

1 THE TRIBUNAL THEN RESUMED AS FOLLOWS 30TH OF OCTOBER,
2 2001, AT 10:30 A.M.

3 .

4 CHAIRMAN: Good morning, everyone.

5 .

6 MS. DILLON: Morning, Sir, the first witness this
7 morning is Miss Sandra O'Neill. Miss Sandra O'Neill,
8 please.

9 .

10 SANDRA O'NEILL, HAVING BEEN SWORN, WAS EXAMINED BY MS.

11 DILLON AS FOLLOWS:

12 .

13 1 Q. MS. DILLON: Good morning Miss O'Neill.

14 A. Morning.

15 2 Q. Miss O'Neill, the Tribunal served a summons on you to
16 give evidence. The summons is dated the 31st of May,
17 2001.

18 .

19 I think that you have been for some considerable time
20 Mr. John Finnegan's personal secretary, personal
21 assistant?

22 A. That's right, yes.

23 3 Q. For how long have you been working for Finnegan Menton?

24 A. Finnegan Menton, since 1976.

25 4 Q. And for how long have you - in what capacity were you
26 initially employed by Finnegan Menton?

27 A. Initially it would have been sort of a general work in
28 the office, secretarial duties, reception and such
29 things. For about two three years.

30 5 Q. From 19 --

1 A. '76 when I started, I suppose, until '78, '79.

2 6 Q. In those general duties, did those duties include
3 filing?

4 A. Yes.

5 7 Q. And dealing with correspondence?

6 A. Yes, they did.

7 8 Q. And in 1978 did your position in Finnegan Menton
8 change?

9 A. Yeah, I think it was around then that I started being
10 trained in as secretary to John by a previous
11 secretary.

12 9 Q. Yes?

13 A. Who was leaving, so there was an overlap then for a
14 while.

15 10 Q. Yes. And have you been Mr. Finnegan's personal
16 assistant since 1978?

17 A. Yeah, basically, yes.

18 11 Q. And in that position would you have been the person in
19 the office who was in charge of maintaining the
20 records, the documents, the files and administration
21 work generally?

22 A. Well, for him personally?

23 12 Q. In general with Finnegan Menton. First of all, in the
24 office of Finnegan Menton.

25 A. No, I wouldn't say I was in charge of the general
26 Finnegan Menton files, all the time. There would have
27 been a number of us doing the general office filing.

28 13 Q. Yes.

29 A. But yes, John's sole filing, I would have been, when I
30 was working for him.

1 14 Q. Yes. And since 1978, that has been your position as
2 personal assistant to Mr. Finnegan?

3 A. I would have said it was more like '79, '80 by the time
4 I made it to being on my own, yes. I would have been
5 working with him and another girl. As I said, there
6 was an overlap for about a year, and then I would have
7 been on my own.

8 15 Q. Are you still working in Finnegan Menton?

9 A. I am, indeed.

10 16 Q. And in that period of time, did Mr. Finnegan have his
11 own personal files, dealing with his own personal
12 matters?

13 A. Yes.

14 17 Q. And where were those files maintained?

15 A. Basically there is an office on the first floor, where
16 they are.

17 18 Q. And were they kept separately from the general Finnegan
18 Menton files?

19 A. Yes.

20 19 Q. Were they maintained by you?

21 A. Yes.

22 20 Q. And was it part of your function to deal with
23 Mr. Finnegan's personal correspondence?

24 A. Yes.

25 21 Q. Would that have included correspondence from his
26 solicitors Messrs. Kennedy McGonagle Ballagh?

27 A. Yes.

28 22 Q. Would have included correspondence from his accountants
29 and other advisors?

30 A. Yes.

1 23 Q. Would have included correspondence from Guinness &
2 Mahon?

3 A. Yes.

4 24 Q. Messrs. Dudgeons?

5 A. Yes.

6 25 Q. And would it also have included correspondence from a
7 Mr. John Burke?

8 A. Yes.

9 26 Q. And when all of that correspondence came in, Miss
10 O'Neill, how did you deal with it?

11 A. Well, it would depend on what it was relating to, how
12 it was dealt with.

13 27 Q. Mm-hmm.

14 A. It would have been put on particular files relating to
15 particular issues, where there was a file existing.

16 28 Q. For example, the Guinness & Mahon Bank statements, when
17 - did they come in on a regular basis?

18 A. It depends on which Guinness & Mahon statement you are
19 referring to.

20 29 Q. Well, let's start with the - let's start with Foxtown
21 Investments Limited.

22 A. Yes.

23 30 Q. Did statements about Foxtown Investments affairs come
24 in regularly from Guinness & Mahon?

25 A. No, I didn't get them.

26 31 Q. You didn't get them?

27 A. No.

28 32 Q. Who got those?

29 A. As far as I know, they didn't come in on a regular
30 basis, but I certainly didn't get them. I had Guinness

1 & Mahon statements relating to other accounts.

2 33 Q. But not in relation to Foxtown Investments?

3 A. That's right.

4 34 Q. Was there a Foxtown Investments' file in the office?

5 A. No.

6 35 Q. Were you aware of the existence of Foxtown Investments?

7 A. Vaguely, yes. Not to the degree that I am now. I

8 was, yes.

9 36 Q. What did you know about Foxtown Investments?

10 A. To my knowledge it was a - a company or an offshore

11 account in Guernsey. That is what I thought it was.

12 37 Q. Well, whose account was it?

13 A. John Finnegan's, I suppose, in no great technical way,

14 but that is how I would have assumed it.

15 38 Q. Mm-hmm. And you have seen the bank statements that

16 were located on the Dudgeons' file?

17 A. Yes.

18 39 Q. Whose job was it to maintain the Dudgeons' file?

19 A. Well, I actually inherited that file, which would have

20 been from Mr. Turvey who was in the office. He would

21 have had them - it was his, his workings at the time.

22 When he left Finnegan Menton, basically I inherited

23 that, and a whole heap of other files, that he left

24 behind. And because I would have been working for John

25 Finnegan at the time, I basically took over anything

26 that was current, I took forward into my system.

27 Anything that was defunct went, and that was where I

28 got it from.

29 40 Q. Mr. Turvey, apparently will tell the Tribunal, that he

30 did work on John Finnegan's personal affairs as well as

1 doing work for Finnegan Menton?

2 A. Yes.

3 41 Q. So is it the position that when Mr. Turvey left

4 Finnegan Menton, he handed over John Finnegan's

5 personal files to you, or you took over Mr. Finnegan's

6 personal files that were previously being managed by

7 Mr. Turvey?

8 A. Yes, that would be more correct. I think that they

9 were left there, literally, and I took them over.

10 42 Q. Right. So what happened to them?

11 A. What happened, they remained in the filing cabinets

12 where they had been left for years. Some were current

13 and were active, and if they were current and active, I

14 was filing in them and using them. And then over time

15 I basically brought the current active ones just into

16 my own system, which would be the system of John

17 Finnegan's rather than Des Turvey's.

18 43 Q. Where are these files now?

19 A. They are in the office still in John Finnegan's system.

20 44 Q. All --

21 A. No, the ones that were current and active, basically

22 anything that wasn't - I would have got rid of over the

23 years.

24 45 Q. Is the - the Dudgeons' file, is that a current and

25 active file?

26 A. Not anymore, no.

27 46 Q. What was the last transaction on the Dudgeons' file?

28 A. I think it goes back to the early '80s or something.

29 47 Q. Mmm. Why was that file kept?

30 A. It was taken forward because I took it, thinking that

1 shares - I didn't know - John would have bought - or
2 see, Mr. Finnegan would have bought and sold shares
3 over the years, if he wanted to look back on something
4 he had previously. I thought he might have wanted to
5 refer to the file again. It would have been worked on
6 the logic of something that I thought might have been
7 needed in the future.

8 48 Q. And when you went through Mr. Turvey's files, I presume
9 you went through Mr. Turvey's files for the purpose of
10 making an assessment of whether you were going to
11 transfer them into your system or whether there was
12 material on those files that needed to be kept?

13 A. Yes.

14 49 Q. Right. And in the files that you went through, that
15 you inherited from Mr. Turvey, were there bank
16 statements other than the bank statements on the
17 Dudgeons' file?

18 A. Not - well, not relating to the account. The Foxtown
19 account that I can recollect, no, because I did keep
20 other statements to do with other accounts, and I would
21 have thought, if I had found them, I would have kept
22 them as well. Bank statements I would normally keep.

23 50 Q. When you say that you kept bank statements to do with
24 other accounts, what other accounts?

25 A. John Finnegan's personal account.

26 51 Q. Which is an account held in what bank?

27 A. He has one in AIB O'Connell Street. He had one in
28 Guinness & Mahon, itself. And he has Bank of Ireland.

29 52 Q. Is this in Stephen's Green?

30 A. No, it is actually in Fitzwilliam Square.

1 53 Q. And did he have a bank account in Stephen's Green?

2 A. I think there was, yes.

3 54 Q. Was that an account held in Mr. Finnegan's personal
4 name or in the name of a company?

5 A. No, I think it was a company name. I don't think it
6 was John's own name. I don't think so.

7 55 Q. What was the name of the company?

8 A. I don't know. I was listening to the evidence just
9 when - looking through Mr. Turvey's stuff. I don't
10 remember - it would have been one that I inherited back
11 in those days. It hasn't stuck in my mind at all as to
12 what it was.

13 56 Q. Is that account still extant?

14 A. It is not in existence. No, it hasn't been since those
15 days.

16 57 Q. Since when?

17 A. Well, I don't know, I think it was the 1980's or the
18 late '70s.

19 58 Q. What is the policy in the office, in dealing with
20 Mr. Finnegan's personal files in connection with
21 destruction of documents?

22 A. It would - I suppose it would more or less fall in with
23 the general Finnegan Menton cleanout. If they were
24 getting in sort of the shredding people to do a
25 collective, I would go through the various files, see
26 if there was anything that hadn't been used for years
27 and was defunct. But it was mainly, the vast majority
28 of files would have been Finnegan Menton files because
29 the sheer volume would have been Finnegan Menton,
30 because it was easier just to let the Finnegan ones

1 just sit there.

2 59 Q. It was easier just to let the Finnegan ones just sit

3 there, is that what you say?

4 A. I wouldn't have paid the same attention of trawling

5 then in the same way as Finnegan Menton, because as I

6 said, the sheer volume of space would have been as a

7 result of the Finnegan Menton files.

8 60 Q. Is it the position that you have a number of John

9 Finnegan old personal files now?

10 A. By old, some would go back - I mean, some of the bank

11 accounts and things would go back a good few years,

12 yes. Some of them I don't keep. Some of them I would

13 literally roll every couple of years, something like

14 invitations or something that have no relevance after a

15 particular period of time. I keep them on file for a

16 while, in case I need to refer to them, then I would

17 get rid of the file. So they wouldn't last, say, seven

18 years, but --

19 61 Q. But bank statements?

20 A. Yes, they would.

21 62 Q. So you have all of the Mr. Finnegan's bank statements

22 from the time that you became his personal assistant?

23 A. I think nearly all. If I don't have them, they would

24 have gone to the accountants.

25 63 Q. Does that include the bank statements of Foxtown

26 Investments?

27 A. I don't remember ever seeing bank statements for

28 Foxtown Investments. I didn't have a file for Foxtown

29 Investments.

30 64 Q. Did you have a file for the company account that was

1 held in Stephen's Green?

2 A. I don't think so. I don't think so.

3 65 Q. Who kept those files?

4 A. I think that would have been Mr. Turvey.

5 66 Q. Well, where did the statements, for example, of the

6 company that Mr. Finnegan used in Stephen's Green,

7 where did the bank statements go to? To whom did they

8 go to?

9 A. I am not quite sure where - as far as I know, they came

10 into Merrion Row, they came into our own offices.

11 67 Q. Presumably, they went either to you as Mr. Finnegan's

12 personal assistant, or they went to Mr. Finnegan, or if

13 Mr. Turvey, they went to Mr. Turvey?

14 A. That sounds right, yes.

15 68 Q. And when Mr. Turvey left in 1984, you took over Mr.

16 Turvey's files?

17 A. Yes.

18 69 Q. So from 1984, when there were bank statements coming in

19 from that bank account in Stephen's Green, they came

20 either to Mr. Finnegan or they came to you?

21 A. Yes, that would be right. I would have --

22 70 Q. Did they come to you?

23 A. Well, I think they would have ended up with me. I am

24 not sure whether they were actually addressed to me, or

25 Des, or to the secretary, or what, but I think they

26 would have ended up with me.

27 71 Q. If they ended up with you, what would you do with them?

28 A. I would file them, basically.

29 72 Q. And you kept all the bank statements, you have told us?

30 A. Well, as far as I know, I have kept anything that has

1 certainly been around for the last 5, 6, 7, 8 years,
2 going back to what - what year are we going back to?
3 Back to before that.

4 73 Q. It's early 1980's?

5 A. No, I wouldn't think I do have them, no.

6 74 Q. I thought you had said earlier that you kept all the
7 bank statements?

8 A. Well, all going back for a number of long years, yes.

9 75 Q. Yes. As in the Dungeon files with the Foxtown
10 Investments bank statements on it, that was kept?

11 A. Well, that actually wasn't kept as a bank statement
12 file. That was actually kept because it was for a
13 different reason. That is how it seemed to have
14 survived. It wasn't actually kept for that reason.

15 76 Q. Was it your function to open the post?

16 A. Yes.

17 77 Q. And presumably make an assessment whether the material
18 you were dealing with was Mr. Finnegan's personal
19 matter or whether it was to do with the office?

20 A. Yes.

21 78 Q. And when you destroyed documents, presumably for good
22 order, you kept a record of all the files that you
23 destroyed?

24 A. No.

25 79 Q. Why not?

26 A. I didn't realise it was necessary.

27 80 Q. And when Finnegan Menton had their destruction policy,
28 did they keep a record of the files that they
29 destroyed?

30 A. No.

1 81 Q. And when Mr. Finnegan got correspondence from his
2 solicitor, where was that filed?

3 A. Generally the filing in the whole office actually is
4 normally done relative to the property. That is how we
5 would normally file something, obviously because of the
6 nature of the business. So generally speaking, stuff
7 would go on to the file, the file would be what it was
8 relative to, rather than, say, a solicitor file. In
9 other words, I didn't have a general solicitor's file.

10 82 Q. Mr. Finnegan discovered a file to the Tribunal called
11 "John Finnegan's personal file in connection with
12 Ardcarn or Canio." You are familiar with that file?

13 A. Yes.

14 83 Q. Was that the file on which you would have filed
15 Mr. Finnegan's correspondence with Kennedy McGonagle
16 Ballagh to do with Canio?

17 A. Yes.

18 84 Q. But why isn't it there?

19 A. Some of it is there.

20 85 Q. It is all not there?

21 A. No, it is not all there.

22 86 Q. So where did you file?

23 A. It basically, if it is not there on that filing, I
24 don't think I filed it anywhere. I think what would
25 have happened was it was things that I either faxed to
26 Kennedy McGonagle Ballagh or whatever, and I didn't
27 keep. There is no other file on Canio. So I can only
28 assume that is what happened.

29 87 Q. I see. So, if I understand what you are telling us
30 correctly, the file that Mr. Finnegan produced to the

1 Tribunal dealing with the Canio transaction, was a file
2 maintained by you?

3 A. Yes.

4 88 Q. If matters relating to Canio, including correspondence
5 with his solicitors came in, that is the file on which
6 you would file it?

7 A. Yes.

8 89 Q. A significant amount of the correspondence that was
9 sent by Kennedy McGonagle Ballagh in connection with
10 Canio is not on that file, but we do know it was sent
11 to Mr. Finnegan?

12 A. Yes.

13 90 Q. From Mr. Michael O'Shea's evidence?

14 A. Yes.

15 91 Q. So somebody made a decision as to whether it would be
16 put on the file, or it wouldn't be put on the file?

17 A. Yes.

18 92 Q. And who made that decision?

19 A. Me.

20 93 Q. Right?

21 A. It would have been me.

22 94 Q. So what criteria would you apply in deciding to put
23 something in the bin or put it - which is, I presume,
24 where you put it - if you didn't put it on the file or
25 you put it on the file?

26 A. There would be - the logic that would prevail generally
27 would be, depending on what I would think that I would
28 need it for in the future, that was really what it was
29 when it came to Sandyford. In those days it was
30 basically Michael O'Shea was dealing with it, with

1 John, and everything that happened along the way
2 happened with him.

3 .

4 And so I would have worked on the assumption that he
5 had the stuff, if I sent it to him and he was working
6 on it, because it wasn't something that we were doing
7 within the office or working on independently of
8 anybody. That was really why it happened.

9 95 Q. Mr. Finnegan was faxed notes and minutes of meetings
10 that were held between, on some occasions, Mr. Finnegan
11 and Mr. John Burke, Mr. Tom Brennan and Mr. Joseph
12 McGowan?

13 A. Yes.

14 96 Q. That related to the Canio transaction and the Rush
15 Cliff share?

16 A. Yes.

17 97 Q. And none of those documents are to be found on what
18 Mr. Finnegan has described as his personal file in
19 relation to this matter?

20 A. Yes, that's right.

21 98 Q. Where are those documents?

22 A. I would have shredded them.

23 99 Q. Why?

24 A. I would have sent them to Michael and shredded them.

25 100 Q. Why?

26 A. Because I think - basically I thought they were sort of
27 sensitive to be knocking around the office at all.
28 They were talking about the amount of money that was
29 owing to Mr. Finnegan, they were talking about the
30 things that were going on to try and get them back.

1 .
2 John Burke frequently gave me the notes and asked me to
3 fax them to Michael O'Shea, which I did, and then
4 basically I knew that Michael O'Shea had them. John
5 Burke had been at the meeting, John Finnegan had been
6 at the meeting, sometimes John Finnegan had or hadn't
7 been at the meeting.

8 .
9 I didn't see any need to keep them. It was - filing is
10 one of those things, it slightly depends on the logic
11 at the time, whether you think you are going to need
12 something to refer to it or not to refer to it again.

13 101 Q. Mr. Finnegan's correspondence with Mr. Des Traynor,
14 where would that have been filed?

15 A. Correspondence relating to?

16 102 Q. Any correspondence?

17 A. Well, I first of all don't even remember correspondence
18 from Des Traynor. If there had been, to do with Des
19 Traynor, if there was a file to do with him, whatever
20 the subject matter was, that is where it would have
21 gone.

22 103 Q. On the file to do with the subject matter?

23 A. Yes.

24 104 Q. If we could have page 1498, please.

25 .

26 This is a letter from Mr. Des Traynor to Mr. Michael
27 O'Shea, which was CCed to Mr. John Finnegan. The
28 subject matter of it is Foxtown Investments?

29 A. Mm-hmm.

30 105 Q. And the letter is the 19th of March, 1992.

1 .
2 It is dealing with the issue of four outstanding
3 promissory notes, which is a matter that arises as a
4 result of the sale of the shares in Foxtown Investments
5 to Rush Cliff. So it is connected to the Ardcarne file,
6 in its subject matter?

7 A. Yes.

8 106 Q. So when this came into Mr. Finnegan, what did you do
9 with it?

10 A. This particular letter, I can't actually say, but the
11 thought process behind it would have been that to me is
12 to do with Foxtown. Foxtown doesn't have a file in the
13 offices of Finnegan Menton, or John Finnegan, never has
14 had. I either kept it and gave it to the guys going
15 back to Guernsey when they were next over, or I
16 possibly shredded it, because basically anything to do
17 with Foxtown was not kept by me.

18 107 Q. But this deals with the - in order for you to make a
19 decision about what to do with this letter, you
20 presumably had to understand what the letter was about?

21 A. A general understanding. I would imagine, yes.

22 108 Q. And the letter notes that Foxtown Investments has four
23 outstanding promissory notes in connection with an
24 outstanding sum of money?

25 A. Mm-hmm.

26 109 Q. It doesn't identify who owes the sum of money?

27 A. No, I was aware of who it was.

28 110 Q. So you knew it was to do with Canio and Ardcarne?

29 A. Yes.

30 111 Q. And the sale of Foxtown Investments' share in Canio --

1 A. Yes.

2 112 Q. -- to Messrs. Brennan and McGowan company, Rush Cliff?

3 A. Yes.

4 113 Q. So if there wasn't a Foxtown Investments file in the

5 office, there was a Canio file?

6 A. That's right.

7 114 Q. To which this material related?

8 A. Yes.

9 115 Q. Now, why isn't it on the Canio file?

10 A. Well, my logic, as I say, would have been that it was

11 Foxtown more overriding than it was Ardcarn. Foxtown I

12 didn't keep. It was a situation I inherited going way,

13 way back. It was drummed into me, I suppose.

14 116 Q. What was drummed into you?

15 A. I didn't keep Foxtown. There wasn't such a thing, as I

16 say, as a Foxtown file. Any correspondence to be doing

17 with Foxtown and Mr. Traynor, either would have been

18 sent back to Guernsey or, as I say, I would have

19 actually shredded it. I wouldn't have filed it. So

20 that is probably - sorry. That was probably where I

21 was coming from, rather than looking at it being

22 Sandyford, going that way about it.

23 117 Q. Are you saying that the system that was in place that

24 you inherited was that anything to do with Guernsey,

25 Foxtown Investment or Mr. Traynor was to be shredded?

26 A. No, not necessarily. It was usually sent back to

27 Guernsey when they were over.

28 118 Q. This letter didn't come from Guernsey?

29 A. No, it came from Mr. Traynor here, yes.

30 119 Q. So why would you have been sending that to Guernsey?

1 A. Because it is to do with Foxtown. It is - some Foxtown
2 stuff is on the file of Canio, but most of the stuff
3 relating to Foxtown, when it comes into my head as
4 being Foxtown, went to Guernsey.

5 120 Q. Was there a policy of not keeping a Foxtown
6 Investments' file?

7 A. Yes.

8 121 Q. Why?

9 A. Why? As I say, it is something I inherited. I never
10 really questioned that much along the way. But I
11 presume it was because it was in Guernsey. I presume
12 in those days it was - in other words, to try and keep
13 it apart, keep the layers there. There was an element
14 of confidentiality with Mr. Traynor and with all,
15 anything to do with Trust. So as I say, it's not
16 something that I really questioned and queried terribly
17 much.

18 122 Q. So the system that you inherited and which you
19 perpetuated, or which you continued with, was of not
20 maintaining any file in connection with Foxtown
21 Investments or Guernsey or Mr. Traynor, if I am
22 understanding you correctly?

23 A. Yes.

24 123 Q. And that was a system that was in place when you came
25 into work in 1984?

26 A. Yes, it was before '84, but yes.

27 124 Q. That is a system which you continued without in any way
28 challenging it, is that right?

29 A. That's right, yes.

30 125 Q. On whose instruction was this done?

1 A. Sorry, keeping it confidential?

2 126 Q. Yes.

3 A. I don't know if it was instructions per se. I would
4 have - I would have been told it along with everything
5 else that I was told when I was being trained in by my
6 predecessor. That is where I think I probably would
7 have heard it from.

8 127 Q. Mm-hmm.

9 A. I don't suppose he was giving an actual instruction. I
10 am not quite sure.

11 128 Q. Somebody must have made a decision at some stage not to
12 keep any records about Foxtown, to not maintain a file
13 in connection with Foxtown?

14 A. Yes. I think it goes all the way back to the source,
15 to Mr. Traynor. That is where I think that sort of
16 emanates from, because it has been there throughout.

17 129 Q. So Mr. Traynor gave an instruction that John Finnegan
18 wasn't to keep a Foxtown Investments' file?

19 A. I don't know. I wasn't party to that, but I am only
20 just guessing.

21 130 Q. Did you ever go to Mr. Finnegan with any of these
22 documents and say, "What will I do with this?"

23 A. I don't remember ever doing that, but I might have
24 along the way in the beginning. I am not sure.

25 131 Q. And if you ever had to go to Mr. Finnegan with
26 documents such as this, or any of the Guernsey
27 documents, did Mr. Finnegan ever say to you, "Open a
28 file on that, better keep those documents"?

29 A. No, Mr. Finnegan, really, would never have anything to
30 say about a file one way or another. I don't think he

1 ever would have told me to open a file or not. It
2 would have been more a question of I might have said,
3 "Do you want me to keep this?" It would have been more
4 of a "yes" or "no".

5 132 Q. Was it "yes" or was it "no"?

6 A. Well, since I don't remember talking to him about it in
7 the first place, I don't know specifically. I am just
8 saying I might have along the way.

9 133 Q. But none of those documents have been produced by
10 Mr. Finnegan?

11 A. That's because we don't have any of them.

12 134 Q. What I am trying to establish, Miss O'Neill, why that
13 is when the documents came in, somebody made a decision
14 about what to do with the document?

15 A. Yes.

16 135 Q. You said that you either shredded it or you sent it
17 back to the Guernsey - the documents on screen didn't
18 come from Guernsey, so presumably you would not have
19 been sending it back to Guernsey?

20 A. Well, not necessarily. Because Foxtown, as I say, was
21 the - it wasn't so much the Guernsey thing, it was
22 Foxtown. Anything to do with Foxtown, the mentality,
23 my mentality, would have been it went to Guernsey, or I
24 got rid of it. It didn't knock around the office. I
25 didn't let him put it in his pocket and walk off with
26 it or leave it sitting on the desk. I am only just -
27 as I say - to me, funnily enough, to me that says
28 absolutely nothing. So I wouldn't have seen any great
29 importance to that. Now, maybe, but then, no.

30 136 Q. So the situation in relation to John Finnegan's

1 personal affairs insofar as it concerned Foxtown
2 Investments, is that the system that was put in place
3 by somebody, not yourself, was no file was to be
4 maintained in the office in connection with Foxtown; if
5 documents came in that appeared to be Guernsey related,
6 they were sent back to Guernsey?

7 A. In the main, yes.

8 137 Q. In the main. And you also - sorry. And that would
9 have meant, would it not, Miss O'Neill, that there
10 would have been documents coming in that would have
11 been dealt with in connection with Foxtown Investments,
12 such as either bank statements, correspondence with
13 Mr. Traynor, correspondence with Mr. O'Shea, from
14 Kennedy McGonagle Ballagh, all of that correspondence
15 was coming in, and once it was connected with Foxtown,
16 wherever it was sent or whatever was done with it, it
17 did not remain in the offices of Finnegan Menton or in
18 Mr. Finnegan's personal files?

19 A. I don't remember that sort of volume of correspondence
20 that you are talking about, but I know there was some,
21 yes. I know - as I say, they used to come over. I
22 remember them coming over. I remember making coffee
23 for them when they came over with statements or
24 whatever. I don't believe they ever remained in the
25 office, so nothing happened to them. I didn't have to
26 do anything with them at all. I know there was some
27 correspondence about selling and this correspondence.

28 138 Q. When Mr. Finnegan swore his Affidavit of Discovery for
29 the Tribunal, in purported compliance with the orders
30 that the Tribunal had made, Mr. Finnegan, subject to

1 checking the document now, to my recollection did not
2 identify a category of documents connected with Foxtown
3 Investments which had previously been in his
4 possession, but which now had, were no longer in his
5 possession because he had sent them on to Guernsey or
6 he had directed that they be shredded. Can you explain
7 why Mr. Finnegan didn't furnish that explaining about
8 what happened to these documents in his Affidavit of
9 Discovery?

10 A. I actually thought that we had said something like
11 that. I am sorry, I must be mistaken. I thought we
12 had.

13 139 Q. What you said about Credit Suisse, or what Mr. Finnegan
14 swore about Credit Suisse, was that he had applied to
15 Credit Suisse for his documents, but up to the point of
16 swearing the affidavit was unable to obtain the
17 documents?

18 A. Yeah.

19 140 Q. This is an entirely separate category of documents now,
20 Miss O'Neill?

21 A. Yes.

22 141 Q. These are the documents that were sent into
23 Mr. Finnegan in Finnegan Menton in connection with
24 Foxtown Investments, which as a result of what you have
25 now described as a policy of the office, were not
26 maintained or kept in the office, but were either
27 shredded or sent to Guernsey, as I understand your
28 evidence?

29 A. Well, I don't know what documents, because as I say, I
30 don't know what documents were left in the office in

1 our possession.

2 142 Q. What you have said, Miss O'Neill, is that when
3 documents in connection with Foxtown Investments
4 arrived in the office of Finnegan Menton, that a
5 decision would be made that the documents would either
6 be sent back, as you have described it, to Guernsey or
7 they would be shredded, because there was a policy in
8 the office of not having a Foxtown Investments' file?

9 A. Yes.

10 143 Q. Because, as I think you used the word, because of the
11 "layers", and that it was something that was set up by
12 Mr. Traynor?

13 A. Mm-hmm.

14 144 Q. In connection with swearing the Affidavit of Discovery,
15 this category of documents which relate to Foxtown
16 Investments were not identified to the Tribunal as
17 documents which had been furnished to Mr. Finnegan and
18 which then had subsequently been disposed of in one way
19 or another, in the offices of Finnegan Menton?

20 A. Well, the document - I suppose the bottom line is that
21 the documents that I know we want to get to the
22 Tribunal, the Tribunal want to see, are in Guernsey.
23 That's where the documents are of any relevance at all.
24 Any documents that we had, I don't know what documents
25 you are talking about, other than the documents we
26 thought were in Guernsey all along. That is really,
27 sorry, the point.

28 145 Q. Yes. I am talking about the documents that you have
29 described to us would not have been kept in the offices
30 of Finnegan Menton because they relate to Foxtown, and

1 the policy of the office was not to keep a Foxtown
2 Investments' file, those documents received in the
3 offices of Finnegan Menton?

4 A. Yes.

5 146 Q. And according to you, were either sent to Guernsey or
6 sent back to Guernsey or they were shredded?

7 A. Mm-hmm.

8 147 Q. That category of documents has not been referred to, as
9 far as I am aware, by Mr. Finnegan in swearing his
10 Affidavit of Discovery in purported compliance with the
11 Order.

12 .

13 Can you explain why it is?

14 A. Sorry --

15 148 Q. Presumably, you were involved in the preparation of the
16 Affidavit of Discovery or assist Mr. Finnegan?

17 A. Yes. Sorry. My understanding was they sort of fell
18 into one category or the other. They were either
19 discovered in Kennedy McGonagle Ballagh's files as that
20 was one lot of documents. The other lot of documents
21 would have been the files or the files and the
22 information that are on the files in Guernsey. I don't
23 know what other documents we are talking about, really.

24 149 Q. The document that is on screen --

25 A. There is very little volume we are talking about that I
26 am, you know --

27 150 Q. But why wasn't it disclosed to the Tribunal that there
28 was a policy of not maintaining a Foxtown Investments'
29 file, and making sure that the documents were removed
30 from Finnegan Menton or else shredded; why was that

1 never, until now, why didn't Mr. Finnegan tell us that
2 in evidence?

3 A. I thought Mr. Finnegan actually had said to you that
4 the documents that we ever had had in our possession
5 from Credit Suisse went back to Credit Suisse or were
6 shredded. Sorry, I thought we had said that.

7 151 Q. Mr. Finnegan said that his documents, together with
8 those of Finnegan Menton, would in the ordinary course
9 of business have been shredded. Mr. Finnegan did not
10 tell the Tribunal that there was a policy in the office
11 of not maintaining a file on Foxtown Investments, and
12 as you've described it, either destroying or sending
13 back to Guernsey any documents that came in in
14 connection with Foxtown Investments.

15 .

16 MR. HUSSEY: I am sorry, Sir. Can I just interject
17 here for a second? I didn't know a policy was part of
18 any Affidavit of Discovery.

19 .

20 As I understand it, these documents are referred to in
21 the Affidavit of Discovery, that they were ones in the
22 possession of Mr. Finnegan, but are now either in
23 Guernsey or have been shredded. These are documents
24 that have actually been referred to in the Affidavit of
25 Discovery.

26 .

27 As far as policy is concerned, I am not sure how that
28 forms any part of any Affidavit of Discovery that I
29 have ever seen.

30 .

1 MS. DILLON: I will open Mr. Finnegan's Affidavit of
2 Discovery in connection with this, so there is
3 absolutely no doubt about what Mr. Finnegan swore to,
4 and then we can look at the transcript of
5 Mr. Finnegan's evidence about destruction of documents
6 and matters such as that, Sir.

7 .

8 As far as I am aware, Sir, subject to any part of the
9 transcript Mr. Hussey may wish to open to you,
10 Mr. Finnegan did not describe in his evidence, a policy
11 of not maintaining a Foxtown Investments' file. And
12 either sending the documents, as this witness has
13 described, back to Guernsey or shredding them once they
14 arrived in the office of Finnegan Menton. As far as I
15 am aware, this is the first time this evidence has been
16 lead.

17 .

18 If I could open the affidavit of Mr. Finnegan, the
19 first Affidavit of Discovery of Mr. Finnegan. It is
20 dated the 19th of September, 2001.

21 .

22 He sets out in that affidavit, which is not the
23 affidavit that really deals with the matters, it deals
24 with specific categories of documents such as
25 Newtownpark Avenue, Carrickbrennan, Stephen's Green and
26 matters such as that sort.

27 .

28 The second Affidavit of Discovery of Mr. Finnegan,
29 which does deal with Credit Suisse, says at paragraph
30 7:

1 .
2 "I have requested the file or files and all other
3 relevant accounts and papers within the scope of the
4 documents ordered to be discovered of Foxtown
5 Investments Limited from Credit Suisse and/or College
6 Trustees and/or Sovereign Management, and I am awaiting
7 a reply to this request, at which time a further
8 affidavit may be sworn."

9 .
10 He then goes on to say, at paragraph 8:

11 .
12 "According to the best of my knowledge, information and
13 belief, I have not now, and never had in my possession,
14 custody, or power, or in the possession, custody, power
15 of my solicitors or agents, solicitor or agent, or in
16 the possession, custody of power or any other persons
17 or person on my behalf any deed, account, book of
18 account, voucher, receipt, letter, memorandum, paper,
19 writing, or any copy of, or extract from any such
20 document or any other document whatsoever, or wherein
21 any entry has been made.

22 .
23 (A) Of any scope within the scope of the documents
24 ordered to be discovered by Order of this Honourable
25 Tribunal made Friday, 27th April, 2001.

26 .
27 (B) Within the scope of the documents ordered to be
28 discovered by the Tribunal in the first Order of
29 Discovery, other than except the documents set forth in
30 the first and second schedule deals hereto."

1 .
2 The first and second schedule of this affidavit deal
3 with, first of all, John, what is described as John
4 Finnegan's personal file, and thereafter is a copy of
5 the Ken McGonigal's correspondence file, which is
6 discovered by Mr. Finnegan having previously been
7 discovered by Mr. Michael O'Shea of Kennedy McGonagle
8 Ballagh.

9 .
10 Now, there are then also documents dealing with another
11 company, that Mr. Finnegan was involved, in connection
12 with its Guinness & Mahon dealings, but this is not the
13 Foxtown Investments - Foxtown Investment document. At
14 no place in this Affidavit of Discovery, which is
15 dealing with Foxtown Investments, does Mr. Finnegan say
16 that documents were received in his office and were
17 subject to instructions, or for whatever reason
18 destroyed or returned to Guernsey, when he received
19 those documents. Nor indeed, did Mr. Finnegan in
20 evidence say that that was what was happening to the
21 documents.

22 .
23 And you will recollect, Sir, that Mr. Hanratty spent at
24 least three or four days with Mr. Finnegan detailing
25 what had happened to the documents, when they were
26 received and matters such as that sort.

27 .
28 I don't really understand Mr. Hussey's objection.

29 .
30 In preparing the Affidavit of Discovery, Miss O'Neill,

1 and I accept it is a matter that would have been
2 prepared by the solicitors in the matter, did anyone
3 avert to the fact that these documents had been
4 received by Mr. Finnegan in Finnegan Menton?

5 A. We - sorry. If these documents have been received - we
6 did talk about it, of course, at the time we were
7 preparing the thing. We would have been talking about
8 the fact - I said and have said, from day one, that we
9 never had a Foxtown file. So I didn't have a Foxtown
10 file to go to, to give. I would have said, I never
11 kept stuff on Foxtown. But as I say, the sheer volume
12 of what we are talking about is not an awful lot. At
13 the time when Mr. Finnegan would have gone to
14 Mr. Traynor, he would have seen the statements, gone
15 through the stuff with him, up in his offices, or maybe
16 down in our offices, the majority of times I think up
17 in his offices, or when the guys came over, from
18 Guernsey, and they would have gone through statements
19 and things with him. They would have just brought
20 those back.

21 .
22 As regards actual documents that came into us, I don't
23 know, other than, I mean, to do with the sale and, of
24 the land. I know that there is stuff around that. I
25 don't actually know what other correspondence or
26 documents there were, so I suppose we probably thought
27 it was covered by one or the other, or maybe we have
28 fallen between the two stools. I thought it was
29 actually McGonagle's or Credit Suisse will have the
30 full --

1 152 Q. Miss O'Neill --

2 .

3 MR. HUSSEY: I am sorry. Again, sorry. Just before
4 this continues. I have had an opportunity to check now
5 the Supplemental Affidavit of Mr. Finnegan, made on the
6 19th of September. And in the second schedule under
7 the title "Guinness & Mahon College Trustees", he
8 swears as follows:

9 .

10 "At one time I did have documents within the scope of
11 the Discovery Orders, although I believe not within the
12 Terms of Reference of the Tribunal. I no longer have
13 them. In the absence of any opportunity to examine
14 these documents, which I no longer have, I am unable to
15 specify the documents referred to. These documents
16 were last in my possession on the date they were sent
17 to Credit Suisse or destroyed in the matter set out in
18 the affidavit."

19 .

20 That is exactly what Miss O'Neill is talking about. I
21 think it is covered in the Affidavit of Discovery.

22 .

23 I am sorry, Sir, I just thought, as I had a chance to
24 read the affidavit. I understand that category is
25 referred to in the Affidavit of Discovery.

26 .

27 MS. DILLON: What is covered in the affidavit, and what
28 the affidavit does disclose and what Mr. Finnegan did
29 not disclose in his evidence, is that the Credit
30 Suisse, Foxtown, Guernsey, Guinness & Mahon, all of

1 those categories of documents were subject to a
2 specific type of treatment on receipt in the offices of
3 Finnegan Menton, if Miss O'Neill is correct, which is
4 --

5 .
6 MR. HUSSEY: I am sorry. They were sent to Credit
7 Suisse or destroyed.

8 .
9 CHAIRMAN: Just a moment, please. Let me follow one
10 submission at a time.

11 .
12 Ms. Dillon, you were saying?

13 .
14 MS. DILLON: We are back to Mrs. Hussey's inability,
15 Sir, to restrain from interrupting at every possible
16 opportunity.

17 .
18 Mr. Finnegan, in his Supplemental Affidavit of
19 Discovery, does set out in the second schedule that at
20 one time he did have documents within the scope of the
21 Discovery Orders. He says that he is unable to specify
22 the documents referred to, "that these were last in my
23 possession on the date that they were sent to Credit
24 Suisse, or destroyed in the manner as set out in the
25 affidavit."

26 .
27 CHAIRMAN: Am I correct in understanding you, that what
28 you are essentially complaining about is not that there
29 wasn't a reference to the document, but that there was
30 no reference to the fact that it was a deliberate

1 policy to return the documents to the custody of Credit
2 Suisse? Isn't that the reality of it? Which was what
3 he did?

4 A. Whenever he read the document, once he got it, it went
5 back to the safe custody of the sender.

6 .

7 MS. DILLON: Or whatever. Because Mr. Finnegan does
8 depose, in paragraph 7 of the same affidavit, that the
9 documents specified, in the first particulate of the
10 second schedule, "Were last in my possession or power
11 on the date when the original of thereof was sent to
12 the persons named as the addressees therein or where
13 indicated on the day they were destroyed in the usual
14 course of business."

15 .

16 Now, that is destruction in the usual course of
17 business, which would be, as I assume would be every so
18 many years, in accordance with whatever policy. But
19 what this witness is now describing is not destruction
20 in the usual course of business. What this witness is
21 describing is a policy or a system she inherited which
22 was that no documents in connection with Foxtown
23 Investments were to be kept, and those that were not
24 sent back to Guernsey, were to be shredded, and not
25 shredded as I understand her evidence, in accordance
26 with the normal course of business, but shredded
27 because these were sensitive documents that were not to
28 be left, as I think the witness has said, lying around
29 the office.

30 .

1 CHAIRMAN: In other words, to enhance the
2 confidentiality --

3 .

4 MS. DILLON: Yes.

5 .

6 CHAIRMAN: -- of the operation?

7 .

8 MR. HUSSEY: Yes, that is understood.

9 .

10 CHAIRMAN: That is as I understand it now. I hope I
11 have got it right.

12 .

13 MR. HUSSEY: What I am complaining about is not -
14 obviously, Ms. Dillon is entitled to question the
15 witness about the policy in the office, but what I am
16 complaining about is that this wasn't revealed somehow
17 in the Affidavit of Discovery.

18 .

19 Now, an Affidavit of Discovery is an affidavit of
20 documents, what documents you have, or what documents
21 you did have once, and where are they now. It is not
22 an affidavit of explanation about policy. It is an
23 affidavit explaining what has happened documents,
24 either they were destroyed or sent to Credit Suisse.
25 That is what the affidavit says, that is what has
26 happened to the documents. The policy in the office is
27 either destruction or sent to Credit Suisse. That is
28 fair enough. But to complain that that policy wasn't
29 revealed in an Affidavit of Discovery, I have never
30 seen any such explanation in any Affidavit of Discovery

1 in all my years of practice.

2 .

3 CHAIRMAN: I note what you are saying, and I note the
4 provenance of what you are saying, and I think I have
5 got the message --

6 .

7 MR. HUSSEY: Thank you, Sir.

8 .

9 CHAIRMAN: -- I hope, correctly. That there was a
10 degree, an unusual degree of confidentiality which
11 covered correspondence originating in the bank accounts
12 outside the jurisdiction and to prevent any leakage, if
13 I may use the phrase, I use it perfectly innocently, I
14 assure you, they were just recycled back to the sender.
15 Isn't that the simple answer --

16 .

17 MR. HUSSEY: Or simply sent abroad, or sent to
18 Guernsey.

19 .

20 CHAIRMAN: That is, I think, the common case now. What
21 Ms. Dillon is saying is what is accepted by you?

22 .

23 MR. HUSSEY: That's correct. As I say, I am not
24 complaining on that score at all, Sir. What I am
25 complaining of is that somehow there is assertions
26 being cast that the Affidavit of Discovery somehow did
27 not reveal that. I am saying that it did.

28 .

29 CHAIRMAN: We won't go into that. It is an unusual
30 sequence of events. Let us just leave it there. We

1 may find an explanation for it later.

2 .

3 MR. HUSSEY: I am quite satisfied to leave it at that,

4 Sir.

5 .

6 MS. DILLON: I mean, the affidavit does, of course, say

7 they were destroyed in the usual course of business,

8 and of course Mr. Hussey will recollect his client's

9 evidence over three-and-a-half days in connection with

10 record-keeping and documents and the fact that his

11 client, unless Mr. Hussey can identify on the affidavit

12 where Mr. Finnegan in evidence ever told the Tribunal

13 that there was a policy in the office of not

14 maintaining a Foxtown Investments' file, and of either

15 returning the documents to Guernsey or destroying them

16 within the office within a short period of the time.

17 .

18 I am not aware that Mr. Finnegan, despite being

19 intensively cross-examined by Mr. Hanratty over a

20 period of times in connection with record-keeping and

21 documents, ever identified to you, Sir, that there was

22 a policy such as Miss O'Neill has now described in

23 evidence in existence. And perhaps if Mr. Hussey is

24 aware of it, in fairness to his client, he might like

25 to identify where in the transcript Mr. Finnegan gave

26 that evidence.

27 .

28 MR. HUSSEY: I don't have those transcripts.

29 .

30 CHAIRMAN: For the moment we will pass from it.

1

2 153 Q. MS. DILLON: Now, Miss O'Neill, the documents - you
3 referred to meetings with Mr. Traynor, that there were
4 meetings with Mr. Traynor that were attended by
5 Mr. Finnegan?

6 A. Yes.

7 154 Q. Were you ever at any of these meetings?

8 A. No.

9 155 Q. Were there any documents generated as a result of those
10 meetings, notes or records of any description?

11 A. Not that I am aware of.

12 156 Q. Did Mr. Traynor write to Mr. Finnegan and say, "There
13 is a meeting going to take place on such a date, does
14 that suit you?" Matters such as that sort?

15 A. Normally speaking, it was done by telephone.

16 157 Q. Mm-hmm. And when the gentlemen or the people from
17 Credit Suisse came over to update Mr. Finnegan in
18 connection with his investments and matters of that
19 sort, was that a meeting that was set up through you?

20 A. Sometimes, yes.

21 158 Q. Did you attend any of those meetings?

22 A. No, I don't think so.

23 159 Q. And Mr. Finnegan has described that they would show him
24 documents in connection with his investments at the
25 meetings, but they would take the documents away with
26 them again?

27 A. Mm-hmm.

28 160 Q. Were you aware of any documents that were given to you
29 or documents that Mr. Finnegan had in connection with
30 those meetings?

1 A. No.

2 161 Q. And was that the same when Mr. Traynor was handling
3 matters, that no documents were generated?

4 A. That's to the best of my knowledge, no documents were
5 generated back into us, yeah.

6 162 Q. And did anybody ever keep any notes or records, or did
7 Mr. Finnegan ever keep any notes or records of how his
8 investments were doing or what the overall picture was?

9 A. No.

10 163 Q. How often did the people from Credit Suisse come over,
11 do you know?

12 A. I don't really remember. Not that often. Certainly
13 recently, as over the more recent past that I remember,
14 and I don't really - it didn't stick out in my mind at
15 the time, so I am afraid I don't really have any great
16 recollection as to how often they were.

17 164 Q. Well, would they have come once a month?

18 A. I wouldn't have thought so. I suppose, if I was to
19 guess, I would say once a year, twice a year, something
20 like that.

21 165 Q. And the purpose of this meeting, according to what
22 Mr. Finnegan has told the Tribunal, was that he would
23 be updated as to how his investments were getting on,
24 that he --

25 A. That is what I gather, yes.

26 166 Q. And other than that meeting at which these people from
27 Credit Suisse took away all of the documents that they
28 had brought with them to show Mr. Finnegan how his
29 investments were doing, no other documents were
30 generated?

1 A. Well, not that I saw, not that I am aware of, no. I
2 think the majority of the communications were done
3 through Mr. Traynor, though, for his life, so the
4 volume of it probably was done through that.

5 167 Q. Mmm. Were you ever involved in any transactions with
6 the Guinness & Mahon account of Foxtown Investments,
7 either lodging or withdrawing money, for example?

8 A. Yes.

9 168 Q. And would you have been involved in making withdrawals
10 or in making lodgements?

11 A. Withdrawal.

12 169 Q. And would those withdrawals have been for the purpose
13 of transferring money to the account in Stephen's
14 Green?

15 A. Possibly, yes.

16 170 Q. Okay. Who gave you your instructions in relation to
17 making those withdrawals?

18 A. Again, it is something I would have inherited.

19 171 Q. The question was who gave you your instructions in
20 relation to withdrawing the money, who came in and said
21 - who told you, "Take ú5,000 out of Foxtown"?

22 A. Presumably - I don't know. Presumably, Mr. Finnegan.

23 172 Q. How many times have you done that, dealt with the
24 Foxtown account?

25 A. Half a dozen times.

26 173 Q. And on each occasion --

27 A. I am not sure.

28 174 Q. And on each occasion it was a withdrawal?

29 A. Yeah, I think so.

30 175 Q. On each occasion did you make that withdrawal on the

1 instructions of Mr. John Finnegan?

2 A. Probably. I - I am not one hundred percent sure about
3 that, but probably.

4 176 Q. But if it wasn't him, who else would it have been?

5 A. I could have been talking to Mr. Turvey.

6 177 Q. Mr. Turvey was Mr. Finnegan's accountant as well as
7 being the accountant for Finnegan Menton?

8 A. Well, he was an accountant working in Finnegan Menton,
9 yes.

10 178 Q. He was an employee of Finnegan Menton?

11 A. That's right.

12 179 Q. Presumably, Mr. Turvey did not of himself have rights
13 to deal with the Foxtown Investments' account?

14 A. No. I presume, as I say, he would have been --

15 180 Q. If you were getting instructions from Mr. Turvey, on
16 whose behalf was Mr. Turvey giving you instructions?

17 A. I presume Mr. Finnegan.

18 181 Q. On each occasion that you were involved with financial
19 transactions involving the Foxtown Investments account,
20 the instructions came from Mr. Finnegan, either
21 directly to you or indirectly through Mr. Turvey?

22 A. I would think so, yes.

23 182 Q. Yes. Okay. When you got instructions to withdraw
24 money, how did you go about it?

25 A. It was frequently a transfer. I gave account details
26 of where money was to be transferred to and asked them
27 to transfer.

28 183 Q. Well, who did you give the instructions to?

29 A. I rang up Credit Suisse.

30 184 Q. In?

1 A. In Guernsey.

2 185 Q. Did you ever deal with Guinness & Mahon in Dublin?

3 A. I don't think I ever did, no. I think I dealt with Mr.

4 Traynor's office, but I am not sure if he was still in

5 Guinness & Mahon in those days or whether he was out of

6 it. I am not sure.

7 186 Q. You would deal either with Mr. Traynor's office or you

8 dealt directly with Credit Suisse or their

9 predecessors, Sovereign Management or College Trustees?

10 A. I think in - what I would have done would - of the more

11 recent times, it would have been Credit Suisse, and I

12 think it was Mr. Traynor. I don't remember Sovereign.

13 Maybe it was, I don't remember.

14 187 Q. When you were dealing with Credit Suisse, what you

15 would do is you would ring them; is that what you did?

16 A. Yes.

17 188 Q. You rang them and you said, "Transfer 'X' pounds from

18 the Foxtown Investments' account to this account

19 number"?

20 A. Yes. It would be usually following a conversation

21 Mr. Finnegan would have had, so I would have been on

22 the tail end of that, just giving an actual detail of

23 the account number.

24 189 Q. Who would have given you the account number to which

25 the money was to be transferred?

26 A. Oh, it depends. It was - I remember doing one which

27 was for a holiday for his son, and I remember getting

28 the details of the travel agent he was dealing with,

29 and I got a bank number and gave it through and asked

30 them to transfer it.

1 190 Q. But you were able to do this by way of a telephone call
2 with somebody in Credit Suisse?

3 A. Yes.

4 191 Q. And how would Credit Suisse, if you don't mind me
5 asking you, how would they have known that you were
6 bona fide?

7 A. I am not actually quite sure. They would have been
8 speaking to Mr. Finnegan earlier, I suppose. He would
9 have said, "Sandra is going to phone through with the
10 details." He would have given it, talked to them about
11 what was happening, and I would have actually come and
12 said it is 'X', 'Y', 'Z', whatever. I don't know how
13 they did.

14 192 Q. So Mr. Finnegan would ring and give his instructions or
15 set out what he wanted done, and would you fill in the
16 details subsequently in a telephone conversation with
17 Credit Suisse, such as bank account numbers and details
18 such as that sort?

19 A. Yes.

20 193 Q. But it would have been - I presume it was your position
21 in the firm that at all times you were doing none of
22 this on your own behalf, you were operating on foot of
23 Mr. Finnegan's instructions?

24 A. Yes.

25 194 Q. Yes. And is it the position that any correspondence
26 that Mr. Finnegan got from Credit Suisse or their
27 predecessors in title would have been returned?

28 A. Well, I can only say to the best of my ability, I did
29 the filing, I don't have anything. I don't remember
30 stuff either. He wouldn't have it anywhere, that's for

1 sure. So I don't think there is anything, but I don't
2 remember getting things either.

3 195 Q. But it is clear that there was correspondence, albeit
4 not maybe a great volume of correspondence. You have
5 already described that there was a system that you
6 inherited which was a system of not keeping a file for
7 Foxtown Investments?

8 A. Mm-hmm.

9 196 Q. And that what happened with the Foxtown documents, such
10 as they were when they came in, was they were either
11 sent back to Guernsey, or they were shredded?

12 A. Yeah.

13 197 Q. And if they were sent back to Guernsey, does that mean
14 that they emanated from Guernsey in the first place?

15 A. I suppose in the majority of times, yes.

16 198 Q. So that whatever documents that came in for whatever
17 purpose, would be returned to Guernsey on behalf of
18 Mr. Finnegan?

19 A. Yes.

20 .

21 CHAIRMAN: Might I intervene at this point.

22 .

23 A letter comes in from Guernsey on a topic, presumably
24 it is considered by your principal, Mr. Finnegan, and
25 would a response, a written response go out accompanied
26 by the original letter coming in?

27 A. Amazingly, I have no recollection of any letters coming
28 in from them. They don't --

29 .

30 CHAIRMAN: Let us assume it was a communication --

1 A. If there was something - well, if it was something,
2 then it is likely that I either could have sent it
3 back, yes - there was practically no written
4 communication, though, from Mr. Finnegan either. I
5 don't remember --

6 .
7 CHAIRMAN: Well, may I further inquire to this extent.
8 Excuse me, I am sorry. If a verbal communication came
9 in, Mr. Finnegan having deliberated on it, gave
10 instructions to you to do something, would you confirm
11 it in writing, or would you simply pick up the phone
12 and say, "Mr. Finnegan wants the following course of
13 action pursued"?

14 A. I just would have picked up the phone. I didn't do
15 anything in writing.

16 .
17 CHAIRMAN: There would be no record in Dublin or in
18 Mr. Finnegan's portfolio, whatever you like to call it,
19 of the fact that you had directed 'X' pounds to be sent
20 to Kingdom Come or wherever it is going to?

21 A. No, not in our offices. I think previously in Mr.
22 Traynor's offices, I don't know whether he kept or
23 didn't keep records, but I wouldn't have kept it. We
24 wouldn't have had it, no.

25 .
26 CHAIRMAN: But how would you know, or how - yes, why
27 would you know, as the executive dealing with the
28 matters, that your instructions had been carried out?

29 A. I would have checked on the receiving end of it,
30 so-to-speak, as if I was transferring to Joe Bloggs and

1 Co., I would have checked with Joe Bloggs that they
2 received what they were meant to receive. That is how
3 I would have checked my end of it.

4 .

5 CHAIRMAN: Thank you very much.

6 A. Okay.

7 .

8 199 Q. MS. DILLON: You have just said there, in answer the
9 Sole Member, that you didn't keep anything in writing?

10 A. Yes.

11 200 Q. Why was that?

12 A. This is from me or from them?

13 201 Q. From you.

14 A. Because I didn't put it in writing. There was nothing
15 to keep.

16 202 Q. But why wouldn't you have put anything in writing, even
17 your telephone instructions in connection with the bank
18 accounts, for example?

19 A. I don't know. I have never put it in writing. It was
20 never done that way. It was done by telephone.

21 203 Q. But you had to write down a bank account number in
22 order to telephone the bank account details to Credit
23 Suisse to tell them where to send the money to?

24 A. Yes.

25 204 Q. All right. So you got instructions from Mr. Finnegan
26 to carry out a certain transaction, included in those
27 instructions would be details and particulars of the
28 bank account of the bank account number and the sort
29 code of where the money was to be sent?

30 A. Mm-hmm.

1 205 Q. You wrote that down, presumably, on a piece of paper?

2 A. Yes.

3 206 Q. So you could telephone these people to telephone them

4 what to do?

5 A. Yes.

6 207 Q. What did you do with the piece of paper?

7 A. The piece of paper would normally be in my ordinary day

8 shorthand pad, which would have any other scribbblings

9 or messages or notes of the day. And then in time,

10 once I had checked it and was done, in other words,

11 once I made the call to make sure the money would have

12 arrived, that would have been just literally scratched

13 out. And then when I moved on to the next book, that

14 book would have been kept - I keep them usually for a

15 couple of months, and then I shred them.

16 208 Q. And the system you had of checking to see if these

17 transactions were carried out, was to telephone the

18 recipient of the money to see if the money had gone

19 through?

20 A. Yes.

21 209 Q. Whether it was a bank account or whether it was paying

22 the travel agent or whatever it was doing?

23 A. Yes.

24 210 Q. And you didn't have any other system of checking back

25 with Credit Suisse?

26 A. No.

27 .

28 CHAIRMAN: Can I once again intervene. I am puzzled to

29 this extent. Certainly my understanding, and it is -

30 I, from time to time, telephone my own bank here in

1 Dublin or credit card.

2 A. Mm-hmm.

3 .

4 CHAIRMAN: And before they will give me any information
5 on the telephone, they will normally either ask some
6 information about you - I think, in fact, from the
7 credit card they usually ask for my mother's maiden
8 name, and for my ordinary banking account they will ask
9 me for my date of birth, what was the key or the code
10 that opened the - what was the "open sesame" that you
11 could use to operate or to get the external account
12 operated.

13 A. I understand exactly what you are saying, Sir, because
14 I have exactly the same thing with my own account here,
15 but amazingly, it was completely lax with dealing with
16 Credit Suisse. They know my voice on the phone. There
17 is nothing, I don't say anything, I have no pass words,
18 I have nothing. I don't have to give any verification
19 as to who I am.

20 .

21 CHAIRMAN: I think I must ring them up very soon, as
22 soon as I can, to get a little money. However, thank
23 you very much.

24 A. Sorry, just by way of explanation. I don't know if it
25 does explain it, but the fact that this would have been
26 sorted through Mr. Traynor's office here, would have
27 been maybe what made it slightly different, in that he
28 knew Mr. Finnegan, he would have known me. It started
29 through there, and then it went over to Credit Suisse.
30 Maybe that.

1 .

2 CHAIRMAN: Thank you.

3 .

4 211 Q. MS. DILLON: Who were you dealing with in Credit
5 Suisse?

6 A. A Mr. Noel Ducqueman.

7 212 Q. Was that the only person that you dealt with in Credit
8 Suisse?

9 A. Up to recently, yes. Yes.

10 213 Q. And were any bills paid out of these, this Foxtown
11 Investments' account?

12 A. Bills as in?

13 214 Q. Ordinary bills.

14 A. Not that I know of, no.

15 215 Q. In Mr. Finnegan's Affidavit of Discovery, at document
16 65, in his Affidavit of Discovery, there is a letter of
17 May 1986, which was a letter sent between a firm of
18 solicitors in Jersey to Bedell & Cristin in Jersey, in
19 connection with the Canio matter?

20 A. Mm-hmm.

21 216 Q. And that was discovered to the Tribunal initially in
22 the Kennedy McGonagle Ballagh files, and subsequently
23 by Mr. Finnegan when he again discovered Messrs.
24 Kennedy McGonagle Ballagh's files. That letter was
25 apparently sent directly to Mr. John Finnegan with a
26 compliment slip from, I think it was - I think it was -
27 I think it was David Naylor. It was received in
28 Finnegan Menton. And it is stamped "received" in
29 Finnegan Menton on the 4th of June, 1986?

30 A. Yes.

1 217 Q. We will put the receipt stamp up on screen.

2 .

3 Now, the correspondence that is attached to this, is
4 correspondence that the Tribunal has because it came
5 from Messrs. Kennedy McGonagle Ballagh?

6 A. Right.

7 218 Q. But this appears to have been received in the offices
8 of Finnegan Menton on the 4th of June, 1986, at the
9 time you would have been Mr. Finnegan's personal
10 assistant, and it is addressed to John Finnegan?

11 A. Yes.

12 219 Q. And it is signed by David Naylor. It makes a note,
13 Crills, who were the firm of solicitors in Jersey,
14 "estimate counsel's fees to be a minimum of ú500 and
15 maybe upwards of ú1,000," and it attaches a number of
16 pages that we needn't go into.

17 A. Yes.

18 220 Q. Now, when this was received, as it clearly was, into
19 Finnegan Menton, it was stamped "received Finnegan
20 Menton"?

21 A. Yes.

22 221 Q. And then what happened to it, or is likely to have
23 happened to it, Miss O'Neill?

24 A. I would have said what is likely is that the whole lot
25 was sent with a compliment slip down to Michael O'Shea,
26 is one possibility. Or it was sent to Michael O'Shea
27 and binned, I don't know.

28 222 Q. But would you have dealt with this document in
29 accordance with the policy that you have described,
30 either returning the document but not keeping any

1 record or copy of the document?

2 A. I would imagine so, yes, yeah.

3 223 Q. So that the policy that was in place and in force was
4 not limited to bank accounts or communications from
5 Credit Suisse or their predecessors in title, it was
6 anything to do with Foxtown Investments or anything to
7 do with the Jersey or Guernsey side of business?

8 A. Not as specifically. It would have been - it would
9 have been much more the Foxtown and the bank statements
10 and Credit Suisse in Guernsey that, as you say, would
11 have been that mentality. The stuff around it was
12 generally treated the same way, but not maybe
13 necessarily.

14 224 Q. So that --

15 A. And definitely - so some things were kept, some things
16 weren't kept to do with the land.

17 225 Q. And that explains the existence of the Ardcarne file,
18 Mr. Finnegan's personal file in relation to Ardcarne?

19 A. Mmm.

20 226 Q. But insofar as anything to do with Foxtown Investments
21 was concerned, Guernsey, Credit Suisse, Mr. Traynor,
22 all of that was dealt differently within Finnegan
23 Menton, and differently by you, in relation to
24 record-keeping?

25 A. Yes.

26 227 Q. And that the policy that was in existence when you
27 became Mr. Finnegan's personal assistant and with which
28 you continued, was that these documents were either
29 sent on to Mr. O'Shea, if they were attributable to Mr.
30 O'Shea, they were sent back to Guernsey or they were

1 destroyed?

2 A. Yes, that is fair enough.

3 228 Q. And no records were kept in relation to them?

4 A. No records were kept as such, except for with

5 everything, it is human nature, and obviously some

6 things I did keep, as are seen by the file, which the

7 logic at the time I obviously thought I would keep it.

8 229 Q. And when you say - you can see that from the file you

9 are referring to the Ardcarne file, you are referring to

10 the --

11 A. Yes.

12 230 Q. Yes, Mr. Finnegan's personal file?

13 A. Yes.

14 231 Q. Which does not contain any communications between

15 Mr. Traynor or Jersey or Credit Suisse or their

16 predecessors in title or Guinness & Mahon, isn't that

17 right?

18 A. That is the file I am referring to, yes.

19 232 Q. Yes. Were any documents or records kept of

20 Mr. Finnegan's dealings with Messrs. Brennan and

21 McGowan?

22 A. No.

23 233 Q. Why not?

24 A. Other than Canio - sorry. Other than the Canio file.

25 234 Q. Other than the Canio file. Why not?

26 A. Because to the best of my recollection there never were

27 any files on the property transactions, the other

28 property transactions that we now know about.

29 235 Q. Mr. Finnegan has had and has described in evidence the

30 extensive dealings that he had with Messrs. Brennan and

1 McGowan, and it involved a minimum of six land
2 transactions?

3 A. Mmm.

4 236 Q. And possibly more than that?

5 A. Mm-hmm.

6 237 Q. And were there no files at all in relation to these
7 transactions?

8 A. Not John Finnegan files, no. There were Finnegan
9 Menton files on a number of them.

10 238 Q. That was where Mr. Finnegan or Finnegan Menton were
11 acting for people such as the Convent of the Sacred
12 Heart or Mr. John Maguire, people such as that, where
13 they were acting professionally in relation to
14 valuation and matters such as that sort?

15 A. Mm-hmm.

16 239 Q. So far as Mr. Finnegan was concerned and his personal
17 involvement in investing money or being paid money in
18 connection with it, there were no files maintained in
19 connection with that?

20 A. No, none.

21 240 Q. Was that because, if Mr. Finnegan was investing money,
22 he was investing it out of Foxtown Investments and no
23 records were kept in connection with that?

24 A. I presume because the money came from Guernsey and went
25 to wherever it went to, which I don't know where it
26 went to, it didn't come through the office at all. I
27 have no recollection. I have never - I have no
28 recollection, I should say, of ever seeing anything on
29 those land transactions before the Tribunal started. I
30 didn't know about them, or his involvement.

1 241 Q. Did you ever provide any facility to Mr. Finnegan for
2 storing documents such as off-site storage or anything
3 such as that sort?

4 A. No, we don't have off-site storage. We keep them all
5 in the office.

6 242 Q. Would you have ever had occasion to bring home
7 documents, for example, or to store documents in your
8 home?

9 A. Well, to bring home, yes, but not to store. I have
10 brought home loads of stuff since the Tribunal started.

11 243 Q. Well, prior to the Tribunal starting, Miss O'Neill,
12 would you have ever stored documents, say, in your home
13 for Mr. Finnegan?

14 A. No. No.

15 244 Q. Are you aware whether there is any storage facility
16 operated by Mr. Finnegan?

17 A. I think I could be 99.9 percent sure in saying that
18 there isn't.

19 245 Q. There isn't?

20 A. He would --

21 246 Q. Were you ever requested to hold documents or mind
22 documents for Mr. Finnegan?

23 A. Other than in the ordinary course of daily work, no,
24 no.

25 247 Q. Is there a safe in the offices of Finnegan Menton?

26 A. There is.

27 248 Q. And what kind of documents are normally kept in the
28 safe?

29 A. Well, there is some Finnegan Menton stuff as regards
30 paperwork and setting up the company, such things.

1 There is some of the old auction books and comparisons
2 going back to yonks, years ago, sort of historical
3 interest at this stage; cheque books, credit cards.
4 It would be, for example, where the Trust document was,
5 was in the safe. That is where I found it.

6
7 Life policies, marriage certificate, those sort of
8 things. Personal and/or work related that I would have
9 thought were hard to replace.

10 249 Q. And if somebody was concerned about secrecy in
11 connection with the Foxtown Investment account, and
12 dealings with Mr. Traynor or Guinness & Mahon, why
13 couldn't all those records have been kept safely in the
14 safe?

15 A. I have no idea. They could have been. It would have
16 been the only place for them I would have thought,
17 yeah.

18 250 Q. But clearly somebody must have made a decision not to
19 keep them in the safe?

20 A. So I gather, yes.

21 251 Q. When you sent documents back to Guernsey, did you send
22 them under cover of a covering letter?

23 A. No.

24 252 Q. What exactly did you do with them?

25 A. Probably would have stuck a compliment slip on them and
26 posted them back again. Done up an envelope, label and
27 posted them back.

28 253 Q. All right. Thank you very much, Miss O'Neill.

29 .

30 Sorry, there was one other matter that I wanted to ask

1 you about.

2 .

3 When Mr. Turvey prepared his statement for the
4 Tribunal, did you ask him for a copy of his statement
5 prior to Mr. Turvey giving it to the Tribunal?

6 A. Mmm - I don't know whether I asked or he offered, I am
7 not quite sure.

8 254 Q. Well, if he offered it, did you take it?

9 A. Yes.

10 255 Q. And when Mr. Turvey was requested by the Tribunal to
11 prepare his statement in connection with the bank
12 statements that had been discovered, did you furnish
13 him with a copy of Mr. Finnegan's statement and
14 explanation in connection with those transactions?

15 A. Yes, because I asked him was there a difference --

16 256 Q. Sorry?

17 A. I asked him, when we were trying to read his writing
18 and things.

19 257 Q. When Mr. Turvey was asked to prepare his statement
20 dealing with the entries on the bank statements, you
21 furnished him with a copy of Mr. Finnegan's statement
22 and Mr. Finnegan's explanation of those transactions;
23 why?

24 A. Because I was asking him had I got everything right or
25 wrong, because it was his writing I was trying to
26 interpret at the time, and he was away on holidays at
27 the time.

28 258 Q. And when Mr. Turvey had prepared his statement you
29 either asked him for a copy of his statement and his
30 explanation, or Mr. Turvey offered you a copy?

1 A. Well, the first thing was, when he came back I actually
2 asked him was there anything to pass on to the Tribunal
3 that we hadn't got right in the interpretation that we
4 had made when he was away. That was the first thing.

5 259 Q. Yes. The question, Miss O'Neill, was why, if you
6 asked him for a copy of his statement prior to
7 Mr. Turvey furnishing it to the Tribunal, why did you
8 do so?

9 A. I thought it was sort of relevant to our files, or I
10 just - the same as Michael O'Shea gave me a copy of his
11 statement, I thought it was crossing over with our
12 staff, so it was of interest to us.

13 260 Q. Was it of interest to anybody, that anybody, for
14 example, would compare Mr. Turvey's analysis of the
15 bank statements with Mr. Finnegan's prior analysis of
16 the bank statements?

17 A. Well, obviously, yes, because it was his writing. The
18 interpretations that we had seen from them, like
19 M-T-O-W-N, we had read as being "Monkstown".

20 261 Q. Yes.

21 A. We were interested to know, did he say - that is what
22 he thought it meant as well.

23 262 Q. Were you anxious that Mr. Turvey in preparing his
24 statement would have had the benefit of Mr.
25 Mr. Finnegan's analysis, when he was preparing his own
26 statement?

27 A. No, I wasn't anxious about it at all.

28 263 Q. Well, why did you give it to him then?

29 A. Because I gave him the full bundle of stuff that we had
30 found, I gave him the full file and the copies.

1 264 Q. The file, Miss O'Neill, that was discovered, the
2 Dudgeons' file did not include Mr. Finnegan's statement
3 or Mr. Finnegan's explanation for the entries on the
4 bank accounts?

5 A. No.

6 265 Q. No. When you were giving this documentation to Mr.
7 Turvey, why did you consider it necessary that he
8 should also be given Mr. Finnegan's explanation and
9 statement in connection with the entries on the bank
10 statements?

11 A. Sorry, because I was trying to ask him - was asking
12 him, was there anything I had got wrong in our
13 explanation, when he looked at it, to see, had I
14 mislead the Tribunal in any way, because when we were
15 doing it and went down through his writing, we put what
16 we thought it meant, but he wasn't there to check it
17 with. So when he came back, I gave this to him and
18 said, would he mind looking at it again. It was his
19 writing, was there anything that I had got wrong.

20 266 Q. In a number of places Mr. Finnegan in his explanation
21 to the Tribunal made a comment, "Will have to await the
22 return of Mr. Turvey"?

23 A. That's right.

24 267 Q. Right. And therefore, presumably, if there was
25 anything that Mr. Finnegan was dealing with in his
26 explanation that he was unclear on or unsure on, he put
27 down the entry "Will have to await the return of Mr.
28 Turvey"?

29 A. Yes, that is why I asked him on his return.

30 268 Q. Yes. So presumably, as far as the balance of his

1 explanation and statement was concerned, Mr. Finnegan
2 was satisfied enough, it would appear, or clear enough?

3 A. Well, yes, we were clear enough, but it wasn't
4 interpreting somebody else's handwriting, since Mr.
5 Turvey had been the person to write the stuff in the
6 first place. We thought it was right to ask him.

7 269 Q. Were you in any way concerned that Mr. Turvey would
8 furnish a similar explanation in connection with the
9 entries on the bank statement that had been furnished
10 by Mr. Finnegan?

11 A. All I wanted Mr. Turvey to do was to give a correct
12 explanation for what he had written at the time.

13 270 Q. And I suggest to you, Miss O'Neill, he did not need the
14 benefit of Mr. Finnegan's statement in order to produce
15 an explanation in connection with his own entries on
16 the bank statement?

17 A. Well, there is a time lapse here. I understand what
18 you are getting at, but the time lapse was - when he
19 came back we asked - I had said - well, we had said in
20 our statement, when he was away, that we would check
21 with him on his return and see if there was anything
22 new. When I asked him, when he came back, I said "This
23 is what we read it to be." I mean, it was sort of
24 exciting, maybe that is the wrong word, but it was
25 quite exciting, in that we had suddenly found this
26 statement. It did say things on them that were
27 relevant. So I wanted to know, did my interpretation
28 of what he had said, was it the same. And basically he
29 said "yes".

30

1 So that was how it happened in the first instance. It
2 was immediately when he came back, and there was
3 nothing new to add.

4 271 Q. Yes. So what you are anxious - what you appear - or
5 am I correct in understanding that you were anxious
6 that Mr. Turvey would have had the benefit of what
7 Mr. Finnegan had given in his explanation prior to Mr.
8 Turvey preparing his explanation in relation to the
9 entries?

10 A. No, I don't think that is correct, no.

11 272 Q. Well, why give him the statement and the explanation
12 otherwise?

13 A. Because I was trying to see if I had said the wrong
14 thing. We had done it, it had taken hours to put it
15 down. It was easier to say, where it says "M Town",
16 that is what his understanding was, is it the same as
17 Mr. Finnegan's.

18 273 Q. What do you mean when you say "I was anxious to say the
19 right thing"? Did you prepare Mr. Finnegan's analysis
20 and explanation?

21 A. Certainly helped on it, yes.

22 274 Q. Is it your explanation and analysis that we have, or is
23 it Mr. Finnegan's explanation and analysis that we
24 have?

25 A. No, I think it would be Mr. Finnegan's explanation and
26 analysis. I actually sat at the typewriter and typed
27 it in at the time, going down through line-by-line of
28 what do we think it was.

29 275 Q. When you say "what do we think it was", are you talking
30 about the combined efforts of yourself and

1 Mr. Finnegan, or are you talking about Mr. Finnegan?

2 A. No. No. Sorry, I am talking about Mr. Finnegan.

3 276 Q. So Mr. Finnegan's statement and explanation in
4 connection with the bank accounts is Mr. Finnegan's
5 solely?

6 A. Yes.

7 277 Q. And Mr. Finnegan prepared that document?

8 A. No, I did.

9 278 Q. You prepared the document from instructions from
10 Mr. Finnegan?

11 A. Yes.

12 279 Q. And then you gave that document to Mr. Turvey?

13 A. Well, I gave it to you first.

14 280 Q. You gave it to Mr. Turvey when he came back from
15 holidays?

16 A. Yes.

17 281 Q. Prior to Mr. Turvey furnishing his statement and
18 explanation to the Tribunal in connection with the same
19 transactions?

20 A. Yes.

21 282 Q. Thank you very much. Miss O'Neill, would you answer
22 any questions that anybody else has.

23 .

24 CHAIRMAN: At this moment in time it is five minutes to
25 12. I think I will take a break.

26 .

27 MR. HUSSEY: I literally have two questions. I think
28 if we can finish with the witness.

29 .

30 CHAIRMAN: Carry on, if that is how you feel.

1

2 THE WITNESS WAS THEN EXAMINED BY MR. HUSSEY AS FOLLOWS:

3 .

4 283 Q. MR. HUSSEY: I think, Miss O'Neill, Mr. Finnegan's

5 explanation, the line-by-line explanation of the

6 accounts that was given into the Tribunal, was before

7 ever there was any discussion about Mr. Turvey. I

8 think Mr. Turvey was on holidays at the time when the

9 Dudgeons' file came to light?

10 A. Yes.

11 284 Q. While I think you had identified Mr. Turvey's writing,

12 his annotations on the accounts, you hadn't spoken to

13 Mr. Turvey about the particular --

14 A. That's right. I couldn't speak to him.

15 285 Q. Before Mr. Finnegan's explanation went into the

16 Tribunal?

17 A. That's right.

18 286 Q. Thank you, Miss O'Neill.

19 A. Thank you.

20 .

21 CHAIRMAN: Anybody else before we break for - very

22 good. I think - does that finish Miss O'Neill as far

23 as you are concerned?

24 .

25 MS. DILLON: Yes, that concludes Miss O'Neill's

26 evidence.

27 .

28 CHAIRMAN: Thank you very much for coming down. We

29 will sit again at a quarter past 12.

30 .

1 THE TRIBUNAL THEN ADJOURNED FOR A SHORT RECESS AND

2 RESUMED AGAIN AS FOLLOWS:

3 .

4 MR. HANRATTY: Mr. Hugh Owens, please.

5 .

6 MR. GLEESON: Sir, I might indicate my name is Eugene

7 Gleeson. I am instructed by Miss Fiona O'Sullivan of

8 A&L Goodbodys to act for Mr. Hugh Owens.

9 .

10 You may recall we were here last Friday, I think, and

11 you directed that we wouldn't be reached last Friday,

12 and that we should return today.

13 .

14 CHAIRMAN: Very good, Mr. Gleeson.

15 .

16 MR. GLEESON: Thank you.

17 .

18 .

19 .

20 .

21 .

22 .

23 .

24 .

25 .

26 .

27 .

28 .

29 .

30 .

1 MR. HUGH OWENS WAS EXAMINED BY MR. HANRATTY AS FOLLOWS:

2 .

3 287 Q. Good afternoon, Mr. Owens. Could I ask you first of

4 all, could you give us a briefly a resume or summary of

5 your dealings with Messrs. Brennan and McGowan?

6 A. Well, Brennan and McGowan became clients of ours in the

7 late '60s --

8 .

9 CHAIRMAN: The witness hasn't been sworn.

10 .

11 MR. HANRATTY: I am sorry, I beg your pardon.

12 .

13 MR. HUGH OWENS, HAVING BEEN SWORN, WAS EXAMINED BY

14 MR. HANRATTY AS FOLLOWS:

15 .

16 288 Q. MR. HANRATTY: Yes, sorry. Carry on, Mr. Owens.

17 A. Oh, they became clients of mine in the late '60s, and,

18 well, like all builders, they started off very small

19 and gradually became quite big.

20 289 Q. Were you a sole practitioner at the time?

21 A. No, I was with Sean Murray in partnership, Owens

22 Murray.

23 290 Q. That firm subsequently became known as Kinnear Owens

24 Murray?

25 A. We merged with Kinnears in the late '80s, '87, I think.

26 291 Q. Did you retire at that time?

27 A. I did.

28 292 Q. Yes.

29 .

30 In any event, you started a professional relationship

1 with Messrs. Brennan and McGowan in the late '60's you

2 say?

3 A. Yes.

4 293 Q. If you just take it from there, then.

5 A. Yes, they started building at Brennan & McGowan

6 Limited, and then they acquired a big site out in

7 Tallaght, called Kilnamanagh. They then started

8 trading as Kilnamanagh Estates Limited. They became

9 one of the biggest house builders in the late '70's in

10 Dublin.

11 294 Q. And were you acting for the companies at the time, or

12 for either Tom Brennan or Joe McGowan personally, or

13 both?

14 A. Well, my firm would have been acting for them

15 personally for tax purposes, but I would have been

16 acting as the auditor of their companies.

17 295 Q. Yes. And as the auditor of their companies,

18 presumably you would have had on-going dealings with

19 them on a regular basis, certainly on an annual basis

20 at least?

21 A. More often than that, Mr. Hanratty.

22 296 Q. And you would have had contact with them in your

23 capacity as the companies or the auditor of the various

24 companies, but would you also have had contact with

25 them in connection with their own affairs?

26 A. Yes.

27 297 Q. Well, taking it then into the '70's and throughout the

28 '70's, could you tell us about the level of the

29 professional relationship you had, whether it

30 increased, stayed the same and so on?

1 A. Well, as the companies increased in size, there was
2 more relationship.

3 298 Q. Yes. And towards the, or between the mid and the late
4 '70s, then, we know that they became involved in a
5 series of land deals in which you were involved?

6 A. Yes.

7 299 Q. In a professional capacity?

8 A. Yes.

9 300 Q. Would you just tell us how that came about?

10 A. Well, it goes back, actually, a couple of years, and I
11 was involved in a major tax case, which - it eventually
12 went as far as the High Court. Luckily, we had Joshua
13 Baker acting for us, and we won the case. There is a
14 very - there was very big money involved. And as a
15 result of that --

16 301 Q. Which company was that?

17 A. Spa Estates verses Liam Horgan, Inspector of Taxes.

18 302 Q. Yes. Was that the first occasion in which you would
19 have been specifically involved in relation to tax, or
20 was it just an occasion in which you had a particular
21 involvement in litigation with them?

22 A. That particular company was not a Brennan and McGowan
23 company. It was another client.

24 303 Q. Yes?

25 A. And as a result of winning at that tax case, I think
26 the tax involved was well over ú300,000. The word
27 spread around the builders that I was fairly good at
28 tax in relation to property.

29 304 Q. Yes?

30 A. But I wouldn't be a tax expert as the people in the

1 bigger firms would be.

2 305 Q. Yes. Well, when was the first time that you became
3 involved with Brennan and McGowan in relation to a tax
4 scheme which involved companies in Jersey?

5 A. That would be in about 1977, I think, Mr. Hanratty.

6 306 Q. And was that the one involving the lands in Monkstown?

7 A. That was the first one.

8 307 Q. Yes. In general, in your dealings with Brennan and
9 McGowan, from whom did you receive your instructions?

10 A. In general, Tom Brennan.

11 308 Q. That would be in relation to the Brennan and McGowan
12 companies?

13 A. Yes, and in relation to these tax schemes.

14 309 Q. I see. Obviously, Mr. McGowan, to the extent that he
15 consulted you in his own personal capacity, would
16 himself have given you his instructions, but in
17 relation to the companies, do I take you correctly to
18 suggest that it was Mr. Brennan who by-and-large did
19 the business?

20 A. For the most part, yes.

21 310 Q. Yes. And when this matter was coming up, which as you
22 said was 1977, can you tell us how it first arose? Did
23 he come to you and say, "We are about to get involved
24 in a series of land transactions", or did he simply
25 come to you on the basis that there was one
26 transaction?

27 A. Oh, just one transaction initially.

28 311 Q. Yes. At the time of the Monkstown transaction, was
29 there any other transaction that you were aware of,
30 when you first received instructions from him?

1 A. Not to my recollection, no.

2 312 Q. Yes. And what were your instructions in general in
3 relation to the Monkstown land?

4 A. Well, the instructions in relation to the Monkstown
5 land is - was that the - they had acquired the
6 leasehold interest of the Sacred Heart Nuns in that
7 site in Carrickbrennan Road in Monkstown.

8 313 Q. Yes?

9 A. And that, apparently, was - the purchase was subject to
10 the acquisition of the freehold, so that they could
11 then go ahead and there would be restrictive covenants
12 in the head lease, which was a De Vesci lease, if I
13 remember correctly.

14 314 Q. Yes?

15 A. And they acquired at least - at least the nuns applied,
16 I believe, to buy out the head rent.

17 315 Q. Yes?

18 A. And passed it on then to Brennan and McGowan.

19 316 Q. Yes. Well, what were your instructions from Mr.
20 Brennan in relation to the matter? First of all, did
21 he tell you about Mr. Finnegan's involvement?

22 A. Yes.

23 317 Q. And can you just tell us what he told you about that?

24 A. Well, he told me that John Finnegan would be a
25 one-third shareholder in any profits arising.

26 318 Q. Yes. In your statement to the Tribunal in reference
27 to Mr. Finnegan, you say that, if I can find the
28 passage, but I think you say that - yes, on page 4 you
29 say, paragraph 10:

30 .

1 "Essentially Tom Brennan, Joseph McGowan and John
2 Finnegan wished to purchase lands at Carrickbrennan in
3 Monkstown owned by the Sacred Heart Nuns."

4 A. (Document handed to witness.) Thank you. Yes, I see it
5 now. Yes.

6 319 Q. It was your understanding that Mr. Finnegan was
7 involved in the deal in his capacity as a one-third
8 purchaser with Mr. Brennan and Mr. McGowan, or it was
9 in some other capacity?

10 A. I don't understand the question.

11 320 Q. Could you just explain to us what you mean by this
12 statement, "Essentially Tom Brennan, Joseph McGowan,
13 and John Finnegan wished to purchase lands at
14 Carrickbrennan in Monkstown owned by the Sacred Heart
15 Nuns."

16 A. Well, it means to me - it means that John Finnegan was
17 a partner at that stage with Brennan and McGowan in
18 this particular land transaction.

19 321 Q. We know that there was some arrangement or agreement or
20 understanding between Mr. Finnegan and Mr. McGowan,
21 there have been some issues as to what precisely the
22 nature of that arrangement was. Can you tell us, as
23 far as you can recall, what your understanding of the
24 nature of the agreement with Mr. Finnegan was?

25 A. Basically that he was a one-third shareholder.

26 322 Q. Yes?

27 A. In the overall division of the profits.

28 323 Q. Well, we know, for example, that for the purpose of the
29 Monkstown scheme, you wrote to Mr. Wheeler, and you
30 instructed him that you required two companies, and you

1 set out the reasons for that, and we will deal with
2 that in a moment. But essentially two companies were
3 set up, Bouganville and Rapallo. And the involvement
4 of the Jersey company was confined entirely to the
5 freehold interest in the property?

6 A. That's correct.

7 324 Q. And the freehold interest in the property was bought
8 for ú10,000?

9 A. Yes.

10 325 Q. But was subsequently sold back to an Irish company
11 called Green Isle Holdings Trust Limited in
12 consideration of that company discharging an
13 indebtedness which had arisen under the arrangements
14 that you had put in place between the two Jersey
15 companies for ú350,000?

16 A. Something of that figure, yes.

17 326 Q. And the ú350,000 was, in fact, sent over to Jersey, and
18 after the payment of some expenses was distributed
19 equally between the three parties?

20 A. That's correct.

21 327 Q. But that was the end, and everybody appears to be in
22 agreement that that was the beginning and end of
23 Mr. Finnegan's involvement in the matter, in that he
24 did not further participate, as we understand it, in
25 the subsequent development or disposition of the
26 property?

27 A. That's correct.

28 328 Q. So, to that extent, he wasn't a full equal one-third
29 partner with Messrs. Brennan and McGowan?

30 A. Not in relation to their Irish companies, only to any

1 Jersey transactions.

2 329 Q. I see. And was that your understanding as to the
3 extent of his involvement?

4 A. Yes.

5 330 Q. Yes. In relation to Monkstown, each of the parties
6 were given €100,000 after the payment of certain
7 expenses?

8 A. Yes.

9 331 Q. On what basis was it decided that Mr. Finnegan would
10 receive, and indeed Mr. Brennan and Mr. McGowan
11 €100,000 each?

12 A. Because it was a third after expenses of the monies
13 going to Jersey.

14 332 Q. Yes. But the monies going to Jersey were borrowed
15 substantially, isn't that right?

16 A. Yes.

17 333 Q. So somebody had to decide how much to borrow, and they
18 were borrowed by Green Isle Holdings Trust Limited,
19 which had a substantial Brennan and McGowan ownership
20 and was, in fact, in turn owned by a company called
21 Lansdowne Construction Limited?

22 A. Yes.

23 .

24 MR. HAYDEN: Sorry, Sir. For the purposes of the
25 record, Lansdowne owned 98 percent of Green Trees --

26 .

27 MR. HANRATTY: Green Isle.

28 .

29 MR. HAYDEN: Green Isle. As I understand it, and the
30 ownership of Lansdowne was in relation to the parties,

1 12-and-a-half percent in relation to Mr. Brennan, so
2 just to make - Mr. Hanratty indicated a substantial
3 Brennan and McGowan - just to put the record straight.
4 .

5 334 Q. MR. HANRATTY: The Irish company was borrowing monies
6 that were going to be sent over to Jersey and shared
7 equally between the three partners, to use that phrase
8 loosely?

9 A. Yes.

10 335 Q. So somebody had to decide how much the Irish company
11 was going to borrow. Was that you?

12 A. No.

13 336 Q. Well, then, does that mean that you were instructed by
14 Mr. Brennan how much the Irish company was going to
15 borrow, to send over to Jersey?

16 A. Yes.

17 337 Q. You see, we know that the freehold was purchased from
18 the Society of the Sacred Heart for ú10,000?

19 A. Yes.

20 338 Q. And therefore, somebody had to decide how much profit,
21 as it were, was going to be generated, in other words,
22 how much extra would be paid for this interest by the
23 Irish company buying it back off the Jersey company, if
24 you know what I mean?

25 A. Well, my understanding of it was that the Irish company
26 bought the land back at market value, having the
27 benefit of planning permission and freehold title.

28 339 Q. Well, it didn't quite happen that way. What happened
29 was that in 1976, in August 1976, the consortium, shall
30 we say - well, sorry, in 1976, Green Isle Holdings

1 Trust Limited bought the leasehold interest of the nuns
2 for ú210,000. In fact, it was a Brennan and McGowan
3 company. Green Isle came in later. But an agreement
4 was entered into with the nuns, I think perhaps by
5 Kilnamanagh Estates, or perhaps Joe McGowan in trust, I
6 can't specifically remember, I think it was Joe McGowan
7 in trust, to buy the leasehold interest for ú210,000.

8 The nuns agreed and entered into an agreement with the
9 Longford and De Vesci Estate to buy in the freehold for
10 ú10,000. You put together your scheme involving
11 Bouganville and Rapallo in June of 1977, that was
12 before the planning permission had come in, and
13 obviously, before either of these two deals, either for
14 the freehold or the leasehold, had been completed.

15 .

16 But it seems, from the evidence certainly we have seen,
17 that obviously the intention was that this property was
18 bought for development, and that in order to develop
19 the property, it was necessary to bring in the
20 freehold. But this particular arrangement in Jersey,
21 as you've already agreed, only concerned the freehold
22 interest which had been bought for ú10,000?

23 A. Yes.

24 340 Q. And that interest was sold in effect for ú350,000, not
25 long afterwards?

26 A. Yes.

27 341 Q. Now somebody had to make a decision about the ú350,000.

28 Somebody had to decide, would we sell - would the
29 Jersey company, Bouganville, sell its interest for
30 200,000, or 350,000 or a million, and they decided on

1 350,000. Now, can you tell us what was the basis of
2 that decision?

3 A. So much for plot, that they got the planning permission
4 for.

5 342 Q. Well, they hadn't got the planning permission at this
6 point?

7 A. I thought they had.

8 343 Q. I think the planning permission came in sometime in the
9 autumn of 1977. They had applied for planning
10 permission, obviously, but they had not yet received
11 it. I think that's the sequence?

12 A. Well, I don't remember the exact sequence, I am afraid.

13 344 Q. Right. Well, in any event, is it the position that
14 insofar as there was going to be a premium, shall we
15 say, paid by the Jersey company, you were told or
16 instructed by your clients what the premium was to be?

17 A. No.

18 345 Q. Well, how did you find it out, then?

19 A. Find out what? Sorry, the land was valued by Tom
20 Brennan, if I remember rightly at "X" pounds a plot. I
21 forget how many plots there were on that particular
22 piece of land. But if I remember, I think it was
23 £14,000 per plot.

24 346 Q. Yes?

25 A. And that was the price that was paid.

26 347 Q. By Green Isle Holdings Trust Limited?

27 A. Yes.

28 348 Q. Well, we know that the £350,000 that was paid was
29 actually paid under an agreement under which Green Isle
30 would discharge an indebtedness under a management

1 agreement that Bouganville had to Rapallo?

2 A. Yes.

3 349 Q. And there wasn't, there is no document that we are
4 aware of, indicating that the ú350,000 was arrived at
5 by reference to a valuation of each plot?

6 A. ú350,000 was for a period of so much per month, if I
7 remember rightly.

8 350 Q. The original management agreement that was entered into
9 between the two Jersey companies under which Rapallo
10 would provide management services to Bouganville was
11 for ú10,000 per month for two years and 11 months,
12 which would amount in total to ú350,000 I think?

13 A. Yes.

14 351 Q. But that never happened, in the sense that we have been
15 told that Rapallo did not have any staff, it didn't
16 have any offices, it didn't have any infrastructure,
17 and it certainly didn't have the capacity to provide
18 any services, and that it did not, in fact, provide any
19 services. And that for whatever reason, Bouganville or
20 Green Isle, or the parties shall we say, treated the
21 whole ú350,000 as being due at the start, and in fact
22 we know that the ú350,000 was, in fact, sent over from
23 Ireland to Jersey from Green Isle to Bouganville in
24 November of 1977?

25 A. Yes.

26 352 Q. So, the two years and 11 months thing didn't really
27 happen, although it was specifically provided for in
28 the agreement that was entered into between the two
29 Jersey companies?

30 A. That's correct.

1 353 Q. Well, can you perhaps explain it, from your own
2 perspective to us. We know in general what the
3 mechanics of the arrangement was. Can you explain to
4 us what you did in the context of the instructions
5 which you had received from Mr. Brennan?

6 A. I can't remember.

7 354 Q. Well, perhaps we will try and assist you in refreshing
8 your memory.

9 .
10 You will recall that in or around June of 1977 you
11 wrote to Mr. Wheeler giving him instructions in
12 relation to the matter?

13 A. Yes.

14 355 Q. And as part of those instructions, you drafted a series
15 of letters which had to be exchanged by various
16 solicitors?

17 A. Yes.

18 356 Q. And effectively what was orchestrated in the
19 correspondence was that Bouganville would or solicitors
20 on behalf of Bouganville would write to - sorry,
21 solicitors on behalf of Green Isle would write to
22 Bedell & Cristin on behalf of Bouganville saying that
23 they understood that Bouganville owned the freehold of
24 the property, saying that they would be interested in
25 buying it and inquiring whether Bouganville would be
26 interested in selling it. Their solicitors would write
27 back. You drafted all of these letters in advance,
28 saying no, they wouldn't be interested in selling it,
29 but if you are prepared, the shareholders would be
30 prepared to sell out their shares, provided you pay an

1 indebtedness of ú350,000 owed by this company to
2 another Jersey company. Do you remember that much?

3 A. Yes.

4 357 Q. That was the structure that you put in place?

5 A. Yes.

6 358 Q. Yes. Now, what were the instructions on foot of which
7 you put that structure in place from Mr. Brennan?

8 A. I can't remember any instructions from him.

9 359 Q. Well, did you get your instructions from him?

10 A. I got the instructions from him to put the freehold
11 into Jersey, and I explained to him the broad basis of
12 my scheme.

13 360 Q. Well, could you just explain it to us.

14 .

15 MR. HAYDEN: I wonder, Sir, might I just at this stage
16 inquire as to the scheme.

17 .

18 You, Sir, have heard the evidence of its existence and
19 the back and forth in relation to the monies. I
20 understood your rulings earlier on in the context of
21 why that inquiry had to be advanced to ensure that the
22 money went and where it went.

23 .

24 Now, this question, in my submission, Sir, seems to be
25 going away from that, because Mr. Owens - clearly the
26 structure is there, but Mr. Owens' involvement of the -
27 in the context of putting the structure into place, not
28 as to where the monies went and didn't go in the
29 context of this Tribunal already having seen that. And
30 if it is the case that Mr. Hanratty is embarking upon a

1 Revenue inquiry, which is the rationale behind why the
2 scheme was why it was, which is far different than the
3 Terms of Reference of this Tribunal, it may be that I
4 have misunderstood the question.

5 .

6 If Mr. Hanratty could identify which particular heading
7 under the Terms of Reference - the rationale behind the
8 scheme in the context of a professional witness's,
9 person's involvement in it, I could understand that.

10 If I could understand which Term of Reference that
11 comes under, as distinct from you, Sir, which you
12 rightly ruled earlier on, indicating that you needed to
13 see the individual's involvement, Mr. Brennan,
14 Mr. McGowan, Mr. Finnegan, where the money went and
15 where it came back from, as that you had an
16 understanding as to the flow of monies. I could
17 certainly see the rationale of that.

18 .

19 The rationale of the identification of the purpose for
20 the scheme in the context of the professional advisor's
21 involvement is, in my submission, not clear to me under
22 which Term of Reference that comes.

23 .

24 MR. HANRATTY: First of all I can confirm, Sir, I am
25 not embarking on any Revenue inquiry, as I have
26 repeatedly said in this Tribunal. I am interested in
27 the mechanics of the scheme and the structure of the
28 scheme, so far as the facts are concerned. What the
29 implications are, further down the road, if any, are
30 concerned, I have no interest in whatsoever.

1 .

2 CHAIRMAN: It is purely the phrase - you are looking at

3 the framework in which the whole --

4 .

5 MR. HANRATTY: The factual --

6 .

7 CHAIRMAN: The factual framework.

8 .

9 MR. HAYDEN: I understand that. That is why you ruled

10 earlier, as I understood, Sir, when the factual

11 framework was being established in the context of going

12 through the ins and outs of this structure.

13 .

14 We are now - the last question that Mr. Hanratty was

15 posing - I don't wish to delay you. I understand the

16 desire to get this matter finished. The question that

17 Mr. Hanratty put to Mr. Owens seems to be a question

18 predicated on the rationale in the context of why he

19 devised this scheme.

20 .

21 CHAIRMAN: I don't understand it as such.

22 .

23 This is the witness who conceived the pattern or

24 framework. He is outlining what the framework was.

25 Now, I know, we all know that the framework, the

26 theoretical framework was departed from to a very

27 limited extent, but we want to know the basis upon

28 which the whole scheme is intended to operate. It is

29 perfectly relevant and perfectly appropriate.

30 .

1 361 Q. MR. HANRATTY: Yes. What I was seeking to elicit from
2 you, Mr. Owens, is in the context of the instructions
3 that you received from Mr. Brennan. Could you just
4 explain to us how you went about implementing your
5 instructions and the objective you had?

6 A. Well, I have no papers, as you are aware. And I only
7 know what has been discovered in the B McG brief. If
8 it is not obvious there, I am afraid I can't help you.

9 362 Q. You see, the problem with that, Mr. Owens, is Mr.
10 Brennan and Mr. McGowan have been questioned
11 extensively about this, and each of them have passed
12 this on in effect to you, on the basis that they didn't
13 understand it, and that you were the person who
14 conceived it, and that any questions we had on this
15 subject would have to be dealt with by you.

16 A. Well, I did conceive it, yes. There is no question
17 about that.

18 363 Q. So, presumably, you are the person best in a position
19 to explain it to us?

20 A. Well, I thought it was really self-explanatory, that
21 Bouganville bought the freehold, and they entered into
22 a management account with Rapallo, is it?

23 364 Q. Rapallo, yes.

24 A. Rapallo. And then subsequently the Irish company which
25 was --

26 365 Q. Green Isle?

27 A. Green Isle, that Green Isle bought the shares in
28 Bouganville, liquidated the company, liquidated
29 Bouganville, and acquired the freehold in specie from
30 the liquidator.

1 366 Q. Yes. Well, let's just take it in stages.

2 .

3 You wanted two companies formed in Jersey, and you

4 wrote to Mr. Wheeler and you asked him to do that?

5 A. Yes.

6 367 Q. We know that he did that and that he caused Messrs.

7 Brennan and McGowan and Mr. Finnegan to be registered

8 as one-third beneficial owner of each of those

9 companies, although none of them were either a director

10 or a shareholder of the company?

11 A. That's true.

12 368 Q. Was it your instructions that Mr. Finnegan was to be a

13 one-third beneficial owner of each of these two Jersey

14 companies?

15 A. Yes.

16 369 Q. Or did you decide that yourself?

17 A. No, I was instructed that he was - they were one-third

18 each.

19 370 Q. Yes. And as I understand it from a previous answer you

20 have given, it was your understanding that

21 Mr. Finnegan, Mr. Finnegan's interest was to be

22 confined to the Jersey companies?

23 A. That's correct.

24 371 Q. And that anything that he was entitled to share in was

25 anything to which the Jersey companies, of which he was

26 a one-third owner, were entitled to?

27 A. Correct.

28 372 Q. Yes. Now, you wrote to Mr. Owens (SIC) on the 23rd of

29 June of 1977, if we can just briefly look at that at

30 page 147.

1 .
2 Yes. What you say to him is:
3 .
4 "Further to our telephone conversation, I confirm that
5 I want two new companies formed. One will be dealing
6 with the land, and the second, an investment holding
7 company.
8 .
9 The beneficial owners will be Thomas Brennan Esquire,
10 22 Park View, Castleknock, County Dublin.
11 Joseph McGowan, Dollanstown Stud, Kilcock, County
12 Kildare.
13 And John Finnegan, Seapoint House, Monkstown, County
14 Dublin.
15 .
16 First company will enter into a contract to purchase a
17 ground rent for €10,000. The second company will take
18 an assignment of the contract and complete the purchase
19 and give the first company a profit, the amount of
20 which has yet to be determined. When this second
21 company has become the registered owner of the ground
22 rent, an Irish trading company will buy its shares and
23 the second Jersey company will then be liquidated, and
24 there will be an in specie distribution of the rent to
25 the Irish trading company."
26 .
27 It is obvious from that, that you tweaked this, as it
28 were, later on?
29 A. It certainly was changed, yes.
30 373 Q. But in broad terms, the scheme was ultimately the same

1 and an in specie distribution did, in fact, ultimately
2 occur, but the bit in the middle, as it were, was
3 changed and the management agreement was substituted
4 for the leasing agreement?

5 A. That's correct, yes.

6 374 Q. But you say, that when the second company has become
7 the registered owner of the ground rent, an Irish
8 trading company will buy its shares, and the second
9 Jersey company will be liquidated, and there will be an
10 in specie distribution. You make reference in the same
11 paragraph, that the first company will be given a
12 profit, "the amount of which has yet to be determined".

13 .

14 Do I take it from that, that you had not yet been
15 instructed as to the amount of the profit --

16 A. Yes.

17 375 Q. -- by Mr. Brennan?

18 A. Yes.

19 376 Q. And you then go on to say:

20 .

21 "There are two points on which you may be able to help
22 me. Assume the first company takes a profit of
23 ú200,000."

24 .

25 Then I think you go on and make a number of queries
26 arising - which may arise under Jersey law.

27 .

28 Why did you first of all decide to use Bedell & Cristin
29 for this purpose?

30 A. Because I had a friend here in Dublin who worked for

1 Royal Trust when they were in Dublin, and I asked them
2 for a name of a reputable Jersey firm of solicitors and
3 they recommended Bedell & Cristin.

4 377 Q. Yes. Was this the first time that you used Bedell &
5 Cristin in connection with any Brennan and McGowan
6 matter?

7 A. Yes.

8 378 Q. Was this the first time you became involved with any
9 Jersey companies in connection with any Brennan and
10 McGowan matter?

11 A. Yes.

12 379 Q. Yes.

13 .

14 So, you gave these instructions to Mr. Owens --

15 A. Not Mr. Owens.

16 380 Q. To Mr. Wheeler?

17 A. Mmm.

18 381 Q. And then you wrote to him again on the 7th of July,
19 after which, obviously, or by the time, at least, he
20 appears to have formed these companies, because he now
21 refers in the heading to Rapallo and Bouganville. If
22 we just have page 153, please.

23 .

24 You say:

25 .

26 "Thank you for your letter of the -" you can see the
27 Rapallo Limited and Bouganville are in the heading.

28 .

29 "Thank you for your letter of the 29th June. With
30 reference to paragraph two of that letter, the persons

1 with whom I have most dealings in Royal Trust are

2 Mr. Humpleby and Mr. Charles."

3 .

4 I can't make that out.

5 .

6 "While not deliberately unhelpful, I have found them to

7 be totally tied up in red tape. In that connection I

8 would only need ú20,000 back-to-back from 3rd of August

9 for two weeks.

10 .

11 There will be three Dublin solicitors acting in this

12 case. The first is Vincent and Beatty, 67 Fitzwilliam

13 Square, Dublin 2, who act for the Sacred Heart Nuns,

14 who have a contract for the purchase of the freehold of

15 their property. The second firm will be Young &

16 O'Reilly Solicitors, 1 Lower Leeson Street, Dublin 2,

17 who will act as your agents in the investigation of the

18 title, etc. on the purchase of the property. The third

19 firm will be Miley & Miley Solicitors, 12 South

20 Frederick Street, Dublin 2, who will act for the

21 ultimate purchaser of the shares of Bouganville.

22 .

23 Since I have wrote to you on the 23rd of June, I have

24 had consultations with solicitors over here, and the

25 revise and final scheme is enclosed. Bouganville will

26 take the property direct without going through Rapallo,

27 and Rapallo will take its profit by entering into a

28 management agreement with Bouganville.

29 .

30 Enclosed is a memorandum consisting of six paragraphs

1 describing in general the scheme from the beginning to
2 end. Also enclosed is a detailed timetable of 16
3 letters and events, and please note that the dates on
4 the letters must be as per the enclosed timetable. The
5 three Irish solicitors are also getting their relevant
6 timetables, insofar as concerns each firm.

7 .

8 Enclosed is a draft of the first letter for you to send
9 on the 29th June. The second letter dated the 6th of
10 July could follow simultaneously."

11 .

12 Then on page 154 you can see the scheme as set out on
13 that page.

14 .

15 Now, I take it that this scheme was put to you in
16 consultation with Mr. Brennan, or did you come up with
17 this on your own?

18 A. I came up with this on my own.

19 382 Q. On your own?

20 A. Yes. Tom Brennan would have no tax knowledge.

21 383 Q. Yes. And having come up with it, did you then explain
22 it to him?

23 A. Well, broadly, yes.

24 384 Q. Yes. The instructions which you had indicated that
25 Mr. Finnegan was going to be involved to the extent of
26 being a one-third then beneficial owner of the Jersey
27 bit of the operation, shall we say?

28 A. Correct.

29 385 Q. You knew that there was a purchase of the leasehold
30 interest, I presume, from the nuns and that a contract

1 had already been signed the previous year?

2 A. I did, yes.

3 386 Q. Approximately how long before this correspondence would

4 you have been instructed? Would it have been

5 relatively - not too long, or would it have been in

6 1976 when the contract was signed with the nuns?

7 A. No, I think it would have been when they were acquiring

8 the freehold, which would have been 1977.

9 387 Q. Yes. And when a decision was made that the leasehold

10 would have nothing to do with this particular, or with

11 these particular companies in Jersey, would that have

12 been your decision?

13 A. No.

14 388 Q. Whose decision would that have been?

15 A. I presume Brennan and McGowan.

16 389 Q. Yes. One of the questions which has arisen in the

17 course of the evidence in the Tribunal, is that Mr.

18 Brennan has told us, and also Mr. McGowan, that

19 Mr. Finnegan did not invest money in the scheme, but

20 Mr. Finnegan has told us that he did, and that in the

21 case of this particular scheme he invested ú33,333.33

22 pence. Did you have any knowledge of Mr. Finnegan

23 investing money in it?

24 A. I have no evidence of it.

25 390 Q. Did anybody ever tell you about it?

26 A. No.

27 391 Q. Were you ever aware that Mr. Finnegan was supposed to

28 invest money in this --

29 A. No.

30 392 Q. -- venture?

1 A. No.

2 393 Q. And were you ever aware that he had, in fact, invested
3 any money in it, if he had?

4 A. No.

5 394 Q. Well, does it come as a surprise to you?

6 A. Well, I can't see - if we are speaking about this
7 particular deal --

8 395 Q. Yes?

9 A. If he invested 33,000 odd, presumably the other two
10 would have also had to have invested 33,000, making up
11 a total of a hundred. And there is only ú10,000 needed
12 for this particular transaction to buy the freehold, so
13 I don't understand why he would have invested any money
14 in this particular one.

15 396 Q. Yes. Well, I did specifically put it to Mr. Finnegan
16 that it doesn't appear to fit anywhere into this
17 scheme?

18 A. Mmm.

19 397 Q. Because as you point out, it is - ú10,000 was the cost
20 of it. I specifically asked him, was it possible that
21 it may have been used to pay the balance of the monies
22 due to the nuns, and he denied that they were?

23 A. No, the balance of the monies for the nuns came from
24 Jersey. I think you will find correspondence --

25 398 Q. Sorry, we are at cross-purposes. I am talking about
26 the monies to close the sale of the leasehold. They
27 were paid a deposit of ú21,000. The contract for the
28 leasehold in 1976 was for 210. They were given a
29 deposit of 21. When the sale to the nuns closed they
30 would have to pay the balance of 189,000, and we know

1 that the balance to the nuns was sometime in November
2 of 1977 as well.

3 .

4 What I was exploring with Mr. Finnegan was would it be
5 possible that he put ú33,33.33 into that. Did you have
6 any knowledge as to whether he did or not?

7 A. No, I have no knowledge he put anything in.

8 399 Q. Yeah. Did anybody ever tell you that he put up part of
9 the money to buy the nuns' property?

10 A. As it being bought in an Irish company, if he had put
11 up some of the money, I would have found it when I was
12 doing the accounts.

13 400 Q. And did you?

14 A. No.

15 401 Q. Yes, indeed it was bought by Green Isle Holdings Trust
16 Limited?

17 A. Yeah.

18 402 Q. And did you ever see any evidence that he had put
19 ú33,000 towards the proceeds?

20 A. No.

21 403 Q. Was it your understanding at the time that all of the
22 monies to buy the nuns' leasehold interest was paid by
23 the Irish company?

24 A. That's correct.

25 404 Q. And would I be correct in thinking that had
26 Mr. Finnegan put ú33,333 into this venture in any
27 context, that you would have known about it?

28 A. Yes, that's correct.

29 405 Q. Because you would have known about it if it formed part
30 of the Jersey scheme, which it doesn't appear to have

1 done, and if it came into Green Isle or was applied in
2 discharge of a portion of a figure to be paid by Green
3 Isle, one way or the other, you, in your capacity as
4 auditor to the company, would have known about it?

5 A. Yes.

6 406 Q. Well, while we are on that subject, the next land
7 transaction involved the same company, Rapallo, except
8 it changed its name to Victa Investments Limited, but
9 here again, this was a property which was bought by a
10 Brennan and McGowan, or, in fact, by a Jersey, by
11 Jersey companies owned by Messrs. Brennan and McGowan,
12 and Finnegan, from, in this case, the Pembroke Estate.
13 And Mr. Finnegan has told us that he put up ú50,000 for
14 this particular venture?

15 A. Which one is this one now, Mr. Hanratty?

16 407 Q. This is the one in Donnybrook. And the one - Bellevue
17 Park, I think, it is called, in Donnybrook. This was
18 property which was bought from the Pembroke Estate,
19 which was bought into Victa under an arrangement with
20 Victa Investments Limited and Oakpark Developments
21 Limited. There was a license agreement. Oakpark
22 effectively borrowed a large amount of money and sent
23 it over to Victa, and Victa then distributed as to
24 one-third each, ú100,000 each, in fact. But
25 Mr. Finnegan has told us that he put ú50,000 into this
26 venture.

27 .

28 Again, are you aware of him having made any
29 contribution towards the acquisition costs of the
30 property?

1 A. No.

2 408 Q. Were you the auditor for Oakpark Developments Limited?

3 A. No. No. That was Freaney, Oliver Freaney & Co..

4 409 Q. Oliver Freaney. Then, is it possible that Mr. Finnegan

5 might have given €50,000 to Oakpark Developments

6 Limited?

7 A. It is possible.

8 410 Q. Did anybody ever tell you that he had?

9 A. No.

10 411 Q. And up to the recent past, when you have seen this

11 documentation circulated by the Tribunal, did you have

12 any knowledge that he had, or had you ever heard any

13 assertion that he had put up €50,000?

14 A. No.

15 412 Q. Do you think you would have known it, had that been the

16 case?

17 A. Well, I wouldn't necessarily have been told, because I

18 didn't act for Oakpark.

19 413 Q. Yes. Did you act for Lansdowne?

20 A. Yes.

21 414 Q. That was the company that was involved in the

22 acquisition of properties at Newtownpark Avenue?

23 A. That's correct.

24 415 Q. Properties owned by Mr. Maguire?

25 A. Yes.

26 416 Q. Mr. Finnegan, it appears, acted for Mr. Maguire. In

27 that case Mr. Finnegan asserts that he, or at least he

28 says he believes that he put in €33,333.33, a similar

29 sum as before?

30 A. Yeah.

1 417 Q. He says that he put this into the scheme, and that was
2 part of his arrangements with Brennan and McGowan,
3 although their belief is that he didn't.

4 .
5 Here, again, were you ever aware of Mr. Finnegan having
6 made a contribution of ú33,000 to any aspect of this
7 particular venture?

8 A. In relation to the John Maguire purchase?

9 418 Q. Yes.

10 A. No.

11 419 Q. No. Given that you were the auditor of Oakpark, sorry,
12 of Lansdowne Construction Limited, would you have come
13 across it in that capacity, had it been made?

14 A. Yes.

15 420 Q. And would that be true, even if it were not actually
16 given into the company, but perhaps paid separately to
17 the vendor of the property?

18 A. The cost price of the property, I would have traced
19 where the money came from.

20 421 Q. Yes.

21 A. And to my knowledge it didn't come from John Finnegan,
22 or any part of it.

23 422 Q. You are saying either way you would have become aware
24 of it as the auditor of the company?

25 A. Yes, yes.

26 423 Q. Again, we know that there was a scheme with Jersey
27 companies in this particular transaction. Did it in
28 any way fit into the scheme that you put together in
29 relation to Newtownpark Avenue?

30 A. I don't remember that particular scheme.

1 424 Q. Well, perhaps we might deal with it when we come to
2 deal with the scheme, very briefly.

3 .
4 We have fairly well established the nature of the
5 scheme, if you know what I mean, and more or less
6 understand the rationale behind the schemes. But there
7 are these issues which have arisen, and the one that I
8 am principally interested in is the question of whether
9 or not Mr. Finnegan may have made this contribution,
10 which he says, he believes that he did, albeit that he
11 says that on the basis of entries in certain bank
12 accounts he had in Foxtown?

13 A. Well, over all, Mr. Hanratty, I have no knowledge of
14 Mr. Finnegan contributing anything to either Jersey or
15 here.

16 425 Q. And when you were receiving your instructions from Mr.
17 Brennan in relation to these various schemes, as and
18 when they arose, were you ever instructed by him that
19 it was part of their arrangements that he was obliged
20 to make a financial contribution?

21 A. No.

22 426 Q. Was that ever part of your understanding as to what
23 these arrangements, such as they were, were between
24 Messrs. Brennan and McGowan on the one hand, and
25 Mr. Finnegan on the other hand?

26 A. Well, broadly speaking I understood that Mr. Finnegan's
27 involvement was his ability to acquire the freehold --

28 427 Q. Yes.

29 A. -- from his clients.

30 428 Q. Yes. Well, one can see that --

1 A. Which is not particularly easy, actually.

2 429 Q. Yes. Well, is it your understanding that that is why

3 he was paid these sums and brought into these schemes

4 by Messrs. Brennan and McGowan?

5 A. Yes. The freehold - the land was, at the freehold, was

6 pretty useless for development.

7 430 Q. Well, in the case of Monkstown, obviously the freehold

8 had to be got in, because the land was not capable of

9 development without it?

10 A. Correct.

11 431 Q. We know that. In the case of the property in

12 Donnybrook, what was purchased was capable of

13 development, because all of the, as it were, assembly

14 of the freehold and the leasehold appears to have been

15 done, and then it was simply sold on to Victa

16 Investments Limited?

17 A. Yeah.

18 432 Q. So, what was your understanding as to why Mr. Finnegan

19 was paid the sum he was paid in that case, which was

20 €101,000, I think?

21 A. Well, I don't remember that particular transaction.

22 433 Q. Yes.

23 A. Because it was, it was Oakpark were involved with it.

24 So I don't remember it actually.

25 434 Q. Well, I think, then, in the interests of expedition,

26 what I will do then is I will ask these questions in

27 context when I come to deal with each.

28 A. Fair enough.

29 435 Q. I think it will probably refresh your memory on it.

30 Would that be --

1 .

2 CHAIRMAN: That would be an appropriate moment to rise

3 for lunch. A quarter past two.

4 .

5 MR. YOUNG: My Lord, I represent Mr. Turvey. And I

6 just wish to state that I am here. But might I also

7 inquire into the fact if he will be reached today?

8 .

9 MR. HANRATTY: If they are, it would probably be well

10 after three o'clock, I would think. So I suppose it

11 would be safe to say that he won't be reached before

12 tomorrow morning, I think that is probably --

13 .

14 CHAIRMAN: Very good, Mr. Young.

15 .

16 MR. HANRATTY: Unfortunately there is a witness

17 specially fixed tomorrow morning. Mr. Caldwell is

18 coming tomorrow morning. I think Friday, therefore, is

19 the only date that Mr. Turvey can be called this week.

20 If that is suitable?

21 .

22 MR. YOUNG: Yes.

23 .

24 CHAIRMAN: Well, then, Mr. Young, shall we say half

25 past ten on Friday morning.

26 .

27 MR. HANRATTY: If you just bear with me for a second,

28 Sir.

29 .

30 CHAIRMAN: Just a moment, Mr. Young.

1 .
2 MR. HANRATTY: Yes, Sir. While his evidence will be
3 relatively short, it will still take at least an hour,
4 possibly an hour and a half, because there are a number
5 of documents to be gone through. I think perhaps
6 Friday would be the safest thing to say.

7 .
8 CHAIRMAN: Very good, then, Friday morning.

9 .
10 MR. HANRATTY: Yes.

11 .
12 CHAIRMAN: Half past ten.

13 .
14 MR. HANRATTY: If there is any change in that we will
15 notify Mr. Young.

16 .
17 CHAIRMAN: We will notify Mr. Young as the days
18 progress.

19 .
20 MR. YOUNG: May it please the Tribunal.

21 .
22 CHAIRMAN: Thank you.

23 .
24 .
25 THE TRIBUNAL THEN ADJOURNED FOR LUNCH

26 .
27 .
28 .
29 .
30 .

1 THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

2 .

3 436 Q. MR. HANRATTY: Mr. Owens, please.

4 .

5 Mr. Owens, in that correspondence there is reference to

6 a ú20,000 loan, and, in fact, it does appear that

7 Mr. Wheeler did make arrangements to get a short-term

8 ú20,000 loan for Bouganville?

9 A. That's correct.

10 437 Q. Was that for a particular purpose, so that an

11 accountant in Guernsey, I think it was, could certify

12 the state of affairs as of the date of the cash

13 deposit?

14 A. Yes.

15 438 Q. And it didn't have any other purpose, so far as we can

16 see?

17 A. It had the purpose that one didn't have to get a

18 Capital Gains clearance, because less than half of the

19 assets of the company consisted of land in the State of

20 Ireland.

21 439 Q. Yes. And that was, obviously, on the basis of the

22 valuation of ú10,000?

23 A. Yes.

24 440 Q. Am I right in thinking, Mr. Wheeler personally

25 guaranteed that borrowing?

26 A. Yes.

27 441 Q. Is there any particular reason why he did that? It

28 would be an unusual thing for a solicitor to do?

29 A. Obviously they wouldn't accept my guarantee, anyway,

30 being a non-resident.

1 442 Q. Yes. And did he have any indemnity in respect of his
2 own guarantee?

3 A. No. Not to my knowledge.

4 443 Q. Did he do it on trust, then, in effect?

5 A. Well, there is a very good degree of trust between
6 myself and Mr. Wheeler.

7 444 Q. Yes. Did you have dealings with Mr. Wheeler prior to
8 your dealings with him in connection with Messrs.
9 Brennan and McGowan?

10 A. No, I didn't. Sean Murray may have.

11 445 Q. Well, we know, for example, that Whisper Investments
12 Limited was formed at a point earlier in time than you
13 had dealings with Brennan and McGowan and Mr. Wheeler.

14 A. That's correct.

15 446 Q. And Whisper Investments Limited was formed by you for a
16 company unrelated to Brennan and McGowan?

17 A. That's right.

18 447 Q. Sometime - was it in 1974?

19 A. I can't remember, actually.

20 448 Q. We think it was in 1974.

21 A. Yeah.

22 449 Q. Which would suggest that you had at least an
23 acquaintanceship with Mr. Wheeler from that time on?

24 A. I don't think it was 1974, actually, because I don't
25 think we moved to Bedell Cristin till '75. One of
26 those years.

27 450 Q. So far as Glenree is concerned, you've told us in your
28 statement that Glenree was formed for the purpose of -
29 to ensure payment of fees, in effect, to Bedell
30 Cristin, because they wanted some kind of an insurance

1 that their fees would be paid?

2 A. Yes. Glencree was beneficially owned by Sean Murray
3 and myself, so we were prepared to use Glencree for
4 that purpose, to guarantee that his fees would be paid.

5 451 Q. Yes. If I could just refer you to page 3151.

6 .

7 This is a letter from you to Messrs. Bedell Cristin of
8 the 19th of April of 1974:

9 .

10 "I confirm instructions to incorporate two new
11 companies, Giddy Investments Limited for my account,
12 and Whisper Investments Limited for the account of
13 Glencree Investments, 33 Hill Street, St. Helier.

14 My address:" And you give your address.

15 .

16 That would appear to indicate it was 1974 that you had
17 Whisper formed, and that that would have been - was
18 that then the first commercial arrangements or dealings
19 you had with Mr. Wheeler, do you think?

20 A. Well, that wasn't with Mr. Wheeler.

21 452 Q. It was certainly not addressed to Mr. Wheeler. It's
22 addressed simply to Bedell Cristin?

23 A. It was addressed to Ms. Mourant.

24 453 Q. Oh, yes. Yes. Well, what I was really wanting to know
25 was when was the first time you had dealings with
26 Bedell Cristin?

27 A. That probably would have been the first.

28 454 Q. Yes. And I take it, it was you that introduced Bedell
29 Cristin to Messrs. Brennan and McGowan?

30 A. Yes.

1 455 Q. Yes. We also know that in 1984 Ray Burke opened -
2 formed a company through Bedell Cristin for which he -
3 which he opened an account.

4 .
5 Was it you that referred Mr. Burke, or were you aware
6 that Mr. Burke was having commercial dealings with
7 Bedell Cristin in 1984?

8 A. No, I wasn't.

9 456 Q. Yes. And when was the first time you became aware of
10 that?

11 A. Last year, when I met you.

12 457 Q. I see. Did Mr. Brennan ever mention to you that he had
13 dealings with Mr. Burke in Jersey?

14 A. No.

15 458 Q. Yes. Now, going back to the Donnybrook transaction.
16 You know that the monies were - the borrowings were
17 made by Oakpark - sorry, by Green Isle Holdings Trust
18 Limited, that the monies were sent over and the
19 payments out were made. And I think --

20 A. Page 6.

21 459 Q. Is it your statement?

22 A. Page 6 of my statement, yes.

23 460 Q. Yes. And it appears that one of the parties that were
24 in receipt of one of the payments that were made were
25 yourself. And what do you say that was?

26 A. That was fees for work done.

27 461 Q. Was that fees due to Owens Murray?

28 A. That's correct.

29 462 Q. It appears that it was sent to you personally in the
30 form of a draft, but is that a payment on foot of an

1 account with Owens Murray?

2 A. It would have been out - would have endorsed it to

3 Owens Murray.

4 463 Q. Yes. I see. That was, I think, ú32,000.

5 A. Paragraph 17 is 52,000.

6 464 Q. Yes, ú52,000. Now, were you aware of the manner in

7 which the sum being sent over to Jersey, which in this

8 case was ú350,000, was going to be divided before it

9 was sent over? In other words, had this been arranged

10 or agreed between yourself and Mr. Brennan?

11 A. It possibly was. I can't remember.

12 465 Q. We discussed very briefly this morning who would have

13 decided how much went over, and I understand from your

14 evidence that it wouldn't have been your decision.

15 A. Which particular one is this?

16 466 Q. The amount of money that went over to Jersey in

17 relation to the Monkstown property was ú350,000. This

18 was to discharge the indebtedness. If you recall,

19 there was an indebtedness created between Bouganville

20 and Rapallo?

21 A. Yes.

22 467 Q. And it was - discharge of that indebtedness was

23 consideration for the shareholding in Bouganville to

24 Green Isle Holdings Trust Limited?

25 A. Correct.

26 468 Q. So the figure was ú350,000. In fact, the breakdown we

27 have is for 200,000 to Jersey International Bank of

28 Commerce, which was ú100,000 each to Messrs. Brennan

29 and McGowan respectively. ú100,000 which was, in fact,

30 sent, we know, to Foxtown Investments Limited.

1 Kilnamanagh Estates was sent a draft for ú11,000. John
2 Finnegan personally received a draft for ú5,000. And
3 you received a draft, in this case, for ú32,000, I
4 think?

5 A. That's correct, yes.

6 469 Q. Now, what was the figure for ú11,000 sent to
7 Kilnamanagh Estates for?

8 A. This is the Sacred Heart thing?

9 470 Q. This was in December 1977, and in connection with the
10 Sacred Heart property?

11 A. It could have been to refund them the purchase price of
12 the freehold, which was 10,000 --

13 471 Q. Yes.

14 A. It could have been. I'm not sure.

15 472 Q. You are not sure. All right. There was a separate
16 ú5,000 sent to Mr. Finnegan, apart from the 100,000
17 sent to Foxtown. What was that for?

18 A. His fee.

19 473 Q. His fee?

20 A. Yeah.

21 474 Q. His fee for what?

22 A. His fee for their acquisition of the freehold, as far
23 as I know.

24 475 Q. The acquisition of the freehold?

25 A. Yeah.

26 476 Q. He did act for the nuns in the sale of the leasehold,
27 and was paid his fee in respect of that?

28 A. Yes.

29 477 Q. But this is a fee paid by - well, by Victa?

30 A. Yeah.

1 478 Q. Which was a company of which he was a one-third owner
2 for acquiring the freehold, is that right?

3 A. I think so, yeah.

4 479 Q. Yes. Then the next land transaction in which they were
5 involved, involved I think, the next - they are not in
6 strict sequence, because there is a certain amount of
7 overlap.

8 .
9 Let's take the next one as being Donnybrook. In that
10 case Victa Investments Limited, which was formerly
11 known as Rapallo, was the Jersey company that was
12 involved and, I think, was the only Jersey company
13 involved in this case. And you have a different scheme
14 here, isn't that right? In that it involves this
15 company getting into, or entering into a licence
16 agreement, essentially, under which they pay a license
17 fee of 46 odd thousand pounds, and the remainder,
18 amounting in total to about ú300,000, by way of site
19 fines?

20 A. Yes.

21 480 Q. Sorry. I beg your pardon. By way of an interest-free
22 loan, in fact.

23 .
24 Now, again, I take it, that this was done by you on the
25 instructions of Mr. Brennan?

26 A. It would have been, yeah.

27 481 Q. And can you just tell us, in outline, what the
28 instructions you would have had from Mr. Brennan were
29 that would have led you to produce this particular
30 scheme?

1 A. I can't remember anything about that particular scheme,
2 actually.

3 482 Q. I see.

4 A. Because of Oakpark's involvement, which weren't clients
5 of mine.

6 483 Q. They weren't clients of yours?

7 A. No.

8 484 Q. Well, you know that - essentially, again in outline,
9 the scheme was that Oakpark entered into a licence
10 agreement with Victa, under which it would pay a
11 licence fee of ú46,000, and make an interest-free loan
12 of ú266,000. And we know that these monies were
13 borrowed, I think in this case, from Lombard & Ulster
14 in Ireland. And that, pursuant to this agreement, in
15 fact - the sum of ú304,000 was, in fact, sent over to
16 Jersey on the 27th of December, 1978, and shortly
17 thereafter was divided up.

18 .
19 In this case what happened was Foxtown Investments
20 Limited received ú101,333.33. Mr. Brennan got
21 ú151,480. And Mr. McGowan got ú50,990.86. And that
22 actually comes to a total, something slightly short of
23 ú304,000.

24 .
25 Can you assist us in this case, as to why Mr. Brennan
26 would have got 151,480 and Mr. McGowan only got 50,990?

27 A. My understanding of that is that Joe McGowan owed Tom
28 Brennan 50,000, and that was settled in that
29 transaction.

30 485 Q. If you divide them all up, they essentially got the

1 same - if you divide it in three, it comes to the same
2 figure?

3 A. Yes.

4 486 Q. So it was an interdebt between Mr. McGowan and
5 Mr. Brennan, as you understand it. Is that right?

6 A. Yes.

7 487 Q. When this particular transaction came up, obviously
8 your involvement was because of your instructions to
9 put together some kind of a scheme. In general terms,
10 what were your instructions vis-a-vis the proposed
11 involvement of Mr. Finnegan in the scheme?

12 A. Oh, that he was still a one-third shareholder in
13 whatever the net proceeds were in Jersey.

14 488 Q. Yes. Well, we know, for example, that in this
15 particular case the property was sold by Herbert
16 Properties Limited, or was it Herbert - yes, Herbert
17 Properties Limited to Victa.

18 A. Yes.

19 489 Q. And at the time it was sold, they had assembled the
20 title, as it were, freehold and leasehold, but they
21 also applied for and, in fact, obtained planning
22 permission. So it was all, as it were, a fait
23 accompli, and Victa simply was the purchaser.

24 .

25 What was your understanding as to what the reason was
26 in that case for the payment of ú101,000 to Mr.
27 Finnegan's company?

28 A. It was - well, the surplus, as you say, was about
29 300,000 on the transaction.

30 490 Q. Well, when you say "surplus", it was money that Oakpark

1 borrowed in Dublin?

2 A. But Oakpark borrowed the money, but then - received a
3 licence agreement for the sites of the land belonging
4 to Victa.

5 491 Q. Yes. But what was your understanding as to why Mr.
6 Finnegan was going to share in this fairly substantial
7 increase in the value?

8 A. Well, because he was a one-third beneficiary of any of
9 the transactions that happened in Jersey.

10 492 Q. Well, was there some global arrangement in advance that
11 you were told about, under which they were going to
12 have a series of transactions involving Jersey
13 companies, and that Mr. Finnegan was going to be a
14 one-third equal partner in them?

15 A. No. They just happened one after the other, but --

16 493 Q. Yes. In this case, Mr. Finnegan simply was in receipt
17 of €101,000. What were you told as to what he was
18 doing to merit him being paid that sum?

19 A. I wasn't told anything. I mean, he acquired the
20 freehold from Herbert Properties, which I understand is
21 one of the Pembroke Estate companies.

22 494 Q. It is, yes. It is, in fact, the Pembroke Estate. It
23 is the company of the Pembroke Estate within which this
24 particular property was assembled. But what was sold
25 to Victa was land, including leasehold and freehold
26 with planning permission.

27 A. That's correct.

28 495 Q. So the Pembroke Estate were selling what they had,
29 which was the property with planning permission.

30 .

1 What was your understanding as to why it was that Mr.
2 Finnegan was in receipt of ú101,000?

3 A. Because he was, as in the other cases, he was getting a
4 third of the net proceeds going to Jersey, that went to
5 Jersey.

6 496 Q. But why? What was your understanding as to why?

7 A. Because he produced the freehold.

8 497 Q. That was what your understanding was?

9 A. Yes.

10 498 Q. And was it Mr. Brennan who told you that was the reason
11 that he was being paid?

12 A. I can't remember anybody telling me, but I assumed it
13 was the same as the other transactions.

14 499 Q. Yes.

15 A. That he was in a position to produce the freehold.

16 500 Q. And was this, therefore, in the nature of a fee?

17 A. No. It was in the nature - it was in the nature of a
18 divvy of the net proceeds.

19 501 Q. Yes. We know, for example, that the licence agreement
20 under which this money was paid was never proceeded
21 with?

22 A. I wasn't aware of that.

23 502 Q. And it appears that again this was one of these cases
24 where everybody appears to be in agreement that
25 subsequent to that division of that particular sum of
26 money, Mr. Finnegan had no further involvement
27 whatsoever, and no further entitlement in relation to
28 the property?

29 A. Was that particular piece of land eventually sold to
30 Farrell Homes?

1 503 Q. If you just bear with me. Farrell Homes were the
2 purchasers, I think, of Newtownpark Avenue.

3 A. No.

4 504 Q. Well, then it must have been Donnybrook, yes. What
5 happened was, there was a subsequent series of
6 transactions put together, which were never proceeded
7 with, I think by Mr. Caldwell, and ultimately the
8 property was sold to Farrell Homes for €1.1 million,
9 which were paid in the form of two FICOIL policies?

10 A. Well, that was after my involvement in that particular
11 transaction.

12 505 Q. Yes. Well, again, your involvement, presumably,
13 particularly given that you were not the auditor for
14 Oakpark, was confined to putting together this scheme
15 involving the Jersey company, Victa?

16 A. Yes.

17 506 Q. And I take it your involvement, therefore, terminated
18 once that - those monies were distributed in Jersey?

19 A. Yes.

20 507 Q. Was it your understanding that it was originally
21 intended by Oakpark to develop the property, or was it
22 intended to sell it?

23 A. I didn't have any instructions on it one way or the
24 other.

25 508 Q. Yes. Do you have any idea how the borrowing of Oakpark
26 Limited was, in fact, ultimately paid off?

27 A. No.

28 509 Q. And, I take it, you didn't have any involvement in
29 that?

30 A. No.

1 510 Q. That's something that would have been done, presumably,
2 within Oakpark itself?

3 A. Well, I presume so. I mean, as I told you, we weren't
4 the auditors of Oakpark.

5 511 Q. Yes. It does appear you had an involvement in getting
6 Central Bank approval, though. If I could just refer
7 you to 1077.

8 .
9 This is a letter from the Central Bank to you, or to
10 Owens Murray, at least. And it carries your reference
11 out. "Re Farrell Homes Limited."

12 .
13 "Dear Sirs, we refer to your letter of the 11th
14 September concerning the above company.
15 .
16 We confirm no objection to the purchase by Farrell
17 Homes Limited of the two plots of land in Donnybrook,
18 Dublin from non-residents of the State.
19 .
20 Permission is hereby granted under the Exchange Control
21 Acts 1954 to 1982 for Farrell Homes Limited to procure
22 two Capital Redemption Policies in the amount of
23 ú920,000 and ú180,000 with Financial Indemnity Company
24 (Ireland) Limited in favour of the following
25 non-resident vendors of the property." And then it
26 gives the names of the directors, I think, or perhaps
27 the shareholders of the company, presumably the
28 shareholders, actually.

29 .
30 "The proceeds of the policy, either principal or

1 profit, may be remitted directly to the non-residents
2 or lodged to the external accounts in their names."

3 A. I don't remember ever seeing that letter.

4 512 Q. Do you not?

5 A. No. I would have thought, if it is a FICOIL, that I
6 called it, that it would have come from John Caldwell.

7 513 Q. Well --

8 A. Why it was addressed to Owens Murray, I don't know.

9 514 Q. If you could just - if we can scroll up to the top of
10 it, you can see that on the fax imprint on the top
11 there is a reference to Binchys & Partners?

12 A. Yeah.

13 515 Q. And it may be that that was faxed from Binchys to
14 Bedell Cristin?

15 A. There is also my reference there, "Your reference HVO."

16 516 Q. It is addressed to you, or at least Owens Murray, with
17 your HVO reference on it. It does say: "We refer to
18 your letter of the 11th September."

19 .

20 This is a document which was found on a Bedell Cristin
21 file for a company known as Worland?

22 A. Yeah.

23 517 Q. And it does appear that Victa Investments Limited,
24 which was the company that owned this property, and
25 which sold it, became owned itself by Worland Limited.
26 And that Worland Limited, in turn, became owned by a
27 British Virgin Island company called Echinus Limited.

28 A. Never heard of it.

29 518 Q. You never heard of Echinus Limited?

30 A. No.

1 519 Q. Well --

2 A. I ceased active dealings with Brennan and McGowan, I
3 mean, about 1982, when John Caldwell and Don Reid took
4 over.

5 520 Q. Yes.

6 A. There would have been some correspondence between
7 Bedell Cristin and me after that date, but it was -
8 most of the work was being done by John Caldwell and
9 Don Reid in relation to stuff going to the British
10 Virgin Islands, or wherever that --

11 521 Q. Did Mr. Caldwell deal with that?

12 A. I don't know. I think it might have been Don Reid. I
13 am not sure.

14 522 Q. Yes.

15 A. I didn't.

16 523 Q. You didn't, anyway?

17 A. No.

18 524 Q. Well, did you ever hear of Echinus Limited, or any
19 British Virgin Island company in connection with this
20 particular transaction?

21 A. No.

22 525 Q. What you appear to have been seeking clearance for was
23 Exchange Control in relation to a payment by Farrell
24 Homes through two FICOIL policies for the sale of the
25 property?

26 A. Yes. I don't know why we applied, why I applied for
27 the Exchange Control --

28 526 Q. I was just going to ask you that. In what capacity
29 would you have, or could you have applied?

30 A. Well, possibly only because Worland - Worland

- 1 Investments was listed as one of the shareholders --
- 2 527 Q. Worland Investments Limited became the owner of Victa
3 Investments Limited?
- 4 A. Yes, but if you go down further - go further down that
5 letter. It gives the list of the shareholders.
6 Worland Investments are one of the shareholders.
- 7 528 Q. Yes. And who would you have been acting for?
- 8 A. Worland. If I had to write to the Central Bank to get
9 Exchange Control, it would have been Worland, but I
10 personally wasn't au fait with what had happened to
11 these Capital Redemption Policies.
- 12 529 Q. As a matter of interest, what are Capital Redemption
13 Policies, as issued by FICOIL?
- 14 A. There was some sort of an insurance policy, I am not
15 sure what they were. John Caldwell will tell you.
- 16 530 Q. Yes.
- 17 A. He created them.
- 18 531 Q. And what was their purpose?
- 19 A. Their purpose was to avoid paying tax.
- 20 532 Q. Yes. We know, for example, that the policies were
21 purchased by Farrell Homes and provided as payment for
22 the property, but they were then cashed, and the cash
23 was sent over to Mr. Wheeler in the form of four
24 cheques or bank drafts. And he endorsed them and sent
25 them on to the Royal Bank of Scotland in the Isle of
26 Man. And we have been told a portion of the proceeds
27 were divided up between the directors of Oakpark
28 Developments Limited?
- 29 A. No knowledge of that at all.
- 30 533 Q. Do I take it that you didn't have any involvement in

1 that?

2 A. None whatever.

3 534 Q. Do you have any idea why it wasn't Mr. Caldwell that
4 applied for this Central Bank approval?

5 A. No.

6 535 Q. He would have been --

7 A. He should have been the obvious man, I would have
8 thought.

9 536 Q. Yes. Anyway, you don't know why it wasn't him?

10 A. No.

11 537 Q. And you don't recall why it was you?

12 A. No, I don't.

13 538 Q. There was a problem about Victa, in that it was
14 dissolved at a particular point in time, which was
15 subsequently found to have been, perhaps, not intended
16 - but there was correspondence between you and others
17 about it.

18 .

19 If I can just refer you to - yes, if we can look at
20 page 490.

21 .

22 This is a telex from yourself to Mr. Wheeler, and it's
23 dated the 8th of December of 1981. You say:
24 "A problem has arisen, in that the company" - this is
25 Victa - "was dissolved on the 4th August, 1980, and the
26 company still owns land. A similar situation arose
27 with Arippe Investments, also R 356, which was
28 resolved.

29 .

30 There is a difference in the case of Victa, in that we

1 require an intermediate company to increase the price
2 of the land. Would it be possible to insert Worland
3 Investments' reference, W 298, as the beneficial
4 shareholder of Victa, so that the land can be vested in
5 it, and Worland can then deal with the land at its
6 market value? Please advise as soon as possible
7 whether this is feasible, as a contract is required
8 prior to year end."

9 .

10 So, in December of 1981, you discovered that there is a
11 difficulty, because Victa was dissolved in the previous
12 year, in August of the previous year. And it appears
13 that in response to that, Mr. MacDonald came back to
14 you. If I can just refer you to page 491. He says:

15 .

16 "Re Victa Investments Limited and your telex 8/12/81 to
17 Mr. Wheeler:

18 .

19 Shares in the above company were held by nominees in
20 this office for your client. Suggest therefore written
21 instructions are received from your client to change
22 the shareholdings to Worland Investments Limited, and
23 these instructions should be dated before the 14th
24 July, 1980, being the date of the first company
25 resolution for dissolution.

26 .

27 From that, the nominees would be in the position of
28 being able to distribute the proceeds of dissolution
29 received by them to whichever on whose behalf they were
30 holding the shares. The conveyance could therefore,

1 presumably, be done on the same basis as for Arippe
2 Investments Limited, and the ultimate owner would
3 benefit from the contract, which you state is required
4 prior to the year end."

5 .

6 So, in effect what he appears to be suggesting there is
7 to effectively backdate a transfer, isn't that right?

8 A. Yes.

9 539 Q. And it appears that he did that by a series of
10 Declarations of Trust.

11 .

12 If we take, for example, and there are a number of
13 them, but if we just take, for example, page 2257.

14 There, in this case, Mary Rochele Mourant declares that
15 she holds the shares in Victa Investments Limited on
16 trust for Worland Investments Limited. And that, as
17 you can see, is dated the 25th of June, 1980, which, as
18 referred to in the telex, pre-dates the date of the
19 first resolution to wind up Victa. Isn't that right?

20 A. Yes.

21 540 Q. And similar declarations were made by, in the firm,
22 Mr. Wheeler - just bear with me. Yes, Mr. Morin at
23 page 2258, as you can see, executed the declaration
24 that he held a certain amount of the shares in Victa on
25 behalf of Worland. And again that's dated the 25th of
26 June, 1980.

27 .

28 And then Mr. Wheeler executed a similar one at page
29 2259. And again dated the 25th of June, 1980.

30 .

1 Finally, on page 2260, Mr. Howard Oke Dart executed a
2 similar Declaration of Trust, but backdated it to the
3 29th of June, 1980. Isn't that right?

4 A. That appears to be correct, yes.

5 541 Q. And in that way, what they did, therefore, was to have
6 the transfer of the land executed, presumably, by
7 Worland?

8 A. Yes.

9 542 Q. Worland became the owner of Victa?

10 A. Yes.

11 543 Q. Which was then liquidated?

12 A. Yes. But it had been liquidated, hadn't it, a year
13 previously?

14 544 Q. No. What the telex says - what your telex says, the
15 difficulty that arose was that a problem has arisen, in
16 that the company was dissolved on the 4th of August,
17 1980?

18 A. Yeah.

19 545 Q. And that was at a point in time before it had divested
20 itself of the property, and that was the problem, I
21 presume.

22 .

23 You say: "A problem has arisen, in that the company" -
24 409 back on screen, please.

25 .

26 As you can see in the first paragraph there:

27 "A problem has arisen, in that the company was
28 dissolved on the 4th August, 1980, and the company
29 still owns land."

30 .

1 So your difficulty was that the title was out there in
2 the ether, as it were, having belonged to a company
3 which was dissolved before the company divested itself
4 of its interest in the land?

5 A. Yeah, it was there in limbo, more or less.

6 546 Q. Exactly. And this is a mechanism which was suggested
7 by your respondent, Mr. MacDonald, to rectify the
8 situation, namely they execute Declarations of Trust
9 predating the first resolution for the dissolution of
10 Victa.

11 .

12 And all of this happened, of course, in 1991.

13 A. 1981 --

14 547 Q. '81, I beg your pardon. And the letter, which I have
15 just shown to you, from the Central Bank to yourself,
16 is dated the 2nd of October, 1985?

17 A. Yeah.

18 548 Q. So, obviously, it's --

19 A. Is this the same property?

20 549 Q. Yes. This is the property in Donnybrook.

21 .

22 There were a number of schemes in the early '80s, which
23 Mr. Caldwell, it appears, came up with, but for one
24 reason or another, none of those were proceeded with.
25 And ultimately the deal was done with Farrell Homes,
26 whereby Farrell Homes bought this property for 1.1
27 million through these FICOIL policies.

28 .

29 But for some reason you appear to have become involved
30 in the context of getting Central Bank approval for it.

1 But, as I understand your evidence, you have no
2 recollection of becoming involved with the Central Bank
3 --

4 A. No.

5 550 Q. Do I take it from that, that your last recollection of
6 your dealings with it relate to the time that the money
7 was distributed, the ú304,000 was sent over? Or do you
8 have a recollection of dealing with this Victa
9 dissolution problem in 1981?

10 A. Yes. I recollect that Victa dissolution problem, all
11 right.

12 551 Q. Yes. There is another document that I would like to
13 draw your attention to in relation to this particular
14 company. If we can have page 357.

15 .

16 Again, this is in relation to - 367 - in relation to

17 Victa. It's addressed to 2 Clare Street, Dublin 2.

18 Dated 25th June, 1980. And it's addressed to Bedell

19 Cristin. It says:

20 .

21 "Dear Sirs, re Victa Investments Limited, R 356.

22 .

23 Would you please note that we have transferred our

24 interest in the above company to Worland Investments

25 Limited, care of your office, which company is now the

26 beneficial owner of Victa Investments Limited."

27 .

28 It bears three handwritten names, with the same names

29 in type beside them.

30 .

1 Now, Mr. Brennan and Mr. McGowan have told us that
2 those are respectively each of their signatures, but
3 that when they signed that document, there was no third
4 signature on it. And Mr. Finnegan has told us that
5 that third name, purporting to be his signature, is
6 not, in fact, his signature. They say, that's Messrs.
7 Brennan and McGowan say they signed it in your office.
8 They were asked to come in to do so, and did so, but
9 that they do not know how Mr. Finnegan's name came to
10 be appended to that document, and that it was not on
11 the document when they signed it?

12 A. Well, they must have fantastic memories.

13 552 Q. Well, that's what they have told the Tribunal.

14 A. Yeah.

15 553 Q. Can you assist us as to how Mr. Finnegan's name would
16 have come to be placed on that document?

17 A. Well, does Mr. Finnegan say that that's not his
18 signature?

19 554 Q. He does.

20 A. Well, I have no idea.

21 555 Q. It does appear to be his signature, in that we have
22 other documents with what purports to be his signature
23 on them, and it's certainly the same, and Mr. Finnegan
24 himself is adamant that he never signed this document.
25 .

26 You see, we do know that at the point in time when this
27 document was being signed, and for whatever reason it
28 was being signed, Mr. Finnegan had no interest, good,
29 bad or indifferent in Victa Investments Limited, he
30 having received his one-third share of the €304,000?

1 A. Yes.

2 556 Q. And that while the arrangements between Mr. Finnegan
3 and Mr. Brennan and Mr. McGowan were such that Mr.
4 Finnegan's interest was confined solely and exclusively
5 to the Jersey part of the deal, shall we put it that
6 way --

7 A. Yeah.

8 557 Q. -- his signature would have been necessary, because he
9 was still a one-third beneficial owner of the company.

10 A. Of Victa?

11 558 Q. Yes. He never was removed as a one-third beneficial
12 owner of the company. And presumably Bedell Cristin
13 were requiring this letter, which is essentially a
14 Letter of Authority from the beneficial owners, from
15 you.

16 A. Is that more or less the same date as the Declarations
17 of Trust --

18 559 Q. No, the Declarations of Trust came in 1981, I think.
19 If you just bear with me, I'll get you the - sorry, I
20 beg your pardon. It is the same date. The 25th of
21 June, 1980.

22 .
23 So, presumably, there would have been a requirement,
24 presumably, by Bedell Cristin for an authority from the
25 registered beneficial owners of Victa for this to be
26 done?

27 A. Yes, I would imagine so.

28 560 Q. And it would appear that this is the authority, this
29 letter, with the three signatures on it?

30 A. Yes.

1 561 Q. But Mr. Finnegan is saying that that is not his
2 signature. Messrs. Brennan and McGowan have told us
3 that they simply went into your office to sign a
4 document, because they were asked to do so, and that
5 they signed it, and that when they signed it, each of
6 them, there was no third signature on it.

7 A. Well, as I said there a few minutes ago, if they can
8 remember twenty years ago coming into my office to sign
9 that document, they have fantastic memories.

10 562 Q. Yes. Well, would you agree, it is probably a document
11 which was prepared in your office for signature, given
12 the requirement that since the ownership of Victa was,
13 in effect, being transferred to another company, it
14 would have been necessary to get the authority of the
15 three registered beneficial owners?

16 A. It could, yeah.

17 563 Q. And, presumably, it's the kind of document that Bedell
18 Cristin would have come to you looking for?

19 A. Yes.

20 564 Q. Before they would have done it?

21 A. Yes.

22 565 Q. And it seems likely that the document was probably
23 prepared in your own office for a signature?

24 A. It probably - it was probably as a result, maybe, of a
25 telephone call from Mr. Wheeler as to the wording that
26 should be put into that particular document.

27 566 Q. Yes.

28 A. If they are all dated the same date --

29 567 Q. Yes, everything was done on the same date, and this
30 document fits in, obviously, entirely with the

1 Declarations of Trust. I would imagine the sequence
2 was that they would have received this document, and
3 would have then executed these Declarations of Trust.
4 But it would seem to follow, that is true, that this
5 document was also backdated?

6 A. Yes.

7 568 Q. This document, in other words, would have been produced
8 at or after the time of those telexes exchanged between
9 yourself and Mr. MacDonald, when the problem was
10 identified?

11 A. Yeah, which was a year later.

12 569 Q. A year later?

13 A. Yeah.

14 570 Q. So Bedell Cristin would have wanted, given that they
15 were proposing this solution, to backdate these
16 transfers or Declarations of Trust effecting the
17 transfer of the ownership of Victa to Worland prior to
18 the date of the first resolution to wind up Victa, they
19 would have required this Letter of Authority as well,
20 which, of course, would also have to be backdated?

21 A. Yes.

22 571 Q. You've agreed with me that it probably was prepared in
23 your office. Is it possible that perhaps you appended
24 Mr. Finnegan's name for the purpose of completing the
25 transaction in the knowledge that he wasn't, in fact,
26 or he didn't, in fact, have any further interest in
27 Victa?

28 A. Well, it doesn't - it doesn't look like my signature -
29 at least my signature of John Finnegan, if you like to
30 put it that way.

1 572 Q. If we could just refer you to page 345.

2 .

3 This is a draft letter that you wrote to - you sent it
4 to Bedell Cristin, but it's a letter which purports to
5 be addressed to Finnegan Menton, and you've written - I
6 think this letter is your hand, is that right?

7 A. That's right.

8 573 Q. And you can see the way "Finnegan" is written there.

9 I am not putting this to you in any sense as a
10 handwriting expert, but it does bear some resemblance,
11 on a superficial observation and a completely
12 non-expert observation, to the manner in which
13 "Finnegan" is written in that other document?

14 A. Can I have a look at the other document again, please?

15 574 Q. By all means. I'll show you a hard copy of both of
16 them, if you would like to look at them together.

17 .

18 (Document handed to witness)

19 A. Yeah, it does.

20 575 Q. That's what I was suggesting to you. Is it possible,
21 perhaps, that you would have known for certain at that
22 time that Mr. Finnegan, although he was registered as a
23 one-third beneficial owner in this company at this
24 time, did not, in fact, have any further involvement
25 with the company, and did not, in fact, have any
26 interest in any future dealings of the company?

27 A. Yes.

28 576 Q. And that, perhaps, for convenience or whatever, you
29 might have appended his signature?

30 A. Well, it looks - it's a remarkable similarity.

1 577 Q. Well, would you agree with my working hypothesis?

2 A. Yes.

3 578 Q. Do you have any recollection of it?

4 A. No.

5 579 Q. Or do you have any recollection of whether you might

6 have asked him for permission to do it?

7 A. No.

8 580 Q. On the basis that it would save him the trouble,

9 presumably, of coming around to sign it myself?

10 A. No, I don't.

11 581 Q. I see. Could we then move on to the next land

12 transaction which Messrs. Brennan and McGowan and

13 Finnegan were involved. And that's in Newtownpark

14 Avenue. When I say "next", I am making due allowance

15 for the fact that there is an element of chronological

16 overlap on them.

17 .

18 Can you just, in general terms, again recall what your

19 instructions were for Mr. Brennan, particularly

20 vis-a-vis Mr. Finnegan in connection with this

21 particular matter?

22 A. Sorry, you'll have to --

23 582 Q. Well --

24 A. You'll have to refer me to my narrative.

25 583 Q. Yes, all right. You have your narrative in front of

26 you?

27 A. I do.

28 584 Q. I think you prepared your narrative with the benefit of

29 the documents that had been sent to you to assist you?

30 A. Yes.

1 585 Q. And I am just trying to find where in your narrative

2 you deal with this particular property.

3 .

4 If you deal with it, you don't appear to deal with it

5 under a heading. Yes. You deal with it on page 6.

6 There is a heading for Victa, but in the second

7 paragraph of the section dealing with Victa you

8 actually make reference to Newtownpark Avenue.

9 .

10 And in this case what happened was, a company called

11 Arippe Investments Limited, a Jersey company, was used

12 by Brennan and McGowan - you put together a scheme

13 involving this particular company. In broad terms, the

14 scheme was very similar to the Donnybrook scheme, in

15 that an Irish company, in this case Landsdowne

16 Construction Limited, entered into a licence agreement

17 with Arippe Investments Limited in connection with a

18 portion of this land, not all of it. And under the

19 terms of that licence agreement, a figure of ú672,000

20 was sent from Ireland over to Jersey, most of that

21 money was borrowed, all but ú122,000 of it, we are

22 told, was borrowed, perhaps even the remaining 122,000

23 was borrowed as well, but it certainly was taken out of

24 accounts in the name of Kilnamanagh Estates Limited.

25 .

26 There was borrowings from Northern Bank Limited. There

27 was borrowings from Chase Bank Limited in the sum of, I

28 think, ú150,000. Northern - sorry, Chase was

29 ú400,000. ú150,000 from Northern. And there was

30 another 122,000 from Kilnamanagh, in two tranches of

1 122, making a total of ú672,000.

2 .

3 Can I just ask you: What were your instructions from
4 Mr. Brennan in connection with this particular venture?

5 A. I don't think that that 672,000 related to - are you
6 talking about Maguire's land in Newtownpark Avenue?

7 586 Q. Arippe Investments Limited was the company that was
8 used in this case.

9 A. I don't remember that that - that figure - that
10 particular transaction.

11 587 Q. Well, it appears that it did, from both the
12 documentation and the testimony which we've had.

13 A. Could you refresh my memory? Was that a freehold and a
14 leasehold thing also? Or it's a leasehold and freehold

15 --

16 588 Q. Well, no. In this case, what appears to have happened
17 is that they were purchasing the title, which Mr.

18 Maguire had. If I could just refer you to page 1746.

19 .

20 That's a telex from yourself to Mr. Wheeler. And in
21 that telex, I think that's dated the 20th of June,

22 1978, you say:

23 .

24 "Please send the following letter to Kennedy McGonagle

25 Ballagh Solicitors of 29 Molesworth Street, Dublin 2

26 for the attention of Mr. Michael O'Shea:

27 We act for Arippe Investments Limited of this address,

28 which company has agreed to purchase for ú100,000

29 certain lands (coloured red and blue on enclosed map)

30 at Newtownpark Avenue, Blackrock, County Dublin from

1 John F Maguire.

2 .

3 Please investigate title to these lands, and let us

4 have your report as soon as possible."

5 .

6 So you ask Mr. Wheeler to have this letter done up on

7 his own headed notepaper and sent off to Messrs.

8 Kennedy McGonagle?

9 A. Yes, on behalf of Arippe.

10 589 Q. Kennedy McGonagle being solicitors for Lansdowne.

11 .

12 Now, what was the purpose of requiring Bedell Cristin

13 to write this letter?

14 A. Because Bedell Cristin are not familiar with Irish

15 property law, and the title had to be investigated on

16 behalf of the purchasers.

17 590 Q. Did you have to draft a letter for them, if you know

18 what I mean?

19 A. Because I had to draft an awful lot of stuff,

20 Mr. Hanratty, to make sure it was done properly.

21 591 Q. We know, for example, in the Monkstown case, you

22 drafted a very lengthy - correspondence involving three

23 solicitors?

24 A. That's correct.

25 592 Q. When you drafted this, you obviously decided on one

26 solicitor sending to another, and then you decided what

27 the reply would be, and so on, until the end of the

28 exchange of correspondence.

29 .

30 You also ordained on which dates each of these pieces

1 of correspondence should be sent. And indeed, by and
2 large, with some exceptions at the end, they were, in
3 fact, sent on the dates you said they should be sent.

4 .

5 What was the purpose of doing that?

6 A. Is this the one - the Sacred Heart Nuns?

7 593 Q. Yes.

8 A. Well, I was dealing with three different firms of
9 solicitors, and it's difficult enough dealing with one
10 firm.

11 594 Q. Generally speaking, solicitors charge money for
12 drafting letters themselves, and would normally be
13 expected to be able to write a letter, once they are
14 given the instructions from their client as to what
15 they have to do?

16 A. Yeah, but the timing was - the timing was - the timing
17 between the three firms of solicitors had to clock in.

18 595 Q. Yes. Can I ask you, in that case, that's in the Sacred
19 Heart nuns, did you, in fact, draft all of these
20 letters, or did somebody else draft them?

21 A. I did.

22 596 Q. You did it yourself?

23 A. Personally.

24 597 Q. I see. And do I take you correctly to say that
25 primarily the reason was for timing?

26 A. Yes.

27 598 Q. Why was that? Your view was that it would be delayed
28 if the solicitors were left to write their own letters?

29 A. Yes.

30 599 Q. Yes. Well, then, going back to where we were in the

1 case of Newtownpark Avenue. If I could just refer you
2 to page 209.

3 .

4 It's a letter dated the 20th of June, 1978. And it's
5 from Mr. Wheeler to Kennedy McGonagle Ballagh. And
6 it's a letter in identical terms to what you requested
7 should be sent in your telex. In other words, they
8 were complying with your instructions in that regard.

9 .

10 So at that stage you knew, therefore, there was this
11 firm, Arippe Investments Limited, for which, obviously,
12 Bedell Cristin acted. Had you established or set up
13 Arippe Investments Limited for this purpose?

14 A. Yes.

15 600 Q. In this case we have been told that although the only
16 registered beneficial owner of Arippe was Mr. Tom
17 Brennan, Mr. Brennan has told us that he held the
18 company on behalf of himself, Mr. McGowan and Mr.
19 Finnegan.

20 .

21 Is that in accordance with your recollection as to what
22 was intended at the time?

23 A. I would have thought it would be held on behalf of the
24 three of them.

25 601 Q. Yes. It's just that in the registry in Jersey, we've
26 heard evidence on this from Mr. Simon Howard of Bedell
27 Cristin, they are not, in fact, the registered
28 beneficial owners. In this case there is only the one,
29 Mr. Brennan himself. But he said that may well be the
30 case, but there was no difference in terms of the

1 arrangements they had between themselves, that the
2 Jersey company was supposed to be their company, and
3 the arrangements were done on whatever basis you
4 decided should be done?

5 A. Well, it would have been done on the same basis as all
6 the other Jersey transactions, in other words, a third
7 each of the net --

8 602 Q. That was your understanding?

9 A. Yes.

10 603 Q. And it would appear that nothing seems to turn,
11 therefore, on the fact that the other two were not, in
12 this case, the registered beneficial owners, because
13 Mr. Brennan, who was, regarded them as equally entitled
14 to himself?

15 A. That's correct.

16 604 Q. Well, in this case, then, what were your instructions
17 from Mr. Brennan?

18 A. How do you mean?

19 605 Q. What did he tell you was the arrangement that they had
20 in relation to this property, and what they wanted to
21 do about it?

22 A. Was this subsequently purchased by Lansdowne, this
23 land?

24 606 Q. Part of it was, yes. And Greenmount Properties Limited
25 was also involved. And there was at some stage an
26 exchange of a portion of the larger part of the
27 property between Lansdowne and Greenmount as well.

28 .

29 But so far as the Jersey scheme was concerned, it
30 related to a smaller portion of the land, the minority

1 portion of the land at the front, we understand, and
2 that involved Arippe Investments Limited and Landsdowne
3 Construction Limited only?

4 A. Was this the site with 48 plots?

5 607 Q. Yes, I think so.

6 A. 48 or 49, or something like that?

7 608 Q. That's correct. There was a reduction in the number of
8 plots at one stage, but that's broadly correct, I
9 think, yes.

10 A. Well, the sum of 672,000 would have been arrived at by
11 Mr. Brennan, as to the market value of that land.

12 609 Q. Well, we know that immediately after the arrival of
13 that money in Jersey, ú404,000 was sent straight back
14 to Dublin.

15 A. Yes.

16 610 Q. Now, we know that, in the case of Chase Bank, they had
17 borrowed 400,000 in the form of two tranches of
18 ú200,000. So it may well be that the 404,000 went
19 back, just went straight back into the bank. In fact,
20 I seem to recall - I can't remember which of the
21 witnesses said that that is, in fact, what happened?

22 A. I think - that 404, Miley & Miley, was it?

23 611 Q. Yes, it went to the Miley & Miley account in Algemene
24 Bank Nederland in Dublin. That's where it went.

25 A. I don't know where it went after that.

26 612 Q. Well, we have been told by one witness, possibly Mr.
27 Finnegan, that he believed that it was used to
28 discharge the indebtedness which had previously been
29 incurred to Chase Bank?

30 A. I think on Friday, actually, Mr. Brennan said it was --

1 613 Q. Perhaps it was Mr. Brennan on Friday, that's correct,

2 yes.

3 .

4 MR. HAYDEN: To clear that up. I think Mr. Brennan

5 said that he wasn't sure, but that there had been

6 inquiries carried out, and it may have gone that way.

7 You'll have to figure it all out, Sir.

8 .

9 MR. HANRATTY: What he said was, having carried out

10 inquiries, that's what he believed --

11 .

12 CHAIRMAN: What he believed was the situation.

13 .

14 614 Q. MR. HANRATTY: If we could have a look at page 220.

15 .

16 This is a letter from Chase Bank (CI) Limited to

17 Mr. Wheeler, dated the 30th of November of 1978.

18 He says: "I refer to the sum of ú672,000 which you

19 received today by telegraphic transfer from Algemene

20 Bank Nederland, Dublin."

21 .

22 Now, the reference to Algemene Bank Nederland, Dublin

23 may be explicable on the basis that this money had been

24 assembled somewhere, because there was ú200,000

25 borrowings from Chase Bank, there was a borrowing of

26 ú150,000 from Northern Bank, and there was two separate

27 sums of 122 respectively from Kilnarnagh, which had to

28 be assembled. So that may well have been assembled

29 from the account of Miley & Miley for sending across.

30 .

1 He then says:

2 .

3 "I would be grateful if you would arrange for an
4 immediate telegraphic transfer of ú404,500 to Algemene
5 Bank Nederland at 46 St. Stephen's Green, Dublin 2 for
6 the account of Messrs. Miley & Miley.

7 .

8 I would be grateful if you would also immediately
9 telegraphically transfer the sum of ú67,278.54 to
10 Guinness & Mahon (Guernsey) at St. Julian's Court,
11 Saint Peter Port, for the account of Foxtown
12 Investments Limited.

13 .

14 I also require two drafts, one made payable to
15 H Owens Esquire for ú52,000, and the other made payable
16 to Messrs. Reid & McNabb for ú10,500.

17 .

18 It would be appreciated if you could telephone
19 immediately the drafts are ready for collection."

20 .

21 Now, just in the case of that last reference to the
22 draft for yourself. Is that in the same way as the
23 previous sum we had this morning, in that they are in
24 respect of fees for services rendered?

25 A. Yes.

26 615 Q. And is that for - in respect of a fee account due to
27 Owens Murray?

28 A. Correct.

29 616 Q. Albeit that it was paid to you personally in the form
30 of a draft?

1 A. Yes.

2 617 Q. All right. I think in this case that money would have
3 gone through your personal account, presumably, before
4 it was paid out. Is that right?

5 A. I can't remember.

6 618 Q. Yes. If I could just refer you briefly to page 5092.

7 .

8 You can see a credit coming in there of 52,355. Is
9 that the same figure?

10 A. Is it - that is the 1978, was it? December 1978?

11 619 Q. Yes, I believe so.

12 A. It would appear to be, yes.

13 620 Q. Yes. It would appear to be. It's your belief that
14 that was in respect of fees due to Owens Murray. Is
15 that right?

16 A. Yes.

17 621 Q. And would you therefore have paid that out to Owens
18 Murray in -

19 A. Yes.

20 622 Q. -- due course. Just going back to the letter at page
21 220.

22 A. My solicitor didn't receive a copy of that.

23 623 Q. I believe they did, yes. It's pagination number 5092.

24 .

25 MR. GLEESON: If I might interrupt. We did receive it
26 late on Friday night.

27 .

28 624 Q. MR. HANRATTY: Going back to page 220. Here again what
29 appears to have happened is after a large figure went
30 back to Dublin directly from whence it came, the

1 balance, after payment of a number of outlays, was
2 divided in three, and each of the parties to this
3 particular transaction were in receipt of a figure of
4 €67,278.54?

5 A. That appears to be a very exact figure, but there is no
6 mention Mr. - of any payment to Brennan and McGowan.
7 It's only to Foxtown.

8 625 Q. There is no reference in this letter, but, in fact --

9 A. That's not the entire amount of 672,000.

10 626 Q. It is, if you take the two 67s approximately that were
11 sent to Mr. Brennan and Mr. McGowan as well.

12 A. Yes, it should be, approximately.

13 627 Q. And Mr. Brennan has given evidence that that's, in
14 fact, what was done; that the balance after the
15 payments of - well, the sending back of the 404,500 to
16 Dublin and the payments of these outlays, that the
17 balance was then divided, in essence, in three, and
18 divided between - it may well be for some reason that
19 the figures are not exactly the same, but they are
20 virtually the same, the €67,000 odd?

21 A. Yeah.

22 628 Q. So is it your understanding that this was essentially
23 of a similar nature to the other two, albeit that in
24 this case, as in the case of Donnybrook, the vehicle,
25 as it were, under which the monies were transferred
26 over to Jersey was a licence agreement, as opposed to
27 the vehicle used in the case of the Sacred Heart lands?

28 A. Yes.

29 629 Q. In other words, in broad terms the arrangements were
30 the same, that certain sums of money were going to be

1 borrowed in Dublin, were going to be sent over to
2 Jersey, and after payment of outlays was going to be
3 divided into three?

4 A. Yes.

5 630 Q. Can you assist us as to who, in this case, and in the
6 case of Donnybrook, decided on the amount that was
7 going to be borrowed and therefore sent over?

8 A. Well, the 672,000 would have been - whatever the
9 number of sites were, multiplied by whatever the market
10 value of the sites were.

11 631 Q. Yes. But in the case of - for example, in this case,
12 what appears to have happened, if Mr. Brennan is
13 correct in what he has found in his inquiries, that the
14 ú400,000 borrowing from Chase was paid back
15 immediately.

16 A. It would appear so.

17 632 Q. Well, was this part of the scheme?

18 A. I can't remember.

19 633 Q. Well, on the basis of your understanding of the scheme,
20 would it have fitted into the scheme, that a borrowing
21 would be taken out and paid back straight away?

22 A. I can't see the logic of that. It doesn't sound like
23 one of my schemes. I mean, whatever went - my schemes
24 were, that whatever went to Jersey is still there.

25 634 Q. Yes. And you don't understand what - if this was a
26 repayment of the Chase borrowing, why it should have
27 been done so quickly?

28 A. Well, it was done more or less simultaneously.

29 635 Q. Yes?

30 A. No, I don't.

1 636 Q. Yes. Well, do you recall it having been part of the
2 scheme in relation to this particular property?

3 A. I don't.

4 637 Q. What do you recall, in essence, to be - to have been
5 the scheme in relation to this particular piece of
6 property?

7 A. The other thing I can - the only thing I can recall is
8 the make-up of the 672,000, which I understand was 48
9 sites at 14,000 each. If anybody has a calculator,
10 perhaps we could check that?

11 638 Q. What relation would - this would be an estimate or a
12 calculation that Mr. Brennan, presumably, would do as
13 to the value of the sites, is that right?

14 A. Yes. The market value of the sites.

15 639 Q. But if he had bought the sites, or if the company that
16 was selling them, shall we say in this case, Arippe,
17 had bought them for 100,000?

18 A. Well, I presume there was planning permission received
19 subsequently. Actually, you asked me this morning
20 about John Finnegan and 33,000.

21 640 Q. Yes.

22 A. Perhaps it could be that one of those 33,000s was the
23 purchase of this land. I am not sure. By Arippe, is
24 it?

25 641 Q. Arippe.

26 A. Yeah.

27 642 Q. Well, Arippe was the Jersey company?

28 A. Yeah.

29 643 Q. As far as we are aware, and from any of the records we
30 have seen, the only money that we are aware was

1 received by that company was the ú672,000 that it got
2 in November 1978.

3 A. But, surely, it had paid for the land?

4 644 Q. Yes. Mr. Maguire - one of the documents we had this
5 morning indicated that Mr. Maguire paid ú100,000 for
6 the land - sorry, paid - there were two sales to
7 Mr. Maguire, one of which was for ú100,000, the smaller
8 of which was for ú100,000.

9 .

10 Obviously, that begs the question, is the 33,333 a
11 one-third contribution towards the purchase of that
12 property? Mr. Finnegan says it isn't.

13 A. Well, it appears to be the only 100,000 floating
14 around.

15 645 Q. Yes.

16 A. That if he was paying his third share, that that would
17 be it.

18 646 Q. But if he did pay his third share, as I understood what
19 you said this morning, was that in the case of
20 Monkstown and Donnybrook, you know or you believed that
21 he didn't, because you would have seen it in your
22 capacity as auditor of the company, in one case Green
23 Isle, in the other case Lansdowne. But in the case of
24 Donnybrook you couldn't say for definite, albeit that
25 nobody ever said to you that he was making any
26 contribution of 50 in the case of Donnybrook.
27 But in the case of Arippe, which was the one we are now
28 talking about, wouldn't you have found it, or would you
29 have found it in some way in your capacity as auditor
30 of Lansdowne?

1 A. No, because the land was purchased directly by Arippe,
2 wasn't it, from John Maguire for 100,000?

3 647 Q. Yes.

4 A. Well, then it's possible that John Finnegan paid 33,000
5 to buy that land in Jersey.

6 648 Q. Would that have been consistent with the scheme that
7 you put together?

8 A. I can't remember, really, what scheme I put together,
9 because, as I said earlier, it wasn't my habit to have
10 money going back from Jersey.

11 649 Q. Well, put it this way: Did Mr. Brennan or Mr. McGowan,
12 or indeed anybody ever tell you that Mr. Finnegan was
13 putting up a portion of the purchase price of the land?

14 A. I can't remember.

15 650 Q. You can't remember whether they did or not?

16 A. No, I can't.

17 651 Q. Well, in the case of the Sacred Heart lands, you seem
18 to be a bit more positive about it.

19 A. Yes, because there was only - the purchase price - the
20 freehold was 10,000, and you wouldn't put up 33,000 for
21 a third of 10,000.

22 652 Q. Yes.

23 A. But 33,000 appears to be a third of 100,000.

24 653 Q. You were assuming that if it was put up, it was put up
25 to fund either the 10,000 or the 100,000, or whatever?

26 A. If he ever put up anything, that would tie up with that
27 particular purchase.

28 654 Q. Yes. So in the case of Arippe, your position is that
29 it could have been - that he could have made a
30 contribution, you just don't know?

1 A. I don't know.

2 655 Q. Around this time there was also a deal involving
3 Tritonville Road?

4 A. That was earlier, I think.

5 656 Q. Well, it started in 1978, I think. Yes?

6 A. Mm-hmm.

7 657 Q. Can you just tell us what the position was about
8 Tritonville Road?

9 A. Well, in the case of Tritonville Road, the land was
10 sold on to a third party, Durkan Brothers, and again
11 the freehold was purchased for - the freehold of some
12 of the properties was purchased for 14,200, I think,
13 and the - Glencree Investments bought one of the
14 freeholds, and Whisper Investments bought the other
15 freehold. And then the freehold was sold to Durkan
16 Brothers for 96,000. And the leaseholds, then, was - I
17 can't remember what the leasehold was sold for, but it
18 was sold in Dublin.

19 658 Q. Yes. Essentially, in terms of the logistics of the
20 operation, what happened was that the Pembroke Estate
21 went to a degree of trouble to gather in the titles, so
22 as to be in a position to dispose of them. Whisper and
23 Glencree Investments Limited were used in part as
24 transmitting vehicles, effectively, to transmit the
25 titles, or part of the titles to Durkan Brothers?

26 A. Yes.

27 659 Q. But can you just explain to us, briefly, what the
28 scheme was in relation to it?

29 A. Well, the scheme was that - I can't remember the total
30 price, 200,000 or 250, I am not sure.

1 660 Q. I think it might have been around 220, or something of
2 that nature?

3 A. Yeah. Well, of that 220 or 250 --

4 661 Q. Sorry, Mr. Brennan did say it was 250. Perhaps he is
5 right.

6 A. 96,000 went to Jersey, and the balance was obviously
7 used to purchase the leasehold interests in Tritonville
8 Road.

9 662 Q. Yes. To buy out the leasehold interests?

10 A. Yes.

11 663 Q. And then the money that went to Jersey was used for
12 what?

13 A. 79,890 was paid to Keno Investments. 15,109 was paid
14 to Tom Brennan. I think Owens Murray got ú100,000 or
15 something. And I can't remember what the balance was.

16 664 Q. Yes. Why did Owens Murray get ú100,000, out of
17 interest?

18 A. I can't remember.

19 665 Q. I mean, it doesn't look like a fee.

20 A. Well, it's probably outlay. I don't - I can't
21 remember.

22 666 Q. Possibly a repayment of outlay?

23 A. Possibly, yeah.

24 667 Q. What was your understanding, then, of the arrangements
25 - we know that the property was purchased in virtually
26 its entirety from the Pembroke Estate in one shape or
27 another, albeit that there were other prior or
28 subsidiary interests. But in essence it was a sale by
29 the Pembroke Estate, but it was a sale on to Durkan
30 Brothers Limited?

1 A. Yes.

2 668 Q. What was your understanding, then, as to the
3 arrangements between Mr. Brennan and Mr. McGowan in
4 connection with this particular property?

5 A. And Mr. Finnegan?

6 669 Q. Yes.

7 A. Well, Mr. Finnegan, again, was able to produce the
8 freehold.

9 670 Q. Yes.

10 A. Which cost €14,000, if I remember.

11 671 Q. Yes.

12 A. And that was purchased by Glenree Investments and
13 Whisper Investments.

14 672 Q. Yes.

15 A. Two Jersey companies.

16 673 Q. Yes.

17 A. And then that freehold - in the apportionment of the
18 sale to Durkan Brothers, 96,000 was received into
19 Jersey.

20 674 Q. Into Keno?

21 A. 79,000 into Keno, and the 15,000 to Tom Brennan would
22 appear to be a refund --

23 675 Q. Of a deposit?

24 A. -- of the purchase of the freehold.

25 676 Q. So --

26 A. He put up the money to buy the freehold.

27 677 Q. The proceeds of the transaction, in other words, was
28 €78,500?

29 A. Yes.

30 678 Q. Which was used, in effect, in relation to the Stephen's

1 Green property?

2 A. It was. It was used in the apportionment account of
3 the - on Stephen's Green.

4 679 Q. What was your understanding as to the reason for Mr.
5 Finnegan's participation in this particular deal?

6 A. Again, he was able to produce the freehold.

7 680 Q. Yes. Was that your understanding in relation to all of
8 the deals we have spoken about so far, as to the reason
9 for Mr. Finnegan's participation?

10 A. Well, there was - if there was freehold involved, yes.
11 If there wasn't freehold involved, I don't know why he
12 was involved.

13 681 Q. Well, we know, for example, that apart from the ú15,000
14 that was paid to Mr. Brennan, which appeared to be a
15 repayment of outlay on his part for something, the
16 78,500 wasn't distributed, but instead it was put into
17 Keno?

18 A. That's correct.

19 682 Q. And was, in fact, subsequently used in the context of
20 the St. Stephen's Green property?

21 A. Correct.

22 683 Q. What was your understanding in relation to the proposal
23 in relation to St. Stephen's Green and the arrangements
24 between Messrs. Brennan and McGowan and Finnegan?

25 A. When McGowan purchased that site, first of all, from
26 whoever --

27 684 Q. Smiths of the Green?

28 A. Whoever, Owens, Smiths of the Green, it was a leasehold
29 purchase. And they were exploring the possibility of
30 developing it as shops and offices, and so on. But

1 they didn't have the expertise. So the Gallagher
2 Group, who were involved in sort of office development
3 and shops and so on in a big way at that time, they
4 became interested in the property. I'm not sure
5 whether it was through John Finnegan or through Joe
6 McGowan or who.

7 685 Q. Yes.

8 A. And they eventually agreed to purchase - if it was
9 freehold, to purchase for 1.5 million.

10 686 Q. Well, we know that the freehold was, in fact, bought
11 from MEPC.

12 A. What was the amount, Mr. Hanratty?

13 687 Q. One of the witnesses, I think, told us it was 150,000,
14 but I think there is another figure, and I'll come back
15 to that. We believe about 90,000.

16 A. The reason I am asking is that could be the second
17 33,000 that John Finnegan claims he paid.

18 688 Q. No. He doesn't claim that he put in any money in the
19 case of St. Stephen's Green, other than his
20 proportionate share of the ú78,500. And there was also
21 monies borrowed by Green Trees, which was the Irish
22 company involved in Stephen's Green which borrowed
23 300,000, which was put into the Sandyford property.
24 And in addition to that, there was ú21,250 deposit, I
25 think, paid by Mr. Finnegan on the freehold.

26 .

27 So he actually outlaid 21,250?

28 A. Yes.

29 689 Q. And he does appear to have done that, because there is
30 a figure in that precise sum coming out of Foxtown

1 around the time that the deposit was paid.

2 .

3 So it would appear that Mr. Finnegan had an outlay in
4 the sum of ú21,250 by way of input into the
5 transaction, apart from his proportionate share of the
6 ú78,500 that went into Keno?

7 A. Yeah.

8 690 Q. To the extent that he was entitled to it. But

9 everybody seems to say that he was, including himself
10 and Mr. Brennan and Mr. McGowan.

11 .

12 So what then was your understanding of the nature of
13 the arrangement or the agreement between the parties in
14 relation to this property?

15 A. Well, again, the contract for the purchase of the
16 leasehold was with Green Trees, an Irish company.

17 691 Q. No - Green Trees, yes --

18 A. Is an Irish company.

19 692 Q. That's correct.

20 A. And the freehold, obviously, was bought by Keno.

21 693 Q. Yes.

22 A. And the entire - the entire interest, then, was sold to
23 the Gallagher Group for 1.5 million.

24 694 Q. Yes. But where does Mr. Finnegan come into this, is
25 what I am trying to find out?

26 A. Well, he comes in insofar as the freehold interest was
27 sold for 900,000 into Keno, and he was a beneficially -
28 beneficially owned a third of Keno.

29 695 Q. What was the position about this borrowing of Green
30 Trees which was put into - we know was put into Canio?

1 A. Green Trees, I can't remember exactly what they paid
2 for the leasehold. I think it is maybe 300,000 or
3 something like that, but they sold it - their share of
4 the 1.5 million was 600,000, and they made a profit of
5 around 190,000, something like that.

6 696 Q. Well --

7 A. In - in Ireland.

8 697 Q. In Ireland, yes. But there was profit off-shore, in
9 the sense that they each received 223,000 from the
10 ultimate proceeds of sale.

11 A. They received it on the 900,000 that went to Jersey.

12 698 Q. That's right.

13 A. Yes.

14 699 Q. The sale was for 1.5 million?

15 A. Yes.

16 700 Q. There were debts to be paid off to the banks?

17 A. Yeah. Well, the only debts were in Green Trees, to my
18 recollection.

19 701 Q. Was that 600,000, by any chance?

20 A. No. No. I think it was around 300 - whatever the
21 purchase price of the leasehold was.

22 702 Q. Yes. But they also sent ú300,000 over to Canio?

23 A. Well, their share of the sale was 600,000, so that
24 would have left 300,000.

25 703 Q. Yes. After payment of the debt?

26 A. Yes.

27 704 Q. Well, then, I understand it was you that put together
28 the scheme in Jersey, is that right?

29 A. Yes.

30 705 Q. And the scheme was that the Jersey company would take

1 ú900,000 for its interest?

2 A. Yes.

3 706 Q. That's Keno?

4 A. Yeah.

5 707 Q. And after payment of approximately ú154,000 expenses,

6 which included a portion of the title, the figure that

7 was divided between the three or - sorry - which

8 yielded to the three was ú220,000 each?

9 A. Yeah.

10 708 Q. And that was presumably on the basis also that Mr.

11 Finnegan was entitled to share, as an equal one-third

12 partner, in the Jersey end of the scheme?

13 A. Yes.

14 709 Q. But in this case, was he not also an equal one-third

15 partner in the Irish end of the scheme?

16 A. I don't think so, because Brennan and McGowan had

17 bought the site before the freehold was acquired.

18 710 Q. So you think that his involvement related only to --

19 A. Although I suppose, indirectly, Mr. Hanratty, if

20 300,000 came from Green Trees to buy the Sandyford land

21 --

22 711 Q. That's correct?

23 A. -- then he did get it, he did get his third interest in

24 the Irish company.

25 712 Q. We do know that - certainly it appears that he was

26 treated as an equal one-third contributor to that fund

27 coming in?

28 A. Yes.

29 713 Q. And to that extent, therefore, he must have been

30 regarded, or he appears to have been regarded as

1 entitled to one-third of the Irish end of the

2 operation?

3 A. Yes.

4 714 Q. That's a borrowing that had to be repaid out of the St.

5 Stephen's Green's property. And to the extent that he

6 was given credit for one-third of the 300,000 that came

7 into Canio, he benefited to that extent, as it were,

8 from that fund?

9 A. Correct.

10 715 Q. So to that extent that appears to be different than his

11 participation in the other schemes, isn't that right?

12 A. Well, yes and no. I think the others - the leasehold -

13 whatever profit there was on the sale of the leasehold

14 would have gone to Brennan and McGowan solely. But it

15 appears in this one that the sale of the leasehold and

16 freehold, he profited from both.

17 716 Q. It may be - you mentioned that you thought the profit

18 in Ireland was ú190,000?

19 A. Yes.

20 717 Q. But he got credit for one-third of the ú300,000 that

21 came out of Green Trees into Canio?

22 A. Yes.

23 718 Q. So he got ú100,000 out of that company. Obviously both

24 Brennan and McGowan got that 100,000 each as well. But

25 they also got a profit of 190 - which do I understand

26 you correctly to mean that Mr. Finnegan did not

27 participate in?

28 A. It's complicated.

29 719 Q. We know that Green Trees borrowed ú300,000, which was

30 sent over to Canio and was used to pay the deposit on

1 the Sandyford land. That's quite clear.

2 A. But did they borrow it?

3 720 Q. Well, all the indications are that they did, and

4 everybody has told us that they did. And it came in

5 two tranches of 225,000 and 75,000, and was paid into

6 an account in Allied Irish Banks in College Street, of

7 Reid & McNabb. And that that is the fund which was

8 used to pay the deposit on the Sandyford lands.

9 A. And - sorry, I don't understand when that 300,000 would

10 have been repaid.

11 721 Q. Well, presumably, from the ú600,000 after the - there

12 was ú600,000 in Ireland and ú900,000 in Jersey, and Mr.

13 Brennan told us, I think again as recently as Friday,

14 that the 600,000 was used to repay the borrowings of

15 the company, of Green Trees. And the ú900,000 we do

16 know went over to Jersey?

17 A. What were the dates? Can you tell me of the purchase

18 of the Sandyford lands, bought in installments --

19 722 Q. Of the Sandyford lands?

20 A. Yeah.

21 723 Q. I think it was April/May of 1979. Just bear with me.

22 If we just look at page 251.

23 .

24 This is a letter to Mr. Wheeler from Mr. Gleeson, which

25 we understand - are we correct in our understanding was

26 drafted by you?

27 A. That's correct.

28 724 Q. It says:

29 .

30 "Dear Laurence Wheeler, further to my telephone

1 conversation, I confirm that I have found a suitable
2 piece of land for your clients. It is approximately 86
3 acres of land at Sandyford, County Dublin, which is
4 about seven miles from the city centre, and has
5 long-term development potential, and appears to be a
6 good investment. The price I have agreed is ú630,000
7 payable as follows:
8 .
9 ú75,000 deposit on signing of contract to be executed
10 12th April.
11 ú225,000 on 1st June.
12 ú118,000 on the 29th February, 1980.
13 And the balance of ú212,000 on the 28th November, 1980.

14 .
15 To preserve secrecy I will have to sign the contract in
16 trust. My solicitor, George Russell of Reid & McNabb,
17 11 South Frederick Street, Dublin 2, and his bank
18 account is at Allied Irish Banks, 5 College Street,
19 Dublin 2, so please arrange to put him in funds.

20 .
21 Would you please confirm that I will be paid an
22 introductory fee of 1 percent, ú6,300 with interest of
23 15 percent per annum until paid.

24 .
25 Looking forward to meeting you again."

26 .
27 That gives you the 29th of March of 1979, and the sale

28 --

29 A. The first payment is 12th of April.

30 725 Q. And those dates were by and large complied with.

1 A. Mm-hmm.

2 726 Q. And if I can show you page - before we go over to the

3 Reid & McNabb account, can I just ask you about that

4 letter.

5 .

6 Mr. Wheeler responded to that letter. And Mr. Wheeler

7 has told us that the letter that was used in response

8 was drafted by you as well. Is that right?

9 A. If I can see it, I'll tell you.

10 727 Q. We'll try and get it out for you. It appears from this

11 letter that Mr. Laurence Wheeler - that Laurence

12 Wheeler and Mr. James Gleeson are long-standing

13 friends, but Mr. Wheeler has told us that they never

14 knew each other from Adam?

15 A. That would be correct.

16 .

17 MR. HAYDEN: Sir, just to clarify one thing. Did I

18 understand Mr. Hanratty to say that Mr. Wheeler has

19 told the Tribunal something?

20 .

21 MR. HANRATTY: Yes.

22 .

23 MR. HAYDEN: I wonder --

24 .

25 CHAIRMAN: Not verbally.

26 .

27 MR. HANRATTY: Mr. Wheeler, as it has been said several

28 times, has declined an invitation to give evidence. He

29 did give us information, which I have put on the

30 latest - that nobody was disputing it, and it was

1 uncontroversial. As I understand this witness, he is
2 not disputing it either. I don't see what point is
3 being made here.

4 .

5 MR. HAYDEN: Maybe I'll help him if I tell him what the
6 point is then.

7 .

8 I am not making any point one way or the other. If My
9 Friend has answers, or has information from
10 Mr. Wheeler, I wonder if that could be circulated, so
11 far as all that information applies to my clients?
12 Because it may be that questions were put to
13 Mr. Wheeler that may clarify some issues or not. I am
14 not sure.

15 .

16 I don't want to go off into another world of inquiry,
17 but, as I understand Mr. Hanratty to say, he is putting
18 something to this witness, which I have no difficulty
19 with, provided - in that Mr. Wheeler has told
20 Mr. Hanratty something, either a consultation or
21 something --

22 .

23 MR. HANRATTY: That's precisely right. But it was not
24 circulated, as most of the interviews of the Tribunal
25 were not. I would have thought by this time Mr. Hayden
26 would have understood that procedure. What is
27 circulated to witnesses, as you are aware, Sir, are
28 statements of evidence intended to be called to the
29 Tribunal which may be adverse to the person to whom it
30 is being circulated. No evidence has been called for

1 Mr. Wheeler because he has declined an invitation to
2 attend, as I have said several times already. And
3 nothing adverse to Mr. Hayden's clients is being put in
4 connection to this witness. In fact, it's been
5 confirmed by his own client, as I understand his
6 evidence.

7 .

8 MR. HAYDEN: So we all know where we stand, and maybe I
9 am just slightly naive, all I am saying is that if the
10 Tribunal received information of some fashion, it's not
11 just adverse information. There may be beneficial
12 information to my clients. As a matter of fair
13 procedures, I should be afforded a copy of it. That's
14 all I am saying one way or the other. It's not a
15 question of, in my submission, to you, Sir, that the
16 Tribunal has had its election or the Tribunal team at
17 its election decided what to put to a witness in
18 relation to information obtained in consultation with
19 Mr. Wheeler.

20 .

21 And I understand Mr. Hanratty's point that it's not the
22 habit of this Tribunal to circulate the text of any
23 interviews. I am not looking for that. What I am
24 looking for is if there is information Mr. Wheeler has
25 obtained from Mr. -- beneficial to my clients, that I
26 would be afforded to have an opportunity to have sight
27 of it.

28 .

29 MR. HANRATTY: We don't have a statement from
30 Mr. Wheeler. What I am saying is this is, with

1 respect, complete nonsense. This is a non sequitur.
2 Mr. Wheeler was interviewed by the Tribunal, he was
3 asked, would he come over and give evidence on certain
4 specific matters being enquired into by the Tribunal.
5 He declined to do so. He declined to provide a
6 statement of evidence. So there is nothing to
7 circulate.

8 .
9 What I have put to this witness, and indeed to both Mr.
10 Brennan, and I believe also Mr. McGowan, were things
11 that Mr. Wheeler said that, to me, that were at an
12 interview which were uncontroversial which nobody is
13 denying.

14 .
15 MR. HAYDEN: Apart from an excellent display of an
16 excellent command of English, the point I am making in
17 relation to fairness of procedures, which is if the
18 Tribunal have taken notes of a meeting - my friend has
19 said on a number of occasions Mr. Wheeler has refused
20 to come over, and has said on a number of occasions he
21 has refused to give a statement, but if the Tribunal
22 have put questions to Mr. Wheeler which have elicited
23 answers, presumably they are recorded.

24 .
25 As I also understand, the practice of this Tribunal is
26 - that it takes a transcript of meetings.

27 .
28 MR. HANRATTY: If I continue this argument, Sir, I am
29 going to end up getting into what transpired at the
30 interview. As you are aware --

1 .

2 CHAIRMAN: You are not going to get that - that is not
3 going to happen.

4 .

5 MR. HANRATTY: All I am putting to this witness is
6 something that nobody is --

7 .

8 CHAIRMAN: We'll put it again, and we'll hear it and --

9 .

10 728 Q. MR. HANRATTY: I think you've already agreed, Mr.

11 Owens, that while one might take the implication from
12 the letter you drafted that these gentlemen knew each
13 other, they didn't know each other, apparently?

14 A. That's my information.

15 729 Q. Yes. And essentially the reasons we have been given

16 for this exchange of correspondence, at least by
17 Brennan and McGowan, is that they did not wish it to
18 become generally known that they were in fact involved
19 in the purchase, lest it might inflate the price or
20 rise expectations?

21 A. Correct.

22 730 Q. And is that the reason that you wrote these letters or
23 this letter in this form?

24 A. I think I was having a bit of fun with Mr. Wheeler when
25 I wrote that letter.

26 731 Q. Well --

27 A. But I did give him the basics. The mention of Ascot,
28 for example, he had never been to a risk meeting in his
29 life ^ .

30 732 Q. I'm sure Mr. Hayden won't object that he told me he

1 didn't know one end of a horse from another.

2 .

3 In any event, this all started with trying to identify

4 the date of the sale, and obviously from this letter it

5 happened around the 5th of April 1979.

6 .

7 Now, what we were talking about was the ú300,000 that

8 came out of Green Trees into Sandyford?

9 A. Yes. I am not sure when the sale of Smiths of the

10 Green happened.

11 733 Q. Well, it was subsequent to that?

12 A. Was it?

13 734 Q. But we do know that this money that was used - if we

14 can just have that page from Reid & McNabb, their

15 account. If we just look briefly at page 255.

16 .

17 You can see there the first two transactions on the

18 page were "deposit paid ú75,000 and ú225,000". This is

19 - you see it coming in on the left-hand side and going

20 out on the right-hand side.

21 .

22 And this is in - between April and June of 1979.

23 A. Yes.

24 735 Q. If you just look at page 270. We can see the ú225,000

25 coming in on the 31st of May, 1979, from Hill Samuel -

26 sorry --

27 A. May --

28 736 Q. This is an advice note from AIB of the ú225,000 coming

29 in from Hill Samuel for Green Trees Limited, order of

30 Hill Samuel.

1 .
2 So it's fairly clear that that - just for completeness,
3 the 75 came, page 260, on the 17th of April, 1979, on a
4 similar advice note. You can see that there.

5 .
6 So that money did come out of Green Trees Limited at
7 that time?

8 A. Yes. It would appear that that money was borrowed in
9 advance of the sale of Smiths of the Green.

10 737 Q. Yes. That appears to be in conformity --

11 A. As I see it.

12 738 Q. But it does appear from the evidence that we've heard,
13 I think from Mr. Brennan, Mr. McGowan and Mr. Finnegan,
14 that they all regarded Mr. Finnegan as being an equal
15 contributor to one-third of the fund of ú300,000 that
16 came in?

17 A. That appears to be the position.

18 739 Q. Which, in effect, means that he got a benefit of
19 another ú100,000 out of the St. Stephen's Green
20 property, but in this case out of the Irish end of the
21 St. Stephen's Green property?

22 A. Yeah.

23 740 Q. So his total benefit from that would have been
24 one-third of the ú78,500 that went directly into Keno,
25 one-third of the ú300,000 that came out of Green Trees,
26 and the ú223,000 that went over to Jersey?

27 A. Well, the first one, the 78,000 was used to pay the
28 apportionment account on the purchase of the Smiths of
29 the Green. It went to Miley & Miley's and they paid
30 the apportionment account.

1 741 Q. Well, Mr. Finnegan got the benefit of - or credit for
2 one-third of that, if you know what I mean?

3 A. Well, he didn't get it into his pocket.

4 742 Q. No. Of course not. But it went into the - it - well,
5 the 78,000 went over to Keno?

6 A. That's correct. And went back then to Miley & Miley to
7 pay the apportionment account of Smiths of the Green.

8 743 Q. We have the account, and we'll just have a look at the
9 breakdown when we dig out that document. If you'll
10 just bear with me.

11 .

12 In fact, most of it was used to buy the freehold?

13 A. Was that apportionment account, an apportionment of the
14 freehold, or was it rates and things like that --

15 744 Q. We believe it was in respect of the freehold, and we'll
16 just check that when we get the document.

17 A. There is a document somewhere in that --

18 745 Q. Yes, you are talking about the solicitors'
19 apportionment where he dealt with the 78,000. In fact,
20 I think it was 78,300 and there was a subsequent 5,000
21 dealt with separately.

22 .

23 So the apportionment account, I think, related to the
24 73,500 that came back out of Jersey first.

25 A. I don't think so. I think it's 78,500.

26 746 Q. Well, perhaps we'll just dig out that document. If you
27 --

28 A. I don't think we should be worrying over 5,000, with
29 the figures we are talking about.

30 747 Q. We just want to get everything right, Mr. Owens.

1 That's all.

2 .

3 Would you like to take a break at this stage, sir.

4 We'll have --

5 .

6 CHAIRMAN: We are coming up to ten to four now.

7 .

8 MR. HANRATTY: Then perhaps I'll just finish today with
9 the witness, and we'll -- I can resume that tomorrow.

10 .

11 CHAIRMAN: Resume tomorrow morning with that.

12 .

13 I have an appointment at half past four in the
14 building. I am not going out of the building.

15 .

16 MR. HANRATTY: Then it's a convenient time to break,
17 sir.

18 .

19 CHAIRMAN: If you wish, because there is an important
20 appointment at that time.

21 .

22 MR. HUSSEY: I wonder, Sir, I understand that Mr.
23 Caldwell is specially fixed for tomorrow. Does that
24 mean that he goes first - sorry, I beg your pardon.

25 .

26 MR. HANRATTY: Yes, he is specially fixed, but it
27 doesn't necessarily follow that he has to go first. I
28 think we'll try, as far as possible, to complete this
29 witness tomorrow and then we'll take Mr. Caldwell.

30 .

1 CHAIRMAN: We'll take Mr. Caldwell -- I want to
2 understand the order of battle, as it were. Mr.
3 Caldwell after this witness?

4 .

5 MR. HANRATTY: Yes.

6 .

7 CHAIRMAN: Very good. Is that all right?

8 .

9 MR. HUSSEY: If Mr. Caldwell is being inserted, I just
10 wish to know that.

11 .

12 CHAIRMAN: No.

13

14 THE TRIBUNAL ADJOURNED TO OCTOBER 31, 2001 AT 10:30

15 A.M..

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

