q. You have already indicated that you do not recall anybody in RTE actually telling you that?

A. I can't specifically recall anybody in RTE telling me that.

759 Q. I want to put it specifically that nobody in RTE in fact told you that?

A. That is possible, probable, maybe highly likely but I am not 100 percent, I can't name anybody.

760 Q. The one point that you raised in the context of, shall we put it, mutual dissatisfaction as to the level of coverage was Limerick which was one instance that you yourself experienced. You are aware, I take it, that there was no obligation on RTE to provide any transmitter in Limerick?

A. I must say that was news to me when I read it in the recent publicity.

761 Q. No provision or transmitter in Limerick whatsoever in the contract with RTE, but they did in fact provide a temporary transmitter in the middle of the town of Limerick, not

being able to --

A. Mr. Hanratty --

762 Q. Sorry, if I can just finish the proposition. There was a possibility that was explored of putting one on a hill outside Limerick but they didn't have linkage to it, so what they did instead was in their own premises they set up a temporary transmitter which was one of their own back-up or standby transmitters to get you transmission in Limerick from the 4th of September, albeit that they had no contractual obligation whatsoever to provide any transmitter in Limerick, that's the evidence we have heard to date and it would appear from a perusal of the contract, certainly there is no contractual obligation to provide a transmitter in Limerick?

A. Far be it from me, Mr. Hanratty, to go into a debate about RTE versus Century, it is dead in the water as far as I am concerned. Let me assure you, RTE did Century Radio no favour whatsoever from the first day they learned Gay Byrne may leave the station and join Century.

763 Q. That prospect was completely finished we understand on the 16th of January of 1989, isn't that right, you having been informed by Mr. Byrne some considerable time before that?

A. I would never give up.

764 Q. I am sure you wouldn't. But you will recall the episode we have all been told about, you arrived out to Mr. Gay Byrne's house with apparently a draft for a million pounds which you suggested that he keep overnight and which he suggested he would prefer not to?

A. That's a bit of gossip, a bit of speculation.

765 Q. Mr. Byrne has told us that, is this not true?

A. I can't remember me asking him to keep it overnight, I remember asking him to take it, it wasn't a Century deal, that was misreported as well.

766 Q. Do you remember going out to Mr. Byrne's house with a bank draft?

A. I do well.

767 Q. Do you remember having a bank draft on your person?

A. I do well.

768 Q. Was it for a million pounds?

A. It was.

769 Q. Where did you buy a bank draft for a million pounds?

A. From 28 Lower O'Connell Street.

770 Q. Where did you get the million pounds?

A. My name was good at the bank at the time, I was after promoting a number of large concerts, I was in a pretty big cashflow, business was booming and I felt that Gay Byrne would have been an ideal man for Century Radio, and I felt he should have departed the company, that being RTE, and got involved in the independent sector and made himself loads of money.

771 Q. Yes, in any event it is to some extent a side issue, the evidence we heard was that this occurred on a Saturday. He discussed it with his accountant the following day which was a Sunday, decided against it and informed you accordingly that he was no longer interested in going?

A. I honestly believe that when we got the license I could talk him back into it, I knew him pretty well, money talks in that business, you know it does.

772 Q. Mr. Byrne signed his new contract with RTE, we understand on the 16th of January of 1989, two days before Century got

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the franchise?

A. Good luck to him and I hope he got a very handsome contract.

773 Q. Yes. But --

A. We are still very good friends.

774 Q. Undoubtedly so, and I am sure will remain so. My point simply is this: It is clear from certainly the 16th of January of 1989, two days before you got the franchise Mr. Byrne was gone out of the picture completely?

A. I didn't know that.

775 Q. And RTE had no reason to worry about him after that in any of their dealings with Century?

A. I didn't know that, I didn't know that, but I think RTE behaved in a pretty bad manner when he was told if he joined Century they would take the Late Late Show away from him, I think it is gossip, let's kill it. We didn't get Gay Byrne, and then I should have gone out of Century as well by the way.

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CHAIRMAN: We won't go any further, a bit of the gossip might get me --

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MR. WALSH: I am not complaining about it this time, My Lord.

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MR. GAVIGAN: Sir, before you rise. In relation to the dispute that arose at the end of the evidence yesterday in relation to the transmission costs and the question of Mr. Hills standing over the ú375,000, I wonder will we be returning to that in the immediate future?

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MR. HANRATTY: As I indicated, Sir, we will return to that when we return to the transmission subject, which I hope will be tomorrow.

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CHAIRMAN: I am not inquiring any more at this hour of the night. Perhaps if you talk to my colleague there and see what his arrangements are into the future.

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MR. GAVIGAN: I appreciate that, Sir, but at the same time I think it is an important point that --

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CHAIRMAN: Nobody is denying that it is, but Mr. Hanratty is in charge of how he presents his case and I am not going to intervene to say "Do it now".

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MR. GAVIGAN: I appreciate he is. This was raised yesterday, there was a disagreement in relation to it. You said this morning you would return to it and overnight the issue could be clarified. We are in a position to clarify it. I think it is unfair to Mr. Stafford for it to remain unclarified at this moment in time. If we can return to it in the morning I would be very grateful.

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MR. HANRATTY: Can I just explain the situation again. Obviously Mr. Gavigan didn't understand me the first time. You will recall Mr. Walsh raised the subject first thing this morning before I resumed evidence with this witness, yesterday two matters were left to be revisited, one was the capital account issue which we revisited and

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spent most of today on. The second was the question of whether Mr. Hills stood over the figure of ú375,000, I think the precise issue was whether he produced that figure.

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Mr. Walsh says he did. Mr. Walsh is going to direct us to the portion of the transcript where Mr. Hills gave that evidence, and I indicated this morning, Sir, that we would be returning to the whole issue of transmission charges which we have not yet dealt with in detail with this witness, and we will do so hopefully sometime tomorrow, and anybody who can assist the Tribunal in anyway possible by directing them to the relevant evidence of Mr. Hills will be very welcome to do so.

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CHAIRMAN: Very good. Perhaps you can deal with that after we rise.

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MR. WALSH: Sorry, my purpose in mentioning was simply to correct an error that had been made, a factual error that had been made.

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CHAIRMAN: We will sort it out. Would you ever promote the matter even further by simply putting down on a piece of paper the relevant reference to the transcript?

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MR. WALSH: We have done that.

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CHAIRMAN: So-be-it, if you have done that you can't do more. Thank you very much. Tomorrow morning at half

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past - half past ten, there is nothing, nothing unusual?

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MR. HANRATTY: Sir, there is the summons in respect of Mrs. McManus, but I think Ms. Dillon who is taking that evidence may not be available, so the solicitor to the Tribunal is actually working on that at the moment, but we won't know until the morning I think.

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CHAIRMAN: Okay then, we will deal with everything tomorrow morning at half past ten as usual.

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THE HEARING THEN ADJOURNED TO THE FOLLOWING DAY, THE 6TH OF DECEMBER, 2000.

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