

09:36:28 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY,**

2 **4TH APRIL 2008, AT 10:00:**

3

4 CHAIRMAN: Good morning, Mr. Kay.

10:16:40 5 A. Good morning.

6

7 JUDGE KEYS: Good morning.

8

9 **MR. EDMUND KAY, CONTINUED TO BE QUESTIONED BY MS. DILLON**

10:16:43 10 **AS FOLLOWS:**

11

12 MS. DILLON: Good morning, Mr. Kay.

13 A. Good morning.

14

10:16:47 15 CHAIRMAN: Sorry.

16

17 MR. NESBITT: Members of the Tribunal. Just before examination starts.

18 Perhaps I could just point out one thing.

19

10:16:53 20 Regrettably through a misaddressing of documentation the Tribunal I think

21 wanted Mr. Kay to have before he got into the witness box, it was only

22 delivered yesterday to a defunct office of the bank and this concerns a

23 communication of the 3rd of April, concerning the Quarryvale II Module and

24 information was sent relevant to among other people, Mr. Kay.

10:17:20 25

26 Now, we haven't had the chance of going through it all and working out how that

27 might effect what Mr. Kay had before him.

28

29 I just wanted to point that out at this point in time. It's disappointing that

10:17:32 30 that should happen to Mr. Kay. I think he probably is the master class in

10:17:37 1 having prepared properly to help this Tribunal and I hope that's not going to
2 happen again.

3
4 CHAIRMAN: No, but if you want some time or Mr. Kay, if you think Mr. Kay
10:17:46 5 might like some time to look in a more detail at the document, there is no
6 difficulty about us rising.

7
8 MR. NESBITT: No, I don't think that's difficult. Mr. Kay knows what he wants
9 to say and he is happy to go on.

10:18:00 10
11 CHAIRMAN: We can take that into account.

12
13 MR. NESBITT: Thank you.

14
10:18:04 15 CHAIRMAN: When he is dealing with ...

16
17 MR. NESBITT: Thank you.

18
19 Q. 1 MS. DILLON: Good morning, Mr. Kay.

10:18:12 20 A. Good morning.

21 Q. 2 Can I take you back to deal with the letter that we were looking at yesterday
22 evening which was the letter of the 3rd of December 1991. And the copy that we
23 had been looking at yesterday is at, if I can just show you this copy first at
24 6400. And I just want to draw to your attention that beneath the letters "QV2"
10:18:38 25 at the very top there is a reference "2 AIB Q" do you see that reference?

26 A. Yes, I do.

27 Q. 3 That means that this is a copy of a document that was provided to the Tribunal
28 by Allied Irish Bank, do you understand that?

29 A. Yes.

10:18:51 30 Q. 4 And that is a referencing system for the purpose of tracking documents that are

- 10:18:56 1 provided to the Tribunal and on the first page of that document you will see
2 that where it's written in bold "payments made by Riga" underneath the words
3 "by Riga" are underlined, isn't that right?
- 4 A. Yes.
- 10:19:09 5 Q. 5 And then if we go to the second page which is the next page, of the same letter
6 on the following page under the headings "payments to be made by Barkhill".
7 There are three ticks one beside the Deloitte & Touche amount, one beside the
8 Frank Dunlop amount and one beside the Taggart amount, isn't that right?
- 9 A. Yes, I see that.
- 10:19:28 10 Q. 6 And there is a line drawn beneath the Taggart, isn't that right?
- 11 A. Yes.
- 12 Q. 7 And that letter was provided to the Tribunal by Allied Irish Banks.
- 13 A. Well I don't know that but yes, I'm sure you are correct.
- 14 Q. 8 Yes. And clearly a copy of this was on the bank's files, isn't that right?
- 10:19:44 15 A. Yes, I came across it in the bank's file. I am not sure whether it was an
16 original or a copy that I read but I certainly read the gist of this.
- 17 Q. 9 And if I can show you 27407. Sorry, before I leave that can I show you 6400
18 again. And you see in the centre of that there is a stamp that says "Allied
19 Irish Bank, 5 December 1991 Corporate Banking"?
- 10:20:11 20 A. Yes.
- 21 Q. 10 And now can I show you side by side 27407 beside 6400. Now, the second copy
22 that's on screen which is 27407 is a copy that was provided to the Tribunal by
23 Mr. Owen O'Callaghan in his discovery and you will see beneath the number
24 "27407" the letters "OC 1.4" meaning O'Callaghan.
- 10:21:04 25 A. I see that, yes.
- 26 Q. 11 Do you see that? Now, do you see that both letters contain the stamp of Allied
27 Irish Bank of the 5th of December '91 Corporate Banking?
- 28 A. I do.
- 29 Q. 12 And it would follow from that, that Mr. O'Callaghan had in his documentation a
10:21:19 30 copy or the original of the letter that was sent to Allied Irish Bank by

10:21:22 1 himself because his copy is also stamped "Allied Irish Bank 5 December '91"
2 isn't that right?
3 A. Yes.
4 Q. 13 Do you know how it is that both the bank and Mr. O'Callaghan had exactly the
10:21:32 5 same copy of that letter both containing the Allied Irish Bank's stamp and both
6 containing the same ticks or notations on it?
7 A. No, I do not.
8 Q. 14 Who is the person in Allied Irish Bank who would be more familiar with the
9 actual documentation than yourself, Mr. Kay?
10:21:51 10 A. Well, at the time when this took place and I was operating in that particular
11 job --
12 Q. 15 Uh-huh.
13 A. -- I presume the team and I would have been involved in it. But I presume when
14 these documents were requisitioned or whatever by the Tribunal, that would have
10:22:11 15 happened, I don't know, sometime a lot later, the late 90's I presume. And I
16 think it would have been handled by our legal department.
17
18 MR. NESBITT: If I could intervene at this point, Mr. Chairman?
19
10:22:25 20 I am very concerned as to the nature of this type of examination of a witness
21 of the quality of Mr. Kay.
22
23 We seem to be gliding across Mr. Kay trying to help this Tribunal in relation
24 to what he did about a particular transaction and an entirely different concept
10:22:42 25 as to how this Tribunal got documentation and asking Mr. Kay to explain
26 something that could be put to Mr. O'Callaghan.
27
28 Now, I just want to take it bit by bit because this is what has happened,
29 subject to final instructions. And the Tribunal counsel can correct me if I'm
10:22:59 30 wrong. When AIB was asked to provide documentation to this Tribunal, there was

10:23:03 1 a lot of documentation. And I am instructed and it's being checked at the
2 moment but I am going to say it now for the purposes of making sure Mr. Kay
3 does not get disadvantaged in the way he is being dealt with.
4

10:23:16 5 That we gave our original files to the Tribunal who went through them and took
6 out what they wanted and gave us back the original files. So Mr. Kay was no
7 part of that process. And he should not be asked about circumstances in which
8 your Tribunal has documentation out of our files because it is not something he
9 was involved in. It was something that in fact the Tribunal was very closely
10 involved in because it had the original documentation and it copied what it
11 wanted. But that doesn't appear to be the way that he is being treated now.
12 It looks like he is going to be brought through what does Mr. O'Callaghan have
13 a copy of a letter that you have.
14

10:24:00 15 CHAIRMAN: No. He is being asked does he know how it has happened that the
16 letter having been sent to AIB the same letter in effect or a copy of the
17 letter as received, finds itself back with Mr. O'Callaghan.
18

19 MR. NESBITT: Yes and he says --

10:24:16 20
21 CHAIRMAN: The response to that can be that he doesn't know or if he does
22 know, he can explain his understanding as to how it happened and the reason for
23 it happening and Mr. Kay I accept may not have any knowledge of it at all. But
24 the reason can be completely innocent, in that it could have been that Mr.
10:24:41 25 O'Callaghan sought a copy of it. But the question, it doesn't presuppose that
26 or the putting of the question that there was anything improper about the
27 manner in which this correspondence was subsequently dealt with by AIB, there
28 may be a completely innocent explanation and Mr. Kay simply being asked does he
29 know anything about it.
30

10:25:10

10:25:10 1 MR. NESBITT: How could there be a dishonest explanation.

2

3 CHAIRMAN: Exactly.

4

10:25:14 5 MR. NESBITT: You have used the phrase. An honest explanation. How could
6 there be a dishonest explanation.

7

8 CHAIRMAN: Well I don't know. It's perfectly reasonable for Mr. Kay to be
9 asked does he know how it has happened that Mr. O'Callaghan has got the same
10:25:30 10 copy of the letter that was sent to AIB.

11

12 MR. NESBITT: Well why not just ask that question? We've noticed that the copy
13 that Mr. O'Callaghan sends a copy -- he had a copy of the bank letter.

14

10:25:40 15 CHAIRMAN: Yes.

16

17 MR. NESBITT: That's a simple question. He was never asked that way. It's
18 always asked in a way that suggests that there is some terrible piece of
19 dishonesty being perpetrated by somebody. You yourself have just used the
10:25:54 20 expression there may be an "innocent explanation". Even you are drawn in to
21 the way counsel is asking questions.

22

23 CHAIRMAN: It's perfectly in order that he would be asked does he know how
24 this happened. It does not suggest that there was anything improper.

10:26:07 25

26 MR. NESBITT: Good. That's what I say.

27

28 JUDGE KEYS: Mr. Nesbitt, I think you are being somewhat over sensitive in
29 that respect.

10:26:13 30

10:26:13 1 MR. NESBITT: Yes, I am very sensitive. I don't think that Mr. Kay is being
2 fairly treated by the Tribunal.
3
4 JUDGE KEYS: This is an inquiry, Mr. Nesbitt.

10:26:20 5
6 MR. NESBITT: Yes and it should ask questions and listen to the answers as
7 opposed to putting scenarios before the witness.
8
9 JUDGE KEYS: Mr. Nesbitt, they do not have to be asked the way you want them
10 to be asked.
11
12 MR. NESBITT: No, but they should be asked about an inquiry --
13
14 JUDGE KEYS: They will be asked in the context of an inquiry.

10:26:35 15
16 MR. NESBITT: Yes. Which is, can up help us with this? Please give
17 information. All inquiries being very careful to indicate that they do not
18 work to scenarios and they do not make suppositions.
19

10:26:44 20 JUDGE KEYS: Mr. Nesbitt, that may be the way you want to ask it.
21
22 MR. NESBITT: No, that's they way it's done.
23
24 JUDGE KEYS: Not everybody is asks questions the same way!

10:26:51 25
26 CHAIRMAN: Mr. Nesbitt, there is no -- you are suggesting that it's being
27 asked on the basis of some preconceived scenario.
28
29 JUDGE KEYS: For God's sake.
10:26:58 30

10:26:59 1 MR. NESBITT: Yes and I know that.

2

3 CHAIRMAN: But the question has been asked my recollection of the manner in

4 which the question was asked was; do you know how this has happened in the way

10:27:11 5 it appears to have happened. It does not -- I certainly don't, I didn't get

6 the impression that any, that anything improper was being suggested to or any

7 act on the part of Mr. Kay or indeed anybody else in AIB was being, as having

8 been done improperly was being suggested to this witness or indeed that

9 anything improper was done by Mr. O'Callaghan or on be on his behalf.

10:27:38 10

11 MR. NESBITT: Good thank you very much. Sorry. Maybe I am over sensitive and

12 apologise if I have been.

13

14 MS. DILLON: And can I, just to make sure there is no ambiguity about the

10:27:45 15 matter, I would like to quite slowly read back the question that I put to

16 Mr. Kay, so that Mr. Nesbitt can see from the transcript the question that I

17 put to which he has now taken such objection.

18

19 What I in fact asked.

10:27:57 20

21 MR. NESBITT: Would it be possible if I was given a stream of the instantaneous

22 transcript. I have a computer that will handle it. Is that possible?

23

24 CHAIRMAN: The difficulty is that we can't produce a copy of the transcript

10:28:08 25 immediately other than on our own screens. It takes a little bit of time for

26 ... it can certainly be provided to you, certainly probably by lunchtime.

27

28 MR. NESBITT: I am not getting the same as my colleague. I've asked about this

29 before, I don't understand why we don't get it.

10:28:24 30

10:28:25 1 CHAIRMAN: Well Ms. Dillon can quote back the question. You can certainly
2 return to it later if you feel that ...

3

4

MR. NESBITT: Thank you.

10:28:33 5

6 Q. 16 MS. DILLON: I will read back the question that I asked you, Mr. Kay, and
7 about which Mr. Nesbitt makes complaint. The question is:

8

9 "Do you know how it is that both the bank that letter both the bank and Mr.

10:28:44 10 O'Callaghan had exactly the same copy of the letter both containing the Allied
11 Irish Bank bank's stamp and both containing the same particular notations on
12 it?

13 A: No, I do not.

14 Q: Who is the person in Allied Irish Bank bank's who would be more familiar
15:28:56 15 with the actual documentation than yourself, Mr. Kay?

16 A: Well at the time when this took place, and I was operating in that
17 particular job, I presume the team and I would have been involved in it".

18

19 Now, what I had put to you I think, Mr. Kay, was whether or not you could
10:29:12 20 explain to the Tribunal, how it was that both yourself and Mr. O'Callaghan had
21 the same letter, isn't that the question that I asked you?

22 A. Yes.

23 Q. 17 And I think your answer to that was that you couldn't give an explanation. And
24 I then moved on to ask you who might be able to assist the Tribunal, isn't that
10:29:25 25 right, in relation to the matter?

26 A. That's right.

27 Q. 18 Thank you. Now, just looking at the documentation that's on screen and for
28 completeness, if we look at the second page of both and therefore if I could
29 have 6401 which is the Allied Irish Bank second page on screen together with
10:29:47 30 the 27408, which is the O'Callaghan Properties second page of the same letter.

10:30:12 1 Yes. I think you will agree in the first instance they appear to be copies of
2 the same letter, isn't that right?

3 A. Yes, they do.

4 Q. 19 And they both contain the same three ticks beside Deloitte & Touche, Frank
10:30:23 5 Dunlop and Taggarts, isn't that right?

6 A. Yes.

7 Q. 20 Obviously made in pen and then beneath the Taggarts there is an underlining on
8 both pages, isn't that right?

9 A. Yes, that's right.

10:30:31 10 Q. 21 So it would appear insofar as both pages of the letter of the 3rd of December
11 are concerned, both the bank and Mr. O'Callaghan had the same copy of the
12 letter, isn't that right?

13 A. Yes, it appears that way.

14 Q. 22 That would appear to be the position, is that right?

10:30:45 15 A. Yes.

16 Q. 23 And then if we move on to the next page or next copy of the same letter which
17 is a copy at 6402. Now, this is a page that is, it is a copy of the first page
18 of this letter, Mr. Kay, but it contains different notations in handwriting
19 than the one we looked at a moment ago, isn't that right?

10:31:07 20 A. Yes, that's correct.

21 Q. 24 This page is provided to the Tribunal from the discovery of Allied Irish Bank
22 so it comes from the bank files. And it would appear that the second page that
23 should have gone with that letter is not on the bank's files?
24

10:31:23 25 MR. NESBITT: I object to that question, Mr. Chairman.
26

27 MS. DILLON: Fine.
28

29 MR. NESBITT: My friend does not know that to be a fact. I have explained to
10:31:29 30 you how your Tribunal came to be in possession of copies of documentation. It

10:31:33 1 was a photocopying process that your Tribunal carried out and I know of no
2 inquiry of my clients or any work done by this Tribunal to find out whether
3 they've lost the copy. The copy doesn't exist in AIB original files and I
4 object in the most strong sense that a thing that's suggesting an important
10:31:54 5 page has gone missing should be suggested without the simple checking being
6 done.

7

8

CHAIRMAN: All right.

9

10:32:07 10 MR. NESBITT: I shouldn't have to do that but I have to.

11

12

MS. DILLON: We have checked our files.

13

14

MR. NESBITT: Your files are made by yourselves.

10:32:07 15

16

MS. DILLON: If I could just make a comment without interruption. I don't
17 believe that I've ever interrupted Mr. Nesbitt.

18

19

We have checked the Tribunal copy of these files. Mr. Nesbitt is correct that

10:32:16 20

the files were returned certainly at one stage there was a photocopying problem
21 and documents were returned to Allied Irish Bank for clearer copies.

22

23

If Mr. Nesbitt has a serious concern about this and it's a matter that was only

24

raised with him this morning, I can leave this and I can return to it at a

10:32:33 25

later stage when we have made a definitive check and we have a sequential

26

history of the circumstances in which discovery was provided by Allied Irish

27

Bank and what process took place.

28

29

CHAIRMAN: All right. Well we'll --

10:32:45 30

- 10:32:45 1 MS. DILLON: But I can still proceed to deal with the questions that I can put
2 without reference to any issue in relation to the discovery.
- 3 Q. 25 Insofar as this page of the letter is concerned, Mr. Kay, it contains notations
4 and marks on it different to the one we looked at a moment ago, isn't that
10:33:02 5 right?
- 6 A. That's right.
- 7 Q. 26 And again, just so that there's no ambiguity about it. If we put up page 6400
8 beside 6402. Now, page 6400 was provided by the bank and 6402 was provided by
9 the bank. And both of them contained the reference at the top "2 AIB Q" do you
10:33:36 10 see that, Mr. Kay?
- 11 A. I do.
- 12 Q. 27 So both of these came to the Tribunal from the bank's discovery?
- 13 A. Sorry, one of them has "2 AIB Q12" and the other has "2 AIB Q3".
- 14 Q. 28 Yes they come from two different files.
- 10:33:52 15 A. Oh, I see.
- 16 Q. 29 Yes. But they are nonetheless provided by the bank albeit on two separate
17 files.
18
- 19 Now, just looking at the letter that's on file looking first of all at the
10:34:03 20 letter that has the bank's stamp. I think you agree that the only notation on
21 the letter with the bank stamp which is 6400, is the under lining of the words
22 "Riga".
- 23 A. Yes.
- 24 Q. 30 All right. And on the second letter which is at page 6402 or the second copy
10:34:19 25 of the letter, there are a number of handwritten notations and starting at the
26 very top over the word "limited" by O'Callaghan Properties, there appears to be
27 a telephone number, would I agree with that?
- 28 A. Looks like that. Yes.
- 29 Q. 31 Is that in your handwriting Mr. Kay?
- 10:34:32 30 A. It is not.

- 10:34:33 1 Q. 32 And if you look beneath the words "housing, industrial and commercial
2 developers" there appears to be written "E/K/another word" which I can't make
3 out, would I agree with that?
4 A. Yes.
- 10:34:44 5 Q. 33 Is that in your handwriting?
6 A. No and my name is incorrectly spelt, so it's unlikely to be somebody from AIB.
7 Q. 34 Yes. Do you know that handwriting?
8 A. No.
- 10:34:58 9 Q. 35 And if you move down, Mr. Kay, to beneath "payments made by Riga" underneath
10 the word "by" in the sentence "payments made by Riga" there is a small under
11 lining, isn't that right?
12 A. Yes.
- 13 Q. 36 And then if you move down to the next line something appears to be written at
14 the beginning of the first entry which relates to Tom Gilmartin, isn't that
10:35:14 15 right?
16 A. I don't see that.
- 17 Q. 37 If you see where it says "20/9/91".
18 A. Oh yes, i do. Sorry.
- 19 Q. 38 And then if you move across that line after 100,000 pounds and under the
10:35:26 20 heading "remarks" something appears to be written which starts with the word
21 "2" and appears to end with the word "pay" is that right?
22 A. It looks like that, yes.
- 23 Q. 39 And then there is a bracket and a question mark.
24 A. Yes.
- 10:35:40 25 Q. 40 Did you make those entries, Mr. Kay?
26 A. No, none of that is in my writing. None of that.
- 27 Q. 41 And if you move to the next line, do you see the tick beside 10,000 pounds "I
28 will explain on Friday"?
29 A. Yes.
- 10:35:52 30 Q. 42 Is that a tick well, I mean you -- I suggest you can't say whether you made the

- 10:35:56 1 tick or not. But to the best of your recollection do you ever remember making
2 any notations such as this in relation to this letter?
- 3 A. No, all of that writing looks completely foreign to me, I don't recollect ever
4 seeing it before. And it's certainly not mine or any of my colleagues.
- 10:36:12 5 Q. 43 That you can recognise?
- 6 A. Yes.
- 7 Q. 44 Yes. And would you think it's likely that whoever made the writing on it is
8 also the person who made the ticks?
- 9 A. Well I don't know but probably.
- 10:36:21 10 Q. 45 Yes. And if you go down to the very bottom where passed the four ticks there
11 is a tick beside "expenses, I will explain on Friday 10,000". A tick beside
12 "Frank Dunlop brochures available" and a tick beside "expenses I will explain
13 on Friday" and then "Ambrose Kelly" 26195 and a tick beside that and beneath
14 that there appears to be a plus sign do you see that in the centre?
- 10:36:44 15 A. I do, yes.
- 16 Q. 46 And then beneath that the following appears to be written subject to correction
17 "F/Dunlop's 746970 plus VAT 8228.42".
- 18 A. I see that.
- 19 Q. 47 That appears to be a calculation where a figure due to Mr. Dunlop has a VAT
10:37:03 20 figure added, totalling 8228.42, do you agree with that?
- 21 A. Yes.
- 22 Q. 48 Now, that if I can turn then to look at 6403 please. And if I could have 6402
23 and 6403 together. 6402, Mr. Kay, is the letter the copy we've just been
24 looking at which was provided to the bank to the Tribunal from the bank's
10:37:43 25 discovery. And the copy beside it at page 6403 appears to be a carbon copy of
26 6402, and it was provided to the Tribunal from Mr. O'Callaghan or by Mr.
27 O'Callaghan.
- 28 A. The question that comes to mind is are you sure that the first document came
29 from the bank's discovery.
- 10:38:08 30 Q. 49 That much we're sure about, yes. Yes, Mr. Kay is the answer to that.

10:38:16 1 A. They appear to be identical.

2 Q. 50 Yes. Right. Now, in Mr. O'Callaghan's discovery at 6404, there is the second

3 page of this letter which also contains handwritten notations, isn't that

4 right?

10:38:35 5 A. Yes.

6 Q. 51 Right. And the second entry which relates to Frank Dunlop is a figure of

7 7467.9 plus VAT and beneath that appear to be written the words "paid by Riga"

8 isn't that right?

9 A. Yes.

10:38:50 10 Q. 52 And then at the side beside -- on the same entry is also seems to be written

11 the words "paid to Riga" and it's underlined, isn't that right?

12 A. Yes.

13 Q. 53 And there is a tick beside that and the preceding entry in relation to Deloitte

14 & Touche and beneath that then there is an entry in relation to Taggarts which

10:39:08 15 has an asterisk and the word "sterling" is underlined. Do you agree with that?

16 A. Yes.

17 Q. 54 And there is also a tick beside that.

18 A. Yes.

19 Q. 55 And there appears to be word of some description written immediately beside

10:39:22 20 that tick, do you see that?

21 A. Yes I do, yeah.

22 Q. 56 Yes. Do you recognise any of the writing, Mr. Kay?

23 A. Not so far.

24 Q. 57 Right.

10:39:32 25 A. The bottom of the letter I he recognise my own writing.

26 Q. 58 Yes. And on the next line in relation to Ove Arup there is a figure of 66254

27 and there is some writing at the side of that letter, isn't that right?

28 A. Yes.

29 Q. 59 And beneath that Kieran O'Malley and some writing also immediately to the side

10:39:50 30 of that.

10:39:50 1 A. Yes.

2 Q. 60 And at the very bottom there is "F Gunne" an arrow and "13,300" and what might
3 be "D/McGrath" would you agree with that?

4 A. It could be yes. I suppose it's D Mac something.

10:40:05 5 Q. 61 Yes. It's not possible to read it all, isn't that right?

6 A. Yes.

7 Q. 62 Right. And beneath that at the very bottom there is an entry that appears to
8 read "Riga F Bohan re Deloitte & Touche". Would you agree with that?

9 A. Yes.

10:40:19 10 Q. 63 And is that in your handwriting?

11 A. It is.

12 Q. 64 Yes. Now, that copy of the letter, Mr. Kay, would appear to be Mr.
13 O'Callaghan's copy of the letter in -- certainly insofar as all of the writing
14 on the letter is somebody other than somebody from Allied Irish Bank, isn't
10:40:37 15 that right?

16 A. With the exception of my --

17 Q. 65 Entry.

18 A. -- few words at the bottom. Yes.

19 Q. 66 Isn't that the position?

10:40:43 20 A. That is correct.

21 Q. 67 Yes. Do you know how it was that Mr. O'Callaghan came to have a copy of the
22 letter which had your notes, your notation at the bottom of it?

23 A. No, I do not.

24 Q. 68 Now, just looking at the ticks at 6403. And you will see, Mr. Kay, where, as I
10:41:10 25 have already indicated to you, there are ticks beside four items there, isn't
26 that right?

27 A. Yes.

28 Q. 69 Would that suggest to you that that might represent an agreement in relation to
29 them? In other words, that they have been passed for payment.

10:41:22 30 A. Well I just don't know.

- 10:41:24 1 Q. 70 Yes. Isn't that likely, isn't that how people would normally indicate
2 agreement has been passed a tick?
- 3 A. Well, I presume it indicates that it has been looked at or whatever but I don't
4 think it necessarily means that it has been approved for payment but I just
10:41:41 5 don't know.
- 6 Q. 71 All right. And can you remember at all, Mr. Kay, whether it is likely that
7 when you discussed this correspondence with Mr. O'Callaghan, whether you would
8 both have had copies of the correspondence together when you were discussing
9 it?
- 10:42:07 10 A. Well I don't know. I think I said yesterday that I had no recollection of
11 actually discussing this with Mr. O'Callaghan. I know he had originally said
12 he would discuss it with me on Friday and as I think I said yesterday, I had no
13 recollection of actually meeting him on that occasion but you showed evidence
14 that he was in Dublin on the day in question.
- 10:42:23 15 Q. 72 Yes.
- 16 A. Which made it perhaps, well certainly possible that I met him. But no more
17 than that.
- 18 Q. 73 Is it possible that he might have discussed this correspondence with somebody
19 other than yourself, Mr. Kay?
- 10:42:37 20 A. Well given that my writing is on the bottom of one of the copies, I suppose
21 obviously I wrote it there. When and how I just don't know.
22
- 23 CHAIRMAN: Mr. Kay, can we take it that these various payments would have had
24 to have been cleared by you?
- 10:43:04 25 A. Yes.
26
- 27 CHAIRMAN: Whether you were at the meeting or whether you were briefed
28 subsequently by somebody who had met Mr. O'Callaghan?
- 29 A. Well, if it was my colleague Mr. Donagh.
10:43:17 30

10:43:18 1 CHAIRMAN: Uh-huh.

2 A. He could have approved it. But I'm not saying he did. But he would have had

3 the power to do so. The authority to do so.

4

10:43:28 5 CHAIRMAN: Yes. And is it likely though that if Mr. Donagh had approved these

6 payments that you would have been, that he would have passed on to you whatever

7 explanation he had been given?

8 A. Oh, yes I'm sure he would.

9

10:43:44 10 CHAIRMAN: By Mr. O'Callaghan.

11 A. I'm sure he would.

12

13 CHAIRMAN: I mean, out of pure curiosity for no other reason, you would

14 have presumably wanted to have been explained to you what happened on the

10:43:57 15 front.

16 A. Oh, yes with a puzzled me is that my writing is clearly on one of them which

17 suggests -- well I obviously must have seen the letter when I wrote on it but

18 more than that, I can't say.

19

10:44:09 20 CHAIRMAN: All right.

21

22 Q. 74 MS. DILLON: Do you remember, Mr. Kay, that in December of 1991 you went to

23 London to meet with Mr. Gilmartin arising from Mr. Gilmartin's failure to

24 attend at a closing of the Bruton sale?

10:44:26 25 A. December '91.

26 Q. 75 Uh-huh. Around the 19th of December 1991, I think that the closing had

27 originally been scheduled for the 17th and Mr. Gilmartin hadn't attended at the

28 closing. It was a variation agreement in relation to the Bruton contract.

29 A. I don't actually recollect meeting him in London on that occasion. I may well

10:44:51 30 have done so. But is there anything to support that.

10:44:54 1 Q. 76 Yes there is. I mean I wanted to ask you just on what we're dealing with at
2 the moment there is a document but I'll take you through that now, Mr. Kay. So
3 that you can be satisfied that in fact you did I think go to London. If we
4 look at 6453. Messrs. Shannon who were the solicitors referred to here were
10:45:13 5 the solicitors acting on behalf of John Desmond Bruton in connection with the
6 Confey Stud and Bruton lands, Mr. Kay.
7 A. Yes, I know that.
8 Q. 77 And on the 17th of December '91, Mr. Shannon or whoever in Shannon's was
9 dealing with it wrote to Ms. Patricia Taylor and Ms Hagan in William Fry as
10:45:31 10 follows:
11
12 "Following our telephone conversation this afternoon, we confirm we called to
13 Mr. Jim Donagh of AIB and handed him both prints of the variation agreement.
14 This is for the purposes of having the agreement executed by Mr. Gilmartin, who
10:45:43 15 failed to attend the meeting scheduled for this morning.
16
17 Mr. Donagh confirmed that he will ensure that AIB does not part with possession
18 of these documents save to your good selves with which of course -- of sanction
19 we concur".
10:45:57 20
21 All right.
22 A. Oh, sorry I think I remember, is this when I am reputed to have gone to London
23 and brought some cash to Mr. Gilmartin?
24 Q. 78 Well I think what you brought in the first place, Mr. Kay, was documentation
10:46:10 25 for Mr. Gilmartin to sign.
26 A. Yes.
27 Q. 79 Right.
28 A. I have read all of this but I have no recollection of actually going to London
29 and getting him to sign documents, I may have done but I think what really
10:46:23 30 surprised me when I read that I was reputed to have brought some cash to Mr.

10:46:27 1 Gilmartin in London or wherever and I'm virtually certain that I did not.

2 Q. 80 Just dealing with the issue of travelling to London, Mr. Kay. At 6454, on the

3 same day which was the 17th of December 1992, there is a notation in William

4 Fry's at item 7 "T Gilmartin is sole signature". Do you see that?

10:46:55 5 A. I do, yes.

6 Q. 81 And on the same day also within the William Fry documentation at 16610. The

7 first notation No. 1 is "Gilmartin is not cooperating. 2. Settlement

8 agreement has been signed. Now doing a variation agreement re Daleview. 3.

9 Can Gilmartin be sidelined."

10:47:23 10

11 And on the following page at 16611. Under the heading "Bruton property

12 Gilmartin has to be a party 'cos of trust problems etc. Robin, Peelo, Bruton

13 are afraid Gilmartin will challenge the conveyance agreement if Gilmartin is

14 not a party. Could Barkhill do it on its own".

10:47:46 15

16 And then down at the bottom beside an asterisk there is a notation "Eddie does

17 not want to appoint a receiver for fear of destroying the credibility of the

18 project".

19

10:48:00 20 Now, I think that there was a certain in the bank and in Frys on that date,

21 which was the 18th, the 17th of December 1991, arising out of Mr. Gilmartin's

22 failure to attend to sign the Bruton variation agreement, is that right?

23 A. Well, yes, this is Frys. Now, I presume we had this documentation in our file

24 but I can't say I've read it before.

10:48:26 25 Q. 82 Yes. All right. At 6457 on the 18th of December '91. Again, a document from

26 William Fry's solicitors under the heading "Eddie Kay telephone". There is a

27 notation "Gilmartin may not have shown up. Gilmartin only signatory on bank

28 account, suggested". And then beneath that "Gilmartin may not show up. Talk

29 to Peelo to see if Gilmartin can be excluded from the contract".

10:48:55 30

10:48:55 1 And I would suggest to you that on the 18th of December 1991 because of Mr.
2 Gilmartin's failure to attend at the signing of the variation agreement on the
3 17th, there was questions being raised as to whether it would be possible to
4 sign the contract without him. Would you agree with that?

10:49:11 5 A. Yes.

6 Q. 83 Right. At 6476, Mr. Kay, on the 19th of December 1991, in an attendance docket
7 by Mr. John Bruton solicitors on himself, the solicitor to Mr. Bruton notes
8 "attending Mr. Jim Donagh of AIB. Mr. Gilmartin did not turn up for the
9 appointment on the 18th and accordingly Mr. Eddie Kay went over to today to
10 Luton in England and saw Mr. Gilmartin.
11
12 Mr. Kay arranged for the variation agreement in duplicate to be signed by Mr.
13 Gilmartin and handed Mr. Gilmartin some monies that AIB had agreed to advance
14 to him" do you see that notation there?

10:49:48 15 A. Oh, yes I've read that before.

16 Q. 84 "Mr. Kay was on his way home at the time of the discussion."
17
18 Now, the information contained in this document to the solicitors for
19 Mr. Bruton appears to have emanated from a conversation with Mr. Jim Donagh of
10:50:02 20 AIB, isn't that right?

21 A. That's right, yes.

22 Q. 85 And the source of the information that you brought monies to Mr. Gilmartin in
23 Luton at the time of this meeting is Mr. Donagh in Allied Irish Banks, isn't
24 that right?

10:50:12 25 A. Yes.

26 Q. 86 Yes. You don't believe that you did in fact do so, Mr. Kay, is that right?

27 A. No, I don't. I may have gone to London or wherever to Luton to get him to sign
28 a document. I don't think I did but it's possible. But I certainly have no
29 recollection of bringing him any cash. And perhaps you could tell me is there
10:50:31 30 any evidence of cash being withdrawn from the account?

- 10:50:35 1 Q. 87 Not at this time, no, Mr. Kay, no.
- 2 A. Well then I think that supports what I ...
- 3 Q. 88 But in any --
- 4 A. I would be 99.99 per cent certain I never brought him cash anywhere.
- 10:50:48 5 Q. 89 Yes. The agreement at 6488 which is the variation agreement in relation to the
6 Bruton contract is signed by Mr. Gilmartin, isn't that right? And it's
7 witnessed by you?
- 8 A. Yes.
- 9 Q. 90 Right. It's also signed by other parties, isn't that right?
- 10:51:04 10 A. Yes.
- 11 Q. 91 And also on the 19th of December 1991 at 6479. This document was also signed
12 by Mr. Gilmartin which is an authorisation of drawdown of amounts from the loan
13 facility and to forward cheques directly to the following parties. Do you see
14 that?
- 10:51:27 15 A. I see that, yes.
- 16 Q. 92 And that document has a number of amounts listed including Seamus Maguire
17 48,400; Taggarts 154,000 odd; F Dunlop 9,036.16; Fintan Gunne 16,000 pounds &
18 Deloitte & Touche 18,150 and handwritten in the bottom 12,600 beside that draft
19 TG and beside that Touche Ross question mark, isn't that right?
- 10:51:55 20 A. Yes.
- 21 Q. 93 Can I ask you first of all whether do you have any recollection of asking Mr.
22 Gilmartin to sign this authorisation?
- 23 A. I haven't. But I have hazy recollection about Touche Ross in London being owed
24 money and it perhaps Mr. Gilmartin might have requested us to add that to the
10:52:17 25 list of payments to be made.
- 26 Q. 94 Yes.
- 27 A. Now, how -- how that payment was made to Touche Ross, I'm not sure. It's
28 possible that we might have given a cheque to Mr. Gilmartin to pass on to
29 Touche Ross in London.
- 10:52:34 30 Q. 95 I think that happened that happened subsequently, yes.

- 10:52:37 1 A. But I certainly have a recollection of him telling us that Touche Ross in
2 London were owed money and we agreed I think to pay it.
- 3 Q. 96 Yes. And on the 20th of December '91 at 6481. Again, in a handwritten
4 memorandum from Frys. There is a reference to meeting at AIB and that appears
10:52:58 5 to be a reference to "EK, OO'Callaghan, J Deane documents signed up" and then a
6 note "GK to call" and at 6482 on the following page there is a notation
7 "Gilmartin has signed most things". Do you see that?
- 8 A. I do.
- 9 Q. 97 Right. And it's an attendance on you because I think that's your name "EK" at
10:53:22 10 the top spelt incorrectly I think?
- 11 A. Yes.
- 12 Q. 98 Right. So "Gilmartin has signed most things except share certs". Next "is
13 getting seal of Barkhill this morning" and then I think "have board meeting"
14 and then beneath that "gave notice to hold meeting on the 23rd, meeting will in
10:53:40 15 fact take place today" do you see that?
- 16 A. I think that implies that Mr. Gilmartin was in Dublin because does it not imply
17 that he was getting the Barkhill seal but perhaps not.
- 18 Q. 99 Right. I think that the totality of those documents, Mr. Kay, seemed to
19 suggest that you did travel to London to obtain, certainly in the first
10:54:00 20 instance Mr. Gilmartin's signature on the Bruton variation contract.
- 21 A. I may have done.
- 22 Q. 100 Yes.
- 23 A. And perhaps if the reference to me bringing cash maybe I was bringing a cheque
24 payable to Touche Ross to give to him. But that is certainly possible but I'm
10:54:17 25 absolutely, I have no recollection of ever bringing Mr. Gilmartin cash for his
26 ...
27
- 28 CHAIRMAN: I don't think the document suggested that you brought cash. I
29 think you referred to it as monies.
- 10:54:31 30 A. Okay.

- 10:54:31 1 CHAIRMAN: But it's not cash.
- 2 A. But I think, Chairman, if I say. I think it probably refers to the cheque
- 3 payable to Touche Ross.
- 4
- 10:54:42 5 Q. 101 MS. DILLON: Some monies it says. 6746. I think you are at 6746, Mr. Kay. I
- 6 think what Mr. Donagh is recorded as having told Mr. Bruton solicitors is that
- 7 "Mr. Kay arranged for the variation agreement in duplicate to be signed by Mr.
- 8 Gilmartin and handed Mr. Gilmartin some monies that AIB had agreed to advance
- 9 to him" and that's after an entry that "Mr. Kay went over today to Luton in
- 10:55:07 10 England and saw Mr. Gilmartin".
- 11 A. Yes.
- 12 Q. 102 Yes.
- 13 A. It's strange that I can't remember. I mean I was there a number of times and I
- 14 was in London a number of times but this particular, but this particular visit
- 10:55:19 15 I must say I cannot remember.
- 16 Q. 103 Yes. Well subject to anything that Mr. Donagh may wish to tell the Tribunal
- 17 about the record of his telephone conversation --
- 18 A. Yes.
- 19 Q. 104 -- with Mr. Bruton's solicitors. May the Tribunal take it that it's likely
- 10:55:32 20 that you did travel to London?
- 21 A. Oh, yes I think it is. And I have no problem with it I mean ...
- 22 Q. 105 Yes. Not alone did you get him to sign the documentation in relation to the
- 23 Bruton agreement but possibly some company documentation and the authorisation
- 24 at 6479?
- 10:55:47 25 A. Yeah, it does appear very likely, yes.
- 26 Q. 106 Yes. And just looking at that authorisation that you asked Mr. Gilmartin to
- 27 sign on the 19th of December 1991, and looking at the 6401 which is the second
- 28 page of the letter of the 3rd of December from Mr. O'Callaghan to the bank.
- 29 The first item under the heading "payments to be made by Barkhill" are
- 10:56:19 30 "Deloitte & Touche at 15,000 pounds plus VAT" isn't that right?

- 10:56:23 1 A. Yes.
- 2 Q. 107 And in the authorisation of the 19th of December 1991 at 6479. There is a
3 figure of Deloitte & Touche 18,150, isn't that right?
- 4 A. Yes I think Deloitte & Touche were the Dublin operation & Touche Ross was the
10:56:38 5 London arm of the accountants with whom the company dealt and Mr. Gilmartin
6 certainly dealt with them.
- 7 Q. 108 And that would explain why the Touche Ross payment is a sterling payment I
8 think, isn't that right?
- 9 A. Yes, yes.
- 10:56:51 10 Q. 109 The second item on that invoice is "Frank Dunlop invoice amount" this is at
11 page 6401. Is a sum of 7,467.9 plus VAT.
- 12 A. Yes, I see that.
- 13 Q. 110 And on the authorisation at 6479. Perhaps if we have the two together,
14 Mr. Kavanagh. The second page is page 6401. You have the first page,
10:57:40 15 Mr. Kavanagh, 6401. Just looking at those two there. Do you think it's
16 likely, Mr. Kay, that the figure of 9,036.16 attributable to Mr. Dunlop in the
17 authorisation dated the 19th of December '91 is the figure of 7,467.9 plus VAT,
18 that's contained in the letter of the 3rd of December at 6401.
- 19 A. Yes doing it in my head. Yeah, I think it looks about right. Yes.
- 10:58:31 20 Q. 111 And the next figure sorry the second figure the next figure in the
21 authorisation is the figure to Taggarts of 154,865 pounds sterling.
- 22 A. Yes.
- 23 Q. 112 Right. And that figure also appears I think under the heading "Taggarts" on
24 Mr. O'Callaghan's letter at 6401.
- 10:58:52 25 A. Yes, it does.
- 26 Q. 113 Right. And then there is a reference to "Fintan Gunne at 16,000 pounds" isn't
27 that right in your document of the 19th of December '91, isn't that right?
- 28 A. Fintan Gunne.
- 29 Q. 114 6479, the one signed by Mr. Gilmartin.
- 10:59:11 30 A. Oh, yes I see it yes.

- 10:59:12 1 Q. 115 And you will remember I think that at 6404 in the handwritten notations on the
2 letter of the 3rd of December 1991, at the very bottom in handwriting there is
3 an entry "F Gunne 13,3" isn't that right?
- 4 A. Yes.
- 10:59:30 5 Q. 116 And "D McG" beside it.
- 6 A. It looks like that, yes.
- 7 Q. 117 And that is something that wasn't included in the letter from Mr. O'Callaghan
8 as it was typed but appears to have been added in in handwriting afterwards.
- 9 A. Well 13,3 plus VAT would that be somewhere near 16, well it wouldn't actually
10 no it. In round figures it would.
- 10:59:48 10
- 11 Q. 118 And I think then the -- would it be fair to say that the figure of 12,6 is a
12 figure that's put in by Mr. Gilmartin on the document dated the 19th of
13 December '91?
- 14 A. I think it probably was. But I have a recollection of him I think I said
11:00:05 15 earlier of him requesting a payment to Touche Ross.
- 16 Q. 119 And the Deloitte & Touche payment I think we've already agreed was the VAT
17 payment and then the payment to Seamus Maguire I think was a payment for fees,
18 isn't that right, for 48,400 pounds?
- 19 A. Yes I think Mr. Maguire had been owed fees for some time.
- 11:00:22 20 Q. 120 Do you think it's likely, Mr. Kay, that when you came to prepare the
21 authorisation dated the 19th of December 1991, you were considering the
22 contents of the letter of the 3rd of December 1991?
- 23 A. Contents of the letter of the 3rd? That's the letter from Mr -- sorry Mr.
24 O'Callaghan to me.
- 11:00:42 25 Q. 121 Yes, under the section that's headed "payments to be made by Barkhill".
- 26 A. I don't know but some of the figures are obviously appear to match up.
- 27 Q. 122 Yes. Isn't it likely, Mr. Kay, that you would have considered the contents of
28 the letter of the 3rd of December in preparing the schedule or the
29 authorisation from Mr. Gilmartin to prepare, isn't that right?
- 11:01:09 30 A. I'm sure it is likely, yes.

- 11:01:10 1 Q. 123 Now, can I just take you back then to the very first page of the letter of the
2 3rd of December 1991, sorry 6400. You don't appear to have prepared any
3 authorisation for Mr. Gilmartin to sign in relation to these figures which were
4 the payments that are described as made by Riga on behalf of Barkhill, isn't
11:01:40 5 that right?
6 A. Yes, that appears -- yes, that's correct.
7 Q. 124 Yes. Now, these payments as we saw yesterday were ultimately reimbursed in
8 January of 1992 to Barkhill. Sorry I beg your pardon -- to Riga from Barkhill,
9 isn't that right?
11:01:59 10 A. But at this stage is it not the case that they would have been debited to
11 Riga's account, the subordinated loan account. So why would I need to get Mr.
12 Gilmartin's authority at that stage.
13 Q. 125 Because in January you got O'Callaghan's and Mr. Pitcher's authority before you
14 made the debit on the Barkhill account, Mr. Kay?
11:02:18 15 A. But at this stage in December --
16 Q. 126 Yes.
17 A. -- this was a Riga account.
18 Q. 127 Yes but what --
19 A. I was being asked to debit these amounts to a Riga account and at this stage --
11:02:30 20 Q. 128 No, Mr. Kay, with respect these were payments as you see that had already been
21 made by Riga on behalf of Mr. Barkhill.
22 A. Oh, sorry.
23 Q. 129 And what Mr. O'Callaghan would have been looking for you was agreement that
24 Barkhill would reimburse Riga, do you understand?
11:02:45 25 A. Were they not items that were debited to Riga's account in Cork which were now
26 to be debited to the subordinated loan account? No?
27 Q. 130 No, they were repaid in January from Barkhill to Riga.
28 A. Yes but at this stage in December.
29 Q. 131 Yes.
11:03:04 30 A. There wasn't an issue in Barkhill paying them, was there?

- 11:03:11 1 Q. 132 You would not have needed -- your consent would never have been needed,
2 Mr. Kay, for a repayment from the subordinated loan of Riga to the Riga general
3 account, isn't that right, I think we agreed that yesterday?
4 A. Yes, broadly, yes, yes.
- 11:03:27 5 Q. 133 Under the heading that's on this letter it's "payments made by Riga Limited on
6 behalf of Barkhill" isn't that right?
7 A. Uh-huh.
- 8 Q. 134 And I think that in January following a meeting I think of the 14th of January
9 of 1992, there was a reimbursement made. I think we saw those documents
11:03:46 10 yesterday.
11 A. Oh, yes yes I accept that, yes.
- 12 Q. 135 From the Barkhill No. 2 account to the Riga account, isn't that right?
13 A. Yes, yes.
- 14 Q. 136 Now, that was done on foot of an authority signed by Mr. O'Callaghan and by Mr.
11:03:57 15 Barry Pitcher, isn't that right?
16 A. Yes. Well all I can assume is that these payments, i.e. the 100,000 down to
17 the Ambrose Kelly 26 were to be decided at another, on another day and the
18 other amounts which I actually obtained Mr. Gilmartin's signature to pay were
19 ones that we agreed had to be paid now. I am guessing that but it seems
11:04:28 20 likely.
21 Q. 137 It seems to be clear I think, Mr. Kay, that you had to have considered a
22 portion of the contents of that letter to create the document of the 19th of
23 December, isn't that right, that Mr. Gilmartin signed?
24 A. Yes.
- 11:04:45 25 Q. 138 Yes.
26 A. Well sorry is that leading to did we get the letter of the 3rd of December, is
27 that what you're leading to?
28
29 JUDGE FAHERTY: It's down to the 5th of December, Mr. Kay. So in all
11:05:00 30 probability AIB had it.

- 11:05:02 1 A. I would have thought there is no doubt that we got the letter.
2
- 3 Q. 139 MS. DILLON: I wasn't leading to that at all, Mr. Kay. What I was going to
4 suggest is if you considered the contents of the letter of the 3rd of December,
11:05:13 5 prior to making you up your document of the 19th of December at 6479, so it
6 could be signed by Mr. Gilmartin on the 19th.
- 7 A. Yes.
- 8 Q. 140 There had to be some reason why you did not seek Mr. Gilmartin's authorisation
9 in relation to the amounts that had already been paid by Riga but which Riga
11:05:30 10 were seeking back from Barkhill, isn't that right?
- 11 A. Yes.
- 12 Q. 141 Now what reason could that have been, Mr. Kay?
- 13 A. I don't know. I simply don't know.
- 14 Q. 142 It is the case, is it not, Mr. Kay, that in January of 1992, following a
11:05:51 15 meeting and an authorisation signed by Mr. Pitcher and Mr. O'Callaghan the bank
16 debited the Barkhill No. 2 account and repaid those sums to Riga, isn't that
17 right?
- 18 A. Yes.
- 19 Q. 143 Yes.
- 11:06:07 20 A. But there could be no question of us withholding that information from Mr.
21 Gilmartin. At any stage if Mr. Gilmartin asked for the balance of the account
22 or copies of the accounts or what had been debited to the accounts, he would
23 have got it.
- 24 Q. 144 Yes. So insofar as you can't think of any reason as to why you wouldn't have
11:06:26 25 brought over that information to Mr. Kay -- to Mr. Gilmartin I beg your pardon,
26 on the 19th of December and asked him to give you an authorisation in relation
27 to it?
- 28 A. No. And I think as I said probably on day one, at no stage during my dealing
29 with Mr. Gilmartin did I ever deliberately withhold information from him.
11:06:46 30 Never!

- 11:06:47 1 Q. 145 In fairness to yourself, Mr. Kay, is it possible that you might have made an
2 assessment of the letter of the 3rd of December 1991, and decided that because
3 the matters listed on the first page had already been paid by Riga that you
4 could leave that matter aside and that you would deal only with the matters
11:07:04 5 where the payments were to be made by Barkhill on the second page at 6401. Is
6 that possible?
7 A. It is possible, yes.
8 Q. 146 Yes. In order to make even that decision you would of course have had to
9 consider the contents of both pages and decided you needn't have troubled Mr.
11:07:21 10 Gilmartin at that stage with the matters that are listed on the first page of
11 page 6400.
12 A. Yes, I think I tried to explain that earlier. I thought that the payments we
13 asked him to pay were more imminent and that the others perhaps could be
14 deferred to another day. That's supposition on my part.
11:07:36 15 Q. 147 But regardless of whether they had been paid by Riga and you were looking for
16 reimbursement or they were going to be paid by Barkhill. In all cases they
17 would need an authorisation from the directors in accordance with the
18 agreement, isn't that right?
19 A. Yes.
11:07:48 20 Q. 148 And you took the opportunity of your visit to London on the 19th to obtain Mr.
21 Gilmartin's authorisation in relation to the matters listed on the
22 authorisation at 6479 and signed by him.
23 A. Yes, I think that's right.
24 Q. 149 And for some reason you didn't ask him at that stage to deal with or to
11:08:11 25 authorise the payments that Riga had already made on behalf of Barkhill which
26 were listed at 6400 on the letter of the 3rd of December '91?
27 A. No, I clearly didn't.
28 Q. 150 Yes. Can you -- do you remember where whether ever Mr. Gilmartin was
29 subsequently asked to authorise those payments -- to be clear. The payments
11:08:25 30 that are listed --

11:08:26 1 A. Yes.

2 Q. 151 -- as having been made by Riga?

3 A. Yes, I know what you mean.

4 Q. 152 At page 6400.

11:08:32 5 A. No, I don't recollect that he was asked to authorise them.

6 Q. 153 Now, I think you did subsequently in 1992, telephone Mr. Gilmartin in relation

7 to one of the Shefran payments and ask him to authorise it verbally over the

8 phone which he did and you subsequently wrote to him, isn't that right?

9 A. I think the sequence of events there was the first payment to Shefran was for

11:08:55 10 40,000 pounds. And I have no recollection of asking Mr. Gilmartin to approve

11 that payment and in fact I don't think I did.

12

13 The second one which was for 30,000, I think what happened there was I was

14 talking to Mr. Gilmartin about whatever as was quite a frequent occurrence, and

11:09:17 15 I told him that we had a request to pay 30,000 pounds to Shefran and he asked

16 me what it was all about and I said to him that it was an arm or it was part of

17 Frank Dunlop and I would send him a copy of the invoice and I asked him on the

18 phone would he -- that I intended going ahead to paying it unless he told me

19 otherwise. And he agreed I should pay it. So I -- that was why in my letter,

11:09:53 20 the reason I remember is I suppose because it was prompted by the letter. The

21 letter enclosed a copy of the invoice for 30,000 and I think I said as agreed

22 which I said as agreed we have paid.

23 Q. 154 Yes.

24 A. Now, during the course of my conversation with him I'm sure he obviously would

11:10:14 25 have asked me well who is Shefran and I'm virtually certain I told him that it

26 was Frank Dunlop because I knew it was Dunlop and I had no reason to withhold

27 that from him. And at any rate, the invoice which I sent him had Shefran's

28 address, which is the same as Mr. Dunlop's address. So I would, I would have

29 been pretty certain. I mean, Mr. Gilmartin was aware of that payment and the

11:10:45 30 nature of it.

- 11:10:47 1 Q. 155 I think in fairness to yourself, Mr. Kay, you did in fact I think ultimately
2 get an authority from Mr. Gilmartin in relation to the second Shefran payment.
3 65 --
- 4 A. Oh, the 40,000.
- 11:10:59 5 Q. 156 Yes you did.
- 6 A. Yes I did. And that came about as --
- 7 Q. 157 At 656 sorry. 6566.
- 8 A. The reason I got that was when I was in the process of sort of clearing up my
9 affairs within Corporate Banking because I was moving to another area of the
11:11:18 10 bank, it struck me that there were various items that I probably should have
11 got signed by Mr. Gilmartin although we weren't obliged to. The mandate called
12 for two signatures but nevertheless I thought it would be preferable if we did.
13 And I phoned him and told him that I was going to send him a list of items and
14 asked him would he pay them and I sent that list. I think it was in July was
11:11:45 15 it?
- 16 Q. 158 It's dated the 27th of July but it appears to have been faxed I think in
17 October from Mr. Gilmartin?
- 18 A. Yeah, I think what happened there was I've heard or I've read some of the
19 discussions about this. I think what happened was I sent it in July and it
11:12:02 20 appears that Mr. Gilmartin signed it in July but did not return it to the bank
21 and I can recollect giving him one or two prompts, ringing him and saying I
22 sent you a list would you return it to us and eventually he did. I think one
23 of your concerns appeared to be that it coincided with, within days of his
24 bankruptcy when he returned it. When he returned the actual signed document, I
11:12:34 25 think it did anyhow.
- 26 Q. 159 In any event it would, and we're jumping ahead slightly in relation to the two
27 Shefran payments that were made directly from Barkhill. Albeit I think you
28 would agree that this authorisation was after the event, isn't that right,
29 insofar as one of those matters was concerned?
- 11:12:50 30 A. Oh, it was but I'm quite certain that in relation to the second one, the 30,000

- 11:12:54 1 one. I'm quite certain I had his verbal agreement to pay it because I would,
2 there's no way I would have put into a letter "as agreed we have paid this
3 item" unless he had actually agreed it with me.
- 4 Q. 160 Yes. I will take you through that hopefully briefly, Mr. Kay, when we come to
11:13:16 5 it in the time sequence. But actual dealing solely with the issue of the
6 authorisation and just to leave at 6400. It is the case is it not, Mr. Kay,
7 that when you went over on the 19th of December 1991, to Mr. Gilmartin that
8 while you did get one authorisation signed it did not include the payments
9 listed on the first page of the letter of the 3rd of December?
- 11:13:34 10 A. Yes, that appears to be correct.
- 11 Q. 161 Now I think, Mr. Kay, at 6119, that the first actual debit out of the Barkhill
12 No. 2 account related to a payment to Mr. Sills. Which was a draft in the sum
13 of 50,669 sterling and the second payment related to 88,000 in relation to the
14 acquisition of land and if you look at 7299.
- 11:14:01 15 A. Sorry, I think Mr. Sills -- I think he was some contact of Mr. Gilmartin's.
- 16 Q. 162 That's correct. I think it was either something to do with brochures or the
17 preparation of it.
- 18 A. To do with the launch in July 1990.
- 19 Q. 163 You will see here this is the first page of the Barkhill No. 2 loan and that
11:14:16 20 the first debit on it is a payment to Mr. Sills which is a sterling payment,
21 isn't that right?
- 22 A. Yes.
- 23 Q. 164 And if you move down the page, you see that the next payment which is made I
24 think in November of '91, is "land deposit Dublin County Council 88,000
11:14:30 25 pounds".
- 26 A. Yes, I see that.
- 27 Q. 165 Right. So it would follow from that, that certainly by October of 1991 that
28 the Barkhill No. 2 loan which is the start of the drawdown of the 3 million
29 advanced from Allied Irish Bank to Barkhill was now in play.
- 11:14:46 30 A. Yes.

- 11:14:46 1 Q. 166 Right. And I think a sum of 6146 please. Now, this is an invoice from Mr.
2 Dunlop to Riga and in fact what was paid here was the totality of two invoices.
3 You will see a handwritten additional at the bottom of the page, Mr. Kay,
4 totalling 8228.42.
- 11:15:13 5 A. Yes, I see that.
- 6 Q. 167 Right. And that was the sum of two invoices that had been sent in by Mr.
7 Dunlop. The first invoice is at 6273 and the second is this invoice which can
8 we can leave on screen. And I think if you look at 6277, Mr. Kay, you will see
9 that that sum was in fact paid on the 2nd of December '91 by Riga. Do you see
11:15:35 10 that?
- 11 A. I do.
- 12 Q. 168 And that subsequently at 6290, this sum is one of the sums that is reimbursed.
13 You see that?
- 14 A. Yes, I see that.
- 11:15:49 15 Q. 169 At the very top in the reimbursement that takes place between Barkhill and
16 Riga, isn't that right?
- 17 A. Yes.
- 18 Q. 170 The sum of 8228 is the first sum on that list and the second sum which is the
19 sundry expenses of the two by 10,000 we looked at yesterday and then another
11:16:06 20 payment to Frank Dunlop and Mr. Kelly and that is a reimbursement to Riga,
21 isn't that right?
- 22 A. Yes.
- 23 Q. 171 And that is authorised by Mr. O'Callaghan and Mr. Pitcher.
- 24 A. Yes.
- 11:16:16 25 Q. 172 And the other payments then relate to the payments that Mr. Gilmartin had
26 authorised in December the 48,400, the Taggarts payment, Deloitte & Touche,
27 Fintan Gunne at 16093 and T Gilmartin sterling which is 12,6 I think which
28 related to Touche Ross, isn't that right?
- 29 A. Yes, that's it.
- 11:16:34 30 Q. 173 So the second part of that authorisation relates to matters that Mr. Gilmartin

- 11:16:38 1 had in fact already authorised himself when you went over on the 19th of
2 December, isn't that right?
- 3 A. That's correct.
- 4 Q. 174 And I think that we saw yesterday that that payment, that transaction took
11:16:51 5 place I think that at this stage also towards the end of '91, Mr. Gilmartin had
6 again sought further refinancing and was dealing with Anglo Securities and
7 again Mr. McMullen.
- 8 A. Yes.
- 9 Q. 175 And that came to nothing, isn't that right?
- 11:17:04 10 A. That came to nothing. I think it continued for quite a long time but it came
11 to nothing.
- 12 Q. 176 Yes. And the 88,000 pounds which was paid out of the Barkhill No. 2 account in
13 connection with the land acquisition was to pay for part of the Dublin County
14 Council lands the contract is at 16330.
- 11:17:21 15 A. I think it was a deposit on the land.
- 16 Q. 177 Yes, I think there were 880,000 in full and this was the deposit which was
17 signed by I think Seamus Maguire on behalf of Barkhill, isn't that right?
- 18 A. Yes.
- 19 Q. 178 And I think they were lands that were running down along the, beside the
11:17:36 20 Barkhill lands in Quarryvale, isn't that right?
- 21 A. I can't remember exactly where they were but I knew they were a necessary part
22 of the overall site.
- 23 Q. 179 Yes. And at 6201, Mr. Kay, there is an invoice from Mr. Ambrose Kelly of
24 26,195 and that figure of 26,195 is the figure that had been I think which was
11:18:05 25 also authorised in January at 6290.
- 26 A. Yes.
- 27 Q. 180 And it also had been on the first page I think of the letter of the 3rd of
28 December 1991, isn't that right?
- 29 A. Yes.
- 11:18:20 30 Q. 181 Right. And again, there was an invoice in connection with that matter. It had

- 11:18:28 1 been paid by Riga and it was reimbursed by Barkhill, isn't that the case?
- 2 A. I think so, yes.
- 3 Q. 182 Right. So it would seem then that in relation to the items that were set out
- 4 in the letter of the 3rd of December 1991, Mr. Kay, that the only matters for
- 11:18:47 5 which there were no invoices were the two 10,000 pounds, isn't that right?
- 6 A. That would seem to be the position, yes.
- 7 Q. 183 That there was documentation in relation to Mr. Dunlop's money and there was
- 8 documentation in and invoices in relation to Mr. Ambrose Kelly's money but
- 9 there was none in relation to the 10,000 pounds.
- 11:19:04 10 A. Correct.
- 11 Q. 184 Now, I think at around this time also that Deloitte & Touche were seeking
- 12 payment of their fees and had put in an invoice at 6313, which I think is the
- 13 invoice that led to the payment we've just been looking at, isn't that right?
- 14 I think the invoice was negotiated down to 15,000 pounds?
- 11:19:23 15 A. I don't remember that but I'm sure it's right.
- 16 Q. 185 Yes. And I think also at the same time Mr. Ciaran O'Malley was looking for
- 17 payment of his fees?
- 18 A. He was. I think lots of people were looking for payment of their fees.
- 19 Q. 186 Around that time. On the 18th of November, Mr. Kay, and you may not have known
- 11:19:39 20 this, it would appear according to what Mr. O'Callaghan will tell the Tribunal,
- 21 that he made a contribution of 5,000 pounds to Mr. Lawlor, that was Councillor
- 22 Liam Lawlor. Were you aware of that at the time?
- 23 A. No, I was not.
- 24 Q. 187 Can I just show you the entry in the cheque payments book of Riga at 6260. And
- 11:20:04 25 six up were from the bottom, Mr. Kay, you will see an entry that says "cash
- 26 5,000 pounds". Do you see that?
- 27 A. Oh, I do yes.
- 28 Q. 188 And if you go across the line you will see it's analysed under sundries.
- 29 A. I do.
- 11:20:17 30 Q. 189 And beside it or beneath it is written the words "expenses Westpark".

- 11:20:23 1 A. Yes.
- 2 Q. 190 That would suggest that when this item was written up in the books of Riga, the
3 initial attribution of this payment of 5,000 pounds was that it was an expense
4 in connection Westpark, isn't that right?
- 11:20:35 5 A. Yes, I knew that Mr. Lawlor had provided advice to Mr. O'Callaghan in
6 connection with Barkhill and the location of the site and so on. But I don't
7 believe we were ever made aware of any payment being made to Mr. Lawlor for
8 that purpose. I mean, I presume we assumed it was in his capacity as a local
9 TD that he had an interest in the development.
- 11:21:05 10 Q. 191 Your authorisation or your agreement was never sought for any payment to
11 Mr. Lawlor, is that right?
- 12 A. That's correct.
- 13 Q. 192 Would it be fair to say that you were unaware of the payment to Mr. Lawlor
14 until you received the documentation from the Tribunal?
- 11:21:16 15 A. That's correct.
- 16 Q. 193 Notwithstanding the attribution that's contained in the Riga cheque payments
17 book?
- 18 A. Well, I was unaware of it completely.
- 19 Q. 194 And certainly I mean it is the case that there is no suggestion that Mr.
11:21:31 20 O'Callaghan or Riga sought reimbursement of this sum from Barkhill, isn't that
21 right?
- 22 A. Not that I recollect. I'm sure they didn't because I'd have remembered it.
- 23 Q. 195 If you had been asked, Mr. Kay, to sanction a reimbursement of 5,000 pounds,
24 being a payment of 5,000 pounds to Mr. Lawlor would you've agreed to it?
- 11:21:49 25 A. Well if a very strong case had been made that he had done work for the company
26 or for the project, I -- perhaps I would but I wasn't.
- 27 Q. 196 Did you think that Mr. Lawlor from what you knew of him was capable of
28 providing services that would have been of assistance to Barkhill?
- 29 A. Oh, yes I think it was generally acknowledged that he was an expert on the
11:22:18 30 whole area of land and zoning and planning and etc.

- 11:22:24 1 Q. 197 Just so that we're clear on this, you wouldn't have had an objection had
2 Mr. Lawlor been providing services such as consultancy service which were
3 invoiced to the company and where the company was retaining Mr. Lawlor as an
4 expert or consultant, is that right?
- 11:22:39 5 A. No, I wouldn't have had a problem with it. I'm sure Mr. Gilmartin would but I
6 wouldn't have had.
- 7 Q. 198 Why would Mr. Gilmartin have had a problem with Mr. Lawlor?
- 8 A. Because he told me on a number of occasions he didn't like him.
- 9 Q. 199 Did he explain to you why it was that he didn't like Mr. Lawlor?
- 11:22:53 10 A. No, he didn't. He just said he didn't like him, he didn't trust him.
- 11 Q. 200 But he never gave you any example or reason as to why that was?
- 12 A. No, Mr. Gilmartin never recounted to me any of the difficulties he encountered
13 prior to our involvement. I mean, I know he has made all sorts of allegations
14 about problems he encountered with politicians in the late 1980's. He never
11:23:18 15 recounted any of those to me in detail other than to say in a general way that
16 he didn't think much of him.
- 17 Q. 201 And that he didn't trust him I think you said?
- 18 A. Oh, yes he did say that.
- 19 Q. 202 Would you have asked him why it was, Mr. Kay, that he didn't trust Mr. Lawlor?
- 11:23:35 20 A. I'm sure I did, yes.
- 21 Q. 203 And did he not give you any answer?
- 22 A. Not specifically, no.
- 23 Q. 204 I think around this time also at 6315, the bank were in contact with Harrington
24 Bannon. I think it would be fair to say that you kept in touch with Harrington
11:23:51 25 Bannon in terms of values and valuations as the position changed?
- 26 A. Yes we had a relationship with them and we had the ability to get their advice
27 at short notice for cases in general. And this was one of them.
- 28 Q. 205 Yes. And I think at this stage on the 26th of November '91, there is a
29 reference there that the "total value could be of the order of 25 million plus.
11:24:17 30 That's depending on the retail element being in place" isn't that right? I

- 11:24:21 1 think "Joe Bannon rang, value of fully assembled site on existing basis 13
2 million. Value of assembled site with zoning for 65 acres for retail for
3 500,000 square feet shopping centre 13 million plus 8 million for remainder.
4 Could be higher depending on use of remainder of site i.e. total 25 million
11:24:40 5 plus". Isn't that right?
- 6 A. Yes.
- 7 Q. 206 So again the picture is fairly consistent. The retail, the advantage to retail
8 was the advantages to the increased value of the site at all stages, isn't that
9 right?
- 11:24:52 10 A. Yes.
- 11 Q. 207 So all of this was doing was re-affirming the bank in its decision that the
12 optimum way to maximise the return on the site was to obtain retail on as big a
13 portion of the site as was possible, isn't that right?
- 14 A. Yes. Well within reason. I think we never fully agreed with Mr. Gilmartin who
11:25:10 15 want the a mega scheme. We had more modest aspirations.
- 16 Q. 208 But what was in dispute between yourself and Mr. Gilmartin was the degree of
17 retail or the amount of retail but there was no dispute that retail on the site
18 would add to the value of the lands, isn't that right?
- 19 A. Yes but I think we felt that we'd a much better prospect of getting zoning for
11:25:37 20 a relatively modest development and Mr. Gilmartin never really accepted that.
- 21 Q. 209 I think Mr. Lawlor told the Tribunal, when Mr. Lawlor was here when he gave
22 evidence and indeed when he was cross-examining some of the witnesses that he
23 had consistently advised Mr. Gilmartin that his scheme was too ambitious and
24 that he should have reduced the retail element from 1.5 million square feet and
11:26:02 25 that Mr. Gilmartin wouldn't accept that and would you agree with that, Mr. Kay,
26 that that is consistent with what you recollect?
- 27 A. Oh, it is yes.
- 28 Q. 210 Now, I think at 6458. There is an invoice in the sum of 29,006.8 pounds from
29 Ambrose Kelly architects, isn't that right?
- 11:26:21 30 A. Yes.

- 11:26:21 1 Q. 211 And I think that that debited from the Barkhill No. 2 account at 6459. That is
2 the Barkhill No. 2 loan account is the second debit on that account, isn't that
3 right?
- 4 A. I see it, yes.
- 11:26:38 5 Q. 212 And I think that was authorised by Mr. Donagh at 6460.
- 6 A. Yes.
- 7 Q. 213 In general, it would be fair to say from what we've seen, Mr. Kay, that in
8 nearly all cases where the bank authorises a debit on the Barkhill account
9 there is documentation surrounding the payment, isn't that right?
- 11:26:55 10 A. Yes, I would think so.
- 11 Q. 214 Yes. In most cases we have seen that there is either a letter, a piece of
12 correspondence or there is an invoice if it's a creditor of the company, isn't
13 that right?
- 14 A. Yes, if it's a small amount and we were given some convincing reason as to why
11:27:10 15 it should be paid I'm sure we would have paid it without an invoice but I don't
16 think it arose.
- 17 Q. 215 And I think in indeed, I think that Taggarts were paid in early 1992, isn't
18 that right?
- 19 A. There was a long period of negotiations with Taggarts and which I was involved.
11:27:28 20 And eventually some agreement was reached and yes, I think it was 154,000
21 sterling.
- 22 Q. 216 154?
- 23 A. Sterling.
- 24 Q. 217 Right. And in January of 1992, Mr. Kay, at 6499, in fact I think on the 2nd of
11:27:56 25 January 1992 is the date of the fax, even though this letter is dated the 2nd
26 of January 1991. If you go to the top where the fax page is you will see that
27 in fact it's dated the 2nd of January 1992. And the letter from Mr.
28 O'Callaghan says 6499:
29
- 11:28:07 30 "Dear Eddie, enclosed copy of Westpark expenses as requested. Would you please

- 11:28:12 1 arrange drafts for Frank Bohan, Fintan Gunne and Riga Limited as agreed.
2 Please hold the draft for Taggarts until I contact you next week."
- 3 A. Yes I remember it. At least I remember reading it.
- 4 Q. 218 And the "copy of Westpark expenses as requested" would suggest that you asked
11:28:28 5 him for a list of the Westpark expenses. In other words, what had been spent,
6 isn't that right?
- 7 A. Yes, I presume so.
- 8 Q. 219 And at 6500. You receive this schedule headed Westpark expenses which is the
9 second page that's sent by Mr. O'Callaghan on that date totalling 230,284.38
11:28:49 10 pounds, isn't that right?
- 11 A. Yes.
- 12 Q. 220 And that had been refunded from the Barkhill subordinated loan on the 19th of
13 June -- 19th of August '91, isn't that right?
- 14 A. Yes.
- 11:29:00 15 Q. 221 At this stage, Mr. Kay, when you received this document you would have been
16 aware of the existence of Shefran because Shefran is listed as having received
17 three payments on this document, isn't that right?
- 18 A. That's correct, yes.
- 19 Q. 222 To this stage can you remember whether by January of 1992 you had been aware of
11:29:16 20 the fact that these payments had been made?
- 21 A. I don't think so.
- 22 Q. 223 Yes. I think sorry. I think you told the Tribunal yesterday that you did not
23 believe that you knew the payments had been made at the time that they'd been
24 made, isn't that right?
- 11:29:35 25 A. Well that's correct, yes. I knew that Mr. Dunlop was involved in the project
26 from well I suppose I first saw him at the post May '91 vote, but I think my
27 colleague Mr. Donagh had been told some weeks earlier by Mr. O'Callaghan that
28 he had engaged Mr. Dunlop. But I don't think I was aware of Shefran at this
29 stage. And, no, I don't think I was.
- 11:30:07 30 Q. 224 And I think you told the Tribunal that would you not have been concerned about

- 11:30:11 1 the reimbursement from the Riga subordinated loan to the Riga current account
2 of the 230,000 pounds or its composition.
- 3 A. No, no. I suppose in general unless the amounts were very large, I didn't give
4 any of them a huge amount of attention. I was involved in an enormously hectic
11:30:33 5 schedule of dealing with perhaps 100 customers and some 400 million pounds of
6 loans. And if somebody asked me to approve a 20,000 pound payment, I wasn't
7 going to spend half the day looking at it or deciding one way or the other. If
8 I was reasonably happy it was all right, I would approve it.
- 9 Q. 225 Well in fact I would suggest to you, Mr. Kay, that you weren't being asked at
11:30:59 10 this stage to approve the payment. The payment had in fact already been made,
11 isn't that right?
- 12 A. Yes but reimbursement was being sought.
- 13 Q. 226 Well I don't think so, Mr. Kay.
- 14 A. Sorry, it already happened.
- 11:31:11 15 Q. 227 Yes. The Riga subordinated loan had already repaid the Riga current account,
16 isn't that right?
- 17 A. What I am trying to put in context is that in general, amounts that were paid
18 out for on behalf of Barkhill or wherever and any other customer, they received
19 hopefully adequate attention from us but they certainly weren't dwelt with on
11:31:32 20 for very long because we were, as I said, we had a horrendously busy job.
- 21 Q. 228 Certainly, Mr. Kay, by the 2nd of January 1992, you knew of the existence of
22 Shefran, isn't that right?
- 23 A. I did, yes.
- 24 Q. 229 And when you contacted Mr. Gilmartin in July of 1992 to seek his authorisation
11:31:52 25 in relation to one of the payments to Shefran, you were going to make out of
26 Barkhill, Mr. Gilmartin, I understand, asked you who Shefran was?
- 27 A. He did.
- 28 Q. 230 Did that suggest to you that he didn't know by July 1992 who Shefran was?
- 29 A. Yes it does, yes.
- 11:32:06 30 Q. 231 Okay. Does that mean that up to that point in time in July '92, that nobody

- 11:32:11 1 had discussed with Mr. Gilmartin Shefran and the payments to Shefran?
- 2 A. It does suggest that. I mean, he was certainly aware that Mr. Dunlop was
- 3 engaged in work for the company.
- 4 Q. 232 Yes.
- 11:32:25 5 A. And from time to time he expressed his disapproval of this, I think as I've
- 6 said already and but in very general terms just that he didn't like him and he
- 7 didn't trust him and he didn't want him involved.
- 8 Q. 233 Yes.
- 9 A. But we had decided to, well essentially we had decided to entrust the running
- 11:32:47 10 of this project to Mr. O'Callaghan and we went along with the professionals he
- 11 employed. Okay, we had a right of veto but we saw no reason to veto.
- 12 Q. 234 When you spoke to Mr. Gilmartin in mid 1992 seeking his authority in relation
- 13 to the payment to Shefran and he queried you as to who Shefran was, did you
- 14 tell him about the previous three payments to Shefran that had been made in
- 11:33:12 15 1991 totalling 80,000 pounds?
- 16 A. I don't think I did.
- 17 Q. 235 At 6479 and I'm jumping slightly backwards here, Mr. Kay, and I apologise for
- 18 that. Just on this document you got signed by Mr. Gilmartin on the 19th of
- 19 December. Do you see the entry in relation to "F Dunlop 9,036.16"?
- 11:33:34 20 A. Yes.
- 21 Q. 236 And there are two question marks beside it.
- 22 A. Yes.
- 23 Q. 237 Are they entries that would have been made by Mr. Gilmartin?
- 24 A. I don't know but I would suspect they probably were.
- 11:33:44 25 Q. 238 Can you -- I beg your pardon?
- 26 A. Sorry. I probably queried me. I mean, he knew that -- rather I knew that he
- 27 disapproved of Mr. Dunlop and he probably raised it and said, you know, why is
- 28 this guy being paid or whatever.
- 29 Q. 239 So you think that on each occasion on which you mentioned Mr. Dunlop, Mr.
- 11:34:04 30 Gilmartin had an objection?

- 11:34:06 1 A. Yes.
- 2 Q. 240 But he ultimately did agree to pay Mr. Dunlop because he signed that document,
3 isn't that right?
- 4 A. Yes, I think it's probably fair to say that Mr. Gilmartin objected to virtually
11:34:17 5 all payments out of the account with the exception of payments for land.
- 6 Q. 241 I think that Taggarts were paid at 4549 on foot of a debit on the Barkhill
7 account by way of bank draft. I think that is the draft in favour of Taggarts
8 and I think in fact while it's dated the 10th of January 1991, it should in
9 fact have been dated the 10th of January 1992.
- 11:34:48 10 A. Oh, I see that, yes.
- 11 Q. 242 Yes.
- 12 A. I think that draft if I remember correctly was given to Mr. O'Callaghan, that
13 he was to meet somebody from Taggarts and hand the draft over.
- 14 Q. 243 Just in terms of operation of the Barkhill No. 2 account, it wasn't a current
11:35:06 15 account as we'd normally understand is it with a cheque book, is that right?
- 16 A. No, the company never had a current account. No, they didn't.
- 17 Q. 244 And this account in terms, there wasn't a cheque book somebody could take out
18 and write a cheque on, isn't that right?
- 19 A. That's correct.
- 11:35:18 20 Q. 245 So that in each case what needed to happen before a payment could be made is
21 that an application or had to be made to the bank and an authorisation given to
22 the bank so that the funds would issue, isn't that right?
- 23 A. Yes and I think that probably is why in some instances Mr. O'Callaghan would
24 have written cheques on a Riga account if he wanted something at short notice
11:35:37 25 and then would be reimbursed from the Barkhill account down the line.
- 26 Q. 246 Because Barkhill paid all of its payments by way of bank draft drawn on the
27 account and it didn't operate a current account as we would see it, isn't that
28 right?
- 29 A. That's correct, yes.
- 11:35:53 30 Q. 247 And would it be fair to say that it was the bank we had operated the current

11:35:56 1 account?

2 A. Well --

3 Q. 248 Sorry. I beg your pardon. That it would be fair to say that the bank operated

4 the bank hill No. 2 account?

11:36:03 5 A. Well, the bank controlled the mechanics of drawn down and so on.

6 Q. 249 Yes.

7 A. But normally it would be on the request of probably of Mr. O'Callaghan who was

8 the project manager. But yes, we would see all items going through the

9 Barkhill account and we would have actually have to handle the mechanics of the

11:36:22 10 drawdown.

11 Q. 250 And in most cases as we've seen there is correspondence in relation to or an

12 invoice is produced, isn't that right?

13 A. In most cases, yes.

14 Q. 251 And I think at 6501. There is a copy of the bank draft of the 3rd of January

11:36:36 15 '92 to F Gunne arising I think out of the authorisation again that you had

16 obtained from Mr. Gilmartin on the 19th of December 1991, isn't that right?

17 A. Yes.

18 Q. 252 Now, I think that it was originally sent, having a meeting on the 7th of

19 January 1992 at 6516. And this was to be a review meeting and this is a copy

11:37:04 20 of a proposed agenda and Mr. O'Callaghan, Mr. Deane, Mr. McGrath, Mr. Kay and

21 Mr. Donagh are involved. Who was Mr. McGrath, Mr. Kay?

22 A. He was the chief manager of, he was basically the next step up from me.

23 Q. 253 Uh-huh.

24 A. And he, I was in charge of the property and construction team and Mr. McGrath

11:37:26 25 had control over that team and another team, perhaps another two teams, I can't

26 remember exactly what. But he was an executive of the bank and senior to me.

27 Q. 254 I think that it's likely that that meeting took place on the 14th of January

28 '92 at 6518. There is reference to a meeting on the 14th of January '92 and

29 while that is written beside the date for the meeting with Mr. Gilmartin in

11:37:59 30 Luton, I think it's likely that in fact there was to be a meeting of the

11:38:03 1 parties on the 14th of January '92. And I think such a meeting in fact took
2 place. 6557. And you will see there minutes of, it's not it's a meeting in
3 Dublin re Barkhill from Mr. Deane's files, 14th of January '92. And present
4 Mr. O'Callaghan, Mr. Deane, Mr. Kay, Mr. Donagh and Mr. McGrath, isn't that
11:38:25 5 right?
6 A. Yes.
7 Q. 255 And the matter I want to draw to your attention, Mr. Kay, is half way down the
8 page "AIB agreed to transfer the 62,907 due to Riga from Barkhill into Riga
9 account on the 15th of January 1992".
11:38:42 10 A. Yes, I see that.
11 Q. 256 And beneath that brackets "invoices available".
12 A. Yes.
13 Q. 257 Right. Now, the reimbursement that's being referred to there I think is the
14 reimbursement that we've seen already from the Barkhill account of 56,000 which
11:39:00 15 is made up at 6656. And do you see the handwritten notation at the bottom of
16 this "Paid 24th January '92 to Riga. F Dunlop 8,228.42, sundry 10,000, sundry
17 10,000, F Dunlop 8,484.29; A Kelly 26,195; total 62,907.71 and then it deducts
18 equity, leaving a total amount of 56,598.71, isn't that right?
19 A. I see that, yes.
11:39:32 20 Q. 258 So the total amount of is 62907.71. And if you go back to 6557, you will see
21 that what's agreed is that "AIB agree to transfer 62907 due to Riga from
22 Barkhill into the Riga account on the 15th of January '92 (invoices
23 available)".
24 A. I see that, yes.
11:39:50 25 Q. 259 Now, does that mean, Mr. Kay, that there were invoices available in relation to
26 all of the amounts that went to make up the 62907?
27 A. I don't know. And I think that's, I think you said that's Mr. Deane.
28 Q. 260 Yes, it's from Mr. Deane's discovery.
29 A. Well I presume if he said it he must have had something available if, I'm not
11:40:10 30 sure if we requested those invoices we probably did but I can't say.

- 11:40:16 1 Q. 261 Certainly you've never seen any invoice, Mr. Kay, in relation to the 10,000
2 pounds, the two 10,000 pounds we looked at yesterday?
- 3 A. Not that I recollect, no.
- 4 Q. 262 And I think if you look at 6656. The sum at the bottom was 56,598.71, isn't
11:40:36 5 that right?
- 6 A. Yes.
- 7 Q. 263 And that is the amount that was authorised at 6657, by the bank -- or I think
8 the bank was organising the transfer, isn't that right?
- 9 A. Yes.
- 11:40:50 10 Q. 264 And that in fact took place as can be seen at 6658, isn't that right?
- 11 A. Yes.
- 12 Q. 265 Now, I think that we saw earlier that Mr. Barry Pitcher and Mr. O'Callaghan had
13 signed an authorisation in relation to that, isn't that right?
- 14 A. Yes.
- 11:41:10 15 Q. 266 When did you get or how did you get Mr. Pitcher's authorisation?
- 16 A. I don't precisely remember but I presume I would have approached him and asked
17 him to sign the document and explained to him what it was about and he would
18 have relied, he would have relied on what I told him. We'd already given
19 Mr. Pitcher an indemnity that effectively why he was a director of the company,
11:41:41 20 that the risk attaching to this loan was Corporate Banking's risk. So that the
21 primary responsibility was mine.
- 22 Q. 267 Yes. At 6290, Mr. Kay, you have prepared the authorisation isn't, is that
23 right?
- 24 A. Yes.
- 11:42:01 25 Q. 268 And the second part of that authorisation deals with the matters that you had
26 discussed with Mr. Gilmartin on the 19th of December 1991, isn't that right?
- 27 A. Yes.
- 28 Q. 269 And at the top of the page you have your four items including the 20,000 sundry
29 which we know is made up of the two by 10s?
- 11:42:20 30 A. Yes.

- 11:42:20 1 Q. 270 One of which Mr. O'Callaghan now tells the Tribunal was a payment of 10,000
2 pounds to Mr. McGrath, isn't that right?
- 3 A. Yes you told me that, yes.
- 4 Q. 271 Now, when you went to Mr. Pitcher to obtain his signature on this document, can
11:42:32 5 you tell the Tribunal what you would have told Mr. Pitcher about the 20,000
6 pounds?
- 7 A. I doubt if I told him anything about it. I presume I produced a list and said
8 these are payments that require to be made and I am happy that they are all
9 right.
- 11:42:52 10 Q. 272 And would you have been relying upon whatever it was Mr. O'Callaghan had told
11 you about the two by 10s or the 20,000 pounds when you met him with him on the
12 6th of December 1991?
- 13 A. Yes, I'm sure I would.
- 14 Q. 273 Yes.
- 11:43:04 15 A. I think it's fair to say that if Mr. O'Callaghan had approached me at any stage
16 and said I want to draw 10 perhaps even 20,000 pounds for sundry items I've
17 incurred sundry expenses whatever I've incurred, I'm sure I would have done it
18 with for him without any invoice.
- 19 Q. 274 But you would ultimately have wanted to know what the sundry expenses were for?
- 11:43:30 20 A. Oh, yes and I expect he would have told me. But I'm sure for an amount of that
21 size I wouldn't have, I wouldn't have made a big issue of it.
- 22 Q. 275 And at 6660. This is the sterling payment of 12,600 pounds which is debited to
23 the Barkhill account, which is payable to Mr. Gilmartin but which is referable
24 to I think to the Deloitte & Touche element of the authorisation signed by Mr.
11:43:58 25 Gilmartin on the 19th of December.
- 26 A. Yes I think that's where I was confused earlier. I had very strong
27 recollection that I have never brought cash for Mr. Gilmartin personally but
28 obviously this was in connection with the Touche Ross.
- 29 Q. 276 Yes but this of course this bank draft is dated the 24th of January '92 and
11:44:16 30 therefore you could never have brought this, Mr. Kay?

- 11:44:19 1 A. Sorry I was mixing that up with the earlier one.
- 2 Q. 277 You couldn't have brought this to Mr. Gilmartin, isn't that right?
- 3 A. Okay, yes.
- 4 Q. 278 At 6554. There is an invoice to Riga of the 14th of January 1992, from Mr.
- 11:44:34 5 Dunlop at 6556. The total amount of the invoice is 14,019.78 pounds and that
- 6 invoice you will see, Mr. Kay, at 6554 is from the Allied Irish Bank files and
- 7 at 6561 drawdown is authorised. This is the first item on the list in the
- 8 centre, 14,019.78.
- 9 A. I see it.
- 11:45:11 10 Q. 279 And at 6562, there is a bank drafts dated the 12th of February '92, to
- 11 Mr. Frank Dunlop & Associates, isn't that right, in that amount?
- 12 A. There is.
- 13 Q. 280 And that is debited to the bank hill No. 2 account at 6563, on the 12th of
- 14 February '92. Isn't that right? It's the first item on that page.
- 11:45:39 15 A. Yes.
- 16 Q. 281 Right. And it would appear that in in this particular case that Riga didn't
- 17 make the payment that the payment is -- while the invoice is addressed to Riga
- 18 it's been handed in to the bank, isn't that right, and the bank in fact are
- 19 making are drawing the draft on the Barkhill No. 2 account directly in favour
- 11:45:56 20 of, directly in favour of Mr. Dunlop, isn't that right?
- 21 A. Yes, I think as I've tried to explain earlier, that if was if there was urgency
- 22 about making a payment and perhaps Mr. O'Callaghan was in Cork, he would
- 23 probably have made the payment through Riga and had been reimbursed later
- 24 through Barkhill.
- 11:46:17 25 Q. 282 Yes.
- 26 A. But on other occasions perhaps he might have been attending a meeting in Bank
- 27 Centre and handed us the invoice and we made the payment directly from the
- 28 Barkhill account. It just depended on what the circumstances were.
- 29 Q. 283 Yes. And it would appear at 6566, Mr. Kay, that this is one of the invoices
- 11:46:37 30 for which you sought authorisation for Mr. Gilmartin prior to your change

- 11:46:42 1 within AIB in July of 1992 because it's the first on that list, isn't that
2 right?
- 3 A. Yes, it is.
- 4 Q. 284 Yes. So that would suggest that up to that point in time you hadn't sought an
11:46:52 5 authorisation from Mr. Gilmartin in relation to that payment to Mr. Dunlop, is
6 that right?
- 7 A. Yes and I think that would have been the case with all of those payments.
- 8 Q. 285 On that list?
- 9 A. Yes.
- 11:47:05 10 Q. 286 Yes.
- 11 A. But as I said earlier, while we didn't obtain Mr. Gilmartin's formal
12 authorisation until then, if at any stage he had asked me what payments had
13 been made out of the Barkhill account recently, I would have told him.
- 14 Q. 287 Yes. And the meeting on the 14th of January 1992, Mr. Kay, in Bank Centre that
11:47:29 15 took place where the authorisation was given to debit the Barkhill account and
16 repay Riga. Can I show you Mr. Dunlop's diary for the 14th of January '92 at
17 6549?
18
- 19 Now, on the 14th of January 1992, Mr. Dunlop has an entry 11:30 "Eddie Kay?"
11:47:49 20 and then there is an entry for "Goodbody's" and then at 1:30 "LL" and beneath
21 that at 3 o'clock "EK" and beneath that "Owen O'C". Owen O'Callaghan, do you
22 see that?
- 23 A. I do.
- 24 Q. 288 Right. And on the following day which is the 15th there is also an entry
11:48:05 25 "Eddie Kay". Do you see that on the 15th and a question mark?
- 26 A. I do, yes.
- 27 Q. 289 And in Mr. Dunlop's telephone records on the 15th of January '92 at 6600.
28 There is an entry at "9:45 Eddie Kay".
- 29 A. Yes, I see that.
- 11:48:26 30 Q. 290 And if we go back to the diary entry for the 15th at 6549. You will see at the

- 11:48:35 1 very top or the start of the 15th there is an entry "Eddie Kay?".
- 2 A. I do.
- 3 Q. 291 Now, can you think first of all, Mr. Kay, whether or not you met with
- 4 Mr. Dunlop object on the 14th or the 15th of January '92?
- 11:48:52 5 A. This wouldn't be the date of where I met him in relation to his personal
- 6 affairs, no.
- 7 Q. 292 In relation to the money in relation to Citywest appears to be May of 1992.
- 8 A. No. Well in that case, no, I never met him. Because I have a very strong
- 9 recollection of when I met him in May. But May I think he said was in relation
- 11:49:12 10 to Citywest.
- 11 Q. 293 Yes, I think so.
- 12 A. But I met him on that occasion. I had never spoken to him before. I had never
- 13 met him face-to-face and I was quite sort of curious to see what he'd been
- 14 like. So I was absolutely certain I never met him in January 1992. And when I
- 11:49:31 15 saw those diary entries, I was wracking my brain to try and think how or why
- 16 would I have been in contact with him and the only thing I could think of was
- 17 that Mr. O'Callaghan may have said to me, presumably when I was asking Mr.
- 18 O'Callaghan how the project was progressing, he may well have said to me well
- 19 why don't you ring Frank Dunlop and he'll bring you up-to-date. And I think
- 11:49:56 20 that might have happened but I didn't speak to him.
- 21 Q. 294 I think around this time in January of 1992 at 6614, Mr. O'Callaghan wrote to
- 22 you with information. In fact provided by Mr. Dunlop in relation to the time
- 23 scale for the zoning.
- 24 A. Yes.
- 11:50:14 25 Q. 295 And I think enclosed with the letter of the 20th of January was an earlier
- 26 letter of the 16th of January '92 from Mr. Dunlop to Mr. O'Callaghan which he
- 27 gave as his opinion that "Quarryvale was unlikely to be dealt with before
- 28 September of 1992".
- 29 A. Yes, well I think that supports what I said earlier. I think it may well have
- 11:50:32 30 been that Mr. O'Callaghan suggested that I contact Mr. Dunlop to sort of to be

11:50:37 1 brought up-to-date because I probably had to do some report internally or
2 whatever as to what was happening. And I think that may well have happened but
3 I never spoke to him, I may have tried to speak to him but I didn't.

4 Q. 296 And certainly when you received this letter of the 20th of January '92 enclosed
11:50:55 5 it at 6615 was Mr. Dunlop's letter of the 16th of January 1992 to Mr.
6 O'Callaghan. Where he sets out the time frame applicable in relation to the
7 rezoning of Quarryvale.

8 A. I see that, yes.

9 Q. 297 So that was obviously a matter that you wanted information upon in mid January
11:51:14 10 of 1992.

11 A. Yes. It's the only explanation that I can come to as to why I would have
12 wanted to contact Mr. Dunlop.

13 Q. 298 You, may the Tribunal take it, Mr. Kay, that you never went to Mr. Dunlop and
14 ever sought a copy of an invoice from Mr. Dunlop?

11:51:29 15 A. I never did, no.

16 Q. 299 That you never spoke to Mr. Dunlop about his fees, how he was charging fees or
17 how he was invoicing fees or had any query with Mr. Dunlop in relation to his
18 financial relationship with Mr. O'Callaghan?

19 A. No, I never did. The only time there was ever any mention of Quarryvale was in
11:51:48 20 the May 1992 meeting I had with him in relation to his Citywest proposed
21 investment. And in passing he -- I passed some remark to him how do you think
22 Quarryvale is going and he passed some fairly harmless remark that seemed to be
23 reasonably all right or something of that order. But that is the only time I
24 ever spoke to Mr. Dunlop in relation to anything in connection with Quarryvale,
11:52:23 25 or indeed with anything else apart from his own affairs.

26
27 CHAIRMAN: Ms. Dillon, it's nearly ten to twelve so we are just going to take
28 a short break.

29

11:52:34 30 **THE TRIBUNAL ADJOURNED FOR A SHORT BREAK**

AND RESUMED AS FOLLOWS:

11:52:38 1
2
3 CHAIRMAN: Ms. Dillon.
4

12:14:16 5 Q. 300 MS. DILLON: Good afternoon, Sir. Good afternoon, Mr. Kay.
6 A. Good afternoon.
7 Q. 301 At 6531, Mr. Kay, there is a letter of the 8th of January 1992 from Mr. Deane
8 to Mr. Donagh Corporate Banking and I just want to ask you about one matter in
9 the second paragraph. This is a letter from Mr. Deane to Mr. Donagh. He deals
12:14:44 10 with the Bruton lands and the Quarryvale -- the re Riga facility if for
11 Quarryvale in the second paragraph:
12
13 "When we get to the next stage, it is likely that we are going to be asked in
14 some detail as to who owns the 20 per cent interest in Barkhill. Eddie
12:15:02 15 indicated that he would be seriously concerned if it was disclosed that the
16 bank were the owners of these shares. As this is matter which is likely to
17 come to a head in the very near future. Perhaps you could give the matter some
18 consideration and we can discuss it when we meet next Tuesday".
19

12:15:13 20 And I think that meeting then on Tuesday was the meeting that we've already
21 dealt with I think. Now, first of all, is Mr. Deane correct when he outlines
22 there a concern of yours?
23 A. Well I don't think he is correct insofar as we obviously were shareholders in
24 the company. It was a question of us deciding how our shareholding would be
12:15:39 25 held and I think that had already been decided at this stage that it would be
26 held by ACT on our behalf. Other than that, I don't think we had any great
27 objections.
28
29 I suppose other things being equal, we would prefer if we were not known that
12:16:04 30 we were shareholders, not least because we had a huge number of customers and

12:16:12 1 this would be probably a precedent in terms of us lining up with one particular
2 developer, we had always stood back from that and frequently we were asked by
3 developers would we join with them in a particular developer. And because of
4 our large customer base we were always reluctant to do that because we felt
12:16:34 5 that if we were seen to be siding with one customer, it would probably
6 antagonise a large number of others. But other than that, no, I don't think
7 we'd any problem with it.

8 Q. 302 Yes.

9 A. It was a fact, we were shareholders.

12:16:48 10
11 JUDGE FAHERTY: Mr. Kay, can I just ask you on that, just as a matter of
12 interest. You became shareholders with the shareholding agreement which was
13 September '91.

14 A. Yes, Judge.

12:16:59 15
16 JUDGE FAHERTY: And the other Heads of Terms going back to December and I
17 think in February '91, where there was if you like a divvy up of the
18 shareholding in Barkhill with Mr. O'Callaghan and variously or Riga variously
19 holding different percentages and with Mr. Gilmartin.

12:17:16 20 A. Yes.

21
22 JUDGE FAHERTY: In the early months there was provision I think maybe in the
23 February one if I'm correct, for an investor just the word "investor" was used.

24 A. Yes.

12:17:25 25
26 JUDGE FAHERTY: And I think that was at a point, I think you very fairly said
27 this when Mr. Gilmartin had been in negotiations with all sorts of would be
28 financiers.

29 A. Yes.

12:17:33 30

12:17:34 1 JUDGE FAHERTY: Now it didn't come to fruition.

2 A. That's correct.

3

4 JUDGE FAHERTY: Then we have a situation in September where if you like AIB

12:17:41 5 steps in if you like.

6 A. Yes.

7

8 JUDGE FAHERTY: And I just want to ask you, who made the decision that AIB

9 would become a shareholder and when was that made?

12:17:50 10 A. Well, I think it sort of evolved in the sense that we wanted, we wanted to be

11 able to exercise some control over operations of the company and secondly, we

12 wanted to have the balance of power. And thirdly, we felt that because we were

13 advancing additional monies high risk monies, we wanted some mechanism whereby

14 we could be rewarded if the thing came right. So I think it was a sum of all

12:18:23 15 those that directed us towards the shareholder route.

16

17 JUDGE FAHERTY: I see. And just in the context of what you said that it

18 wasn't the norm if you like, because you would have had, for the reasons you

19 said, which seem certainly reasons the bank wouldn't in the ordinary way -- was

12:18:41 20 it your call or was it, had it to go to a higher authority in the bank to make

21 a decision for the AIB to become a shareholder?

22 A. Well, it was incorporated in a mark up, an application we made to the group

23 Credit Committee in which we proposed that course of action really because we

24 hadn't come up with any other particular mechanism that would cover the

12:19:06 25 situation.

26

27 JUDGE FAHERTY: I see.

28 A. So it was approved as part of the overall going forward arrangements.

29

12:19:17 30 JUDGE FAHERTY: Thank you.

- 12:19:22 1 Q. 303 MS. DILLON: It would have been out of the normal run of activities for the
2 bank to have taken a shareholding in a development as they did on this
3 occasion?
- 4 A. That's correct, yes.
- 12:19:30 5 Q. 304 And you had a concern that this wouldn't become generally known among the
6 building community in case you would be plagued with similar applications, is
7 that right?
- 8 A. Oh, yes. Because I had been involved in the property and construction for some
9 years at this stage. And I was well aware that this had happened on a number
10 of occasions. We had been asked to become, to line up with one developer or
11 another and we had all, there was mixed opinion in the bank about it as to
12 whether we should or should not. But the consensus was that we should not, and
13 we didn't.
- 14 Q. 305 But in this particular case you did, isn't that right?
- 12:20:15 15 A. Yes and I think we -- it's fair to say that we saw our shareholding as not
16 being a conventional shareholding. It was a financial arrangement to
17 facilitate the circumstances that existed and we never saw ourselves as
18 becoming long-term property developers in this or any other scheme.
- 19 Q. 306 And the share subscription agreement did make a provision allowing for Mr.
12:20:34 20 Gilmartin to effectively have first option on the bank's shares at a fixed
21 price, isn't that right?
- 22 A. That's correct, yes.
- 23 Q. 307 And a mechanism was in place that the bank couldn't dispose of it's
24 shareholding other than on a first offer to Mr. Gilmartin basis, isn't that
12:20:45 25 also the case?
- 26 A. Yes, that's correct.
- 27 Q. 308 And thereafter if Mr. Gilmartin didn't deal, certain other events might happen
28 but first and foremost the bank and at a price of I think 2 million pounds was
29 holding its shares and it would sell them to Mr. Gilmartin, isn't that right?
- 12:21:00 30 A. That's correct, yes.

- 12:21:01 1 Q. 309 However, the reality was and the factual position was that you were as well as
2 bankers to the Barkhill development you were also a shareholder in the
3 enterprise, isn't that right?
- 4 A. That is correct.
- 12:21:10 5 Q. 310 Now, in January of 1992, I think that Messrs. Deloitte & Touche were brought in
6 to try and sort out the VAT situation within Barkhill which was the initial
7 introduction of Deloitte & Touche into the situation, isn't that right?
- 8 A. Yes.
- 9 Q. 311 And I think they came in, in early 1992 at 13977. And this is a typed version
10 of a handwritten document and simply on the last paragraph it says:
11
12 "I mentioned to Aidan that I suggested to Eddie Kay we should collect up all
13 outstanding invoices" and presumably bring the VAT up-to-date and this is a
14 note made I think by Ciaran Mulcahy in Deloitte & Touche, isn't that right?
- 12:21:55 15 A. Yes.
- 16 Q. 312 Now, can I ask you first of all about your understanding about Mr. Aidan
17 Lucey's position in O'Callaghan Properties. What did you understand Mr. Lucey
18 to be?
- 19 A. He was the -- I'm not sure of his formal title. But he was effectively the
12:22:12 20 company secretary's/financial, perhaps financial controller. He was the person
21 that we dealt with in connection to Riga and O'Callaghan's financial affairs in
22 the absence of Mr. O'Callaghan. But it's probably fair to say that it was on
23 an exceptional basis that we dealt directly with Mr. Lucey.
- 24 Q. 313 But you are you are you were aware of Mr. Lucey and had dealt with him on
12:22:39 25 certain occasions, is that correct?
- 26 A. I'm not sure that I personally did but I'm certainly aware that the bank did,
27 yes.
- 28 Q. 314 Because I think that was the formal, the first introduction of Deloitte &
29 Touche and subsequently I think later in 1992, Deloitte & Touche were retained
12:22:55 30 to do the audit of the first Barkhill audit period, isn't that right?

- 12:23:00 1 A. Yes, we were concerned that up until this time the affairs of Barkhill had been
2 conducted on a pretty ad hoc basis and Mr. Gilmartin had very few records and
3 we were concerned that matters should be brought up-to-date and in particular
4 we were concerned that if we didn't make returns we could be in serious
12:23:19 5 trouble.
- 6 Q. 315 And Deloitte & Touche were initially retained in relation to reconciling the
7 VAT element, isn't that right?
- 8 A. Yes, I think so.
- 9 Q. 316 And I think one of the concerns had been maybe that VAT had been reclaimed by
12:23:30 10 Riga on some of the invoices and then the invoices in full had been resubmitted
11 to Barkhill and there might be some element of double claiming in relation to
12 that and that all had to be sorted out?
- 13 A. Well, I'm not sure the mechanics of it. I know that there were problems in
14 relation to VAT and various other issues as well. And as I said, little or
12:23:51 15 nothing had been done by way of preparing or submitting accounts on behalf of
16 Barkhill up until that time.
- 17 Q. 317 And I think on the 4th of February, Mr. Kay, 1992, the Bruton lands transaction
18 was completed. At 6689, is the transfer to Barkhill. And on the 4th of
19 February 1992 at 16224. There is an authorisation to debit the Barkhill No. 2
12:24:28 20 account signed by Mr. O'Callaghan and Mr. Gilmartin.
- 21 A. Yes.
- 22 Q. 318 Would that suggest to you that Mr. Gilmartin was in attendance on the 4th of
23 February 1992?
- 24 A. I well -- it would suggest that, yes.
- 12:24:40 25 Q. 319 Yes. Can you remember whether in fact you would have met with Mr. Gilmartin on
26 the 4th of February 1992?
- 27 A. No, I don't.
- 28 Q. 320 Yes. And the amounts that for which authorisation are being sought on the
29 document at 16224, are the costs and expenses associated with the Bruton sale,
12:24:58 30 isn't that right, including the cost of the land?

- 12:25:09 1 A. Yes.
- 2 Q. 321 All right. Now, on the 12th of February 1992 at 6716. There is an
- 3 authorisation signed by Mr. O'Callaghan directed to Allied Irish Banks for the
- 4 payment out of certain sums starting with a sum of 14,019.78 to Frank Dunlop &
- 12:25:23 5 Associates, then a payment to Ambrose Kelly, Harrington Bannon, William Fry
- 6 Solicitors and another payment to William Fry Solicitors, isn't that right?
- 7 A. Yes.
- 8 Q. 322 And that I think was authorised by the bank at 6717, isn't that right?
- 9 A. Yes.
- 12:25:41 10 Q. 323 That records the payments there and those debits appear on the Barkhill No. 2
- 11 account at 6718. You will see that the entries there on the 12th of February
- 12 1992, the debits on the Barkhill No. 2 account are the payment to Mr. Dunlop,
- 13 Mr. Ambrose Kelly, Mr. Messrs. Harrington Bannon and the two payments to
- 14 William Fry's?
- 12:26:07 15 A. I see them, yes.
- 16 Q. 324 So those debits took place, isn't that right?
- 17 A. Yes.
- 18 Q. 325 And if I just take you back to the authorisation, Mr. Kay, at 6716. This
- 19 authorisation is only signed by Mr. O'Callaghan, isn't that correct?
- 12:26:25 20 A. Yes.
- 21 Q. 326 And it's not signed by Mr. Pitcher.
- 22 A. No, I presume it would have been our intention to obtain Mr. Pitcher's
- 23 signature retrospectively. Obviously, I would have or Mr. Donagh or I would
- 24 have had to explain to Mr. Pitcher what it was all about and ask him to sign.
- 12:26:49 25 Q. 327 I think at 6566. Which is the retrospective authorisation that you spoke about
- 26 earlier today.
- 27 A. Yes.
- 28 Q. 328 That the first five elements on that reflect the elements -- the five elements
- 29 in the authorisation of the 12th of February 1992, isn't that right?
- 12:27:10 30 A. Yes, yes.

- 12:27:10 1 Q. 329 It would follow from that, Mr. Kay, that there was no other authorisation for
2 those payments other than Mr. O'Callaghan's signature on the 12th of February
3 '92, isn't that right?
- 4 A. Well yes it follows from that. But we would not have had any difficulty in, I
12:27:25 5 assume, in obtaining Mr. Pitcher's signature. But I think I felt that it would
6 be better if I got Mr. Gilmartin to sign as well just to be sure to be sure.
- 7 Q. 330 Well certainly we, it would seem from the documentation supplied to the
8 Tribunal that until you went to seek Mr. Gilmartin's signature in July of 1992,
9 there was only one authorisation in relation to the payments on the 12th of
12:27:53 10 February 1992 at 6717.
- 11 A. Oh, well I'm sure that's correct.
- 12 Q. 331 Yes.
- 13 A. But it would have been merely an oversight. But it would not have had any
14 difficulty in obtaining a second authorised signature I suggest.
- 12:28:05 15 Q. 332 Would it be fair to say that you would have got Mr. Pitcher's signature for the
16 asking?
- 17 A. Oh, yes. Well within reason. Obviously I'd have to give him some explanation.
- 18 Q. 333 For the payments?
- 19 A. Yes.
- 12:28:16 20 Q. 334 Again I think at this stage Mr. Gilmartin was involved in a refinancing attempt
21 through Abbey Finance & Mortgage Company Limited, isn't that right? And I
22 think that continued for some time up to March of 1992 and beyond?
- 23 A. I don't precisely remember but they were as I think I said earlier, there was
24 almost always at least one proposed financing, refinancing in the pipeline,
12:28:43 25 that's probably one of the more prominent ones.
- 26 Q. 335 Ultimately, it again didn't come to anything, isn't that right?
- 27 A. Yes.
- 28 Q. 336 Right. But in all of these cases where the bank and indeed Mr. O'Callaghan
29 were asked to confirm certain matters by Mr. Gilmartin for the purpose of these
12:28:59 30 refinancing, they were confirmed in correspondence, isn't that right?

- 12:29:03 1 A. Yes and while we never had any great expectations that any of these
2 refinancings would actually happen, we had, we hoped that they might and we
3 were anxious to ensure that any reasonable steps we could take to facilitate
4 that process would be taken.
- 12:29:23 5 Q. 337 But it was nonetheless the bank's belief that nothing would happen in relation
6 to any of these refinancing proposals, isn't that right?
- 7 A. It was, yes. And I think if you go on a bit further into March you'll find
8 that we actually confirmed in writing to Mr. Gilmartin that we would be, we
9 would be, I was going to say happy but we certainly would have been prepared to
10 accept full repayment if he managed to organise a refinancing. And I think Mr.
11 O'Callaghan wrote him some similar letter. So that we would be, both parties
12 would have been very happy to get out in March 1992 and indeed at any time.
- 13 Q. 338 I think it would be fair to say that the bank would have been happy to accept a
14 take out at any stage, isn't that right?
- 12:30:14 15 A. Absolutely, yes.
- 16 Q. 339 Right. Now, I think in March of 1992, Mr. Kay, there was an invoice at 6914,
17 to Barkhill Limited in the sum of 10,000 pounds. And this was noted at the
18 bottom it's paid by Riga Limited 14th of March 1992 to be refunded by Barkhill.
- 19 A. Yes.
- 12:30:41 20 Q. 340 Do you see that?
- 21 A. Yes.
- 22 Q. 341 And I think in fact it was paid by Riga at 6916.
- 23 A. Sorry, there's some notation.
- 24 Q. 342 I'm going to come back to the notation. I just want to establish, Mr. Kay, to
12:30:54 25 your satisfaction the fact of the payment first of all by Mr. Riga. Do you see
26 in a?
- 27 A. I do, yes.
- 28 Q. 343 And then in the reimbursement document at 6920. There is a reference under the
29 heading "Westpark expenses" the second entry is "Riga to Ambrose Kelly 10,000".
12:31:14 30 The second last handwritten entry and beneath that 16th of April "refunded by

- 12:31:19 1 Barkhill 10,000 pounds" do you see that?
- 2 A. I do.
- 3 Q. 344 And then if you look at 6921. Can I show you there an authorisation for the
- 4 payment by Barkhill to Riga of that 10,000 pounds to Ambrose Kelly signed by
- 12:31:34 5 Mr. O'Callaghan alone, isn't that right?
- 6 A. Yes and in my writing.
- 7 Q. 345 Yes.
- 8 A. The notation is.
- 9 Q. 346 The authorisation is drafted by you and signed by Mr. O'Callaghan.
- 12:31:45 10 A. That's correct.
- 11 Q. 347 And the money is paid at 6922. This is the bank's organisation of the money,
- 12 isn't that correct?
- 13 A. Yes.
- 14 Q. 348 And the first sum there is Ambrose Kelly 10,000 pounds and at 6923, one can see
- 12:32:02 15 the sum of 10,000 pounds in a copy of the bank draft, isn't that right?
- 16 A. Yes.
- 17 Q. 349 That seems to establish that Riga paid a sum of 10,000 pounds know on the 16th
- 18 of March 1992 by way of cheque which was reimbursed on foot of an authorisation
- 19 from Mr. O'Callaghan on the 13th of April 1992 by Barkhill. Would you agree
- 12:32:21 20 with that?
- 21 A. Yes.
- 22 Q. 350 Now, can I take you back then to look at the document at 6914. And written at
- 23 the side in the smaller handwriting beneath the words "for professional
- 24 services" at the side the following is written "The above amount taken as a
- 12:32:40 25 loan by Ambrose Kelly to be repaid" and beneath that "repaid August 1992" do
- 26 you see that notation?
- 27 A. I see it, yes.
- 28 Q. 351 First of all, were you aware that this was a loan to Mr. Ambrose Kelly, if
- 29 indeed it was a loan to Mr. Ambrose Kelly?
- 12:32:55 30 A. No I wasn't aware of that, no.

12:32:57 1 Q. 352 Were you aware of any repayment in August of 1992 of that apparent loan?
2 A. No.
3 Q. 353 All right. It would be fair to say that it certainly insofar as the bank
4 account of Barkhill is concerned, there is no lodgement of a sum of 10,000
12:33:10 5 pounds then or indeed subsequently referable to any repayment by Mr. Kelly,
6 isn't that right?
7 A. Well I don't know but I'm sure you're correct, yes.
8 Q. 354 Do you know whether in fact Riga was repaid by Mr. Ambrose Kelly?
9 A. No, I am not aware of Mr. Kelly borrowing 10,000 pounds from either Riga or
12:33:34 10 from Barkhill or anything to do with its repayment.
11 Q. 355 If, therefore, this payment on foot of this invoice by Riga in the first
12 instance and the reimbursement by Barkhill took place, it took place on foot of
13 an invoice and an understanding within Allied Irish Bank that this was in
14 respect of professional services, is that right?
12:33:52 15 A. Yes.
16 Q. 356 Right. If there was any other arrangement that was made between anybody in
17 Riga and Mr. Ambrose Kelly to provide a loan to Mr. Kelly, this is not a matter
18 that has ever drawn to the attention of Allied Irish Bank and in particular
19 yourself, Mr. Kay, is that right?
12:34:07 20 A. Certainly not to me. And I would be strongly think to anyone else in AIB
21 either.
22 Q. 357 Now, I think that on the 18th of March 1992 at 6934.
23
24 JUDGE FAHERTY: Sorry Ms. Dillon. Just I beg your pardon. What is the date
12:34:22 25 of this invoice?
26
27 MS. DILLON: The invoice is dated the 23rd of March.
28
29 JUDGE FAHERTY: Thank you.
12:34:28 30

12:34:28 1 MS. DILLON: 1992
2
3 JUDGE FAHERTY: Thank you.
4

12:34:31 5 Q. 358 MS. DILLON: Yes.
6
7 On the 18th of March, Mr. Kay, at 6934, in a file note that contains the
8 reference "EK/KM" at the bottom. Is that a meeting with you and?
9 A. Yes that's my initials and at the end of it.

12:34:52 10 Q. 359 And were you the only person who attended for the bank or was there anybody
11 else in attendance?
12 A. It looks as though I was the only one.

13 Q. 360 You had a meeting with Mr. O'Callaghan and Mr. Deane and the first part deals
14 with negotiations between Green Property or the possible involvement of DCC and
12:35:16 15 Mr. Jim Flavin, isn't that right?
16 A. Yes.

17 Q. 361 And then in the third paragraph dealing with the issue of lobbying the
18 following is said "O'Callaghan and Deane are now working on the premises that
19 if a Green deal is not possible how did they progress matters. They intend
12:35:23 20 actively canvassing the councillors over the next number of weeks and are also
21 speaking to the IDA in relation to industrial use of 50 per cent of the site.
22 Owen O'Callaghan's intention is to meet all 78 of the councillors over the next
23 month. As of now he anticipates he has 28 lined up."
24

12:35:41 25 Now, this would suggest that at this stage Mr. O'Callaghan is reactivating his
26 lobbying campaign of the councillors?
27 A. Yes, I think around that time Mr. O'Callaghan was being quite pessimistic as to
28 the prospects of the zoning being retained.

29 Q. 362 But certainly insofar as that paragraph is concerned Mr. O'Callaghan proposes
12:36:06 30 meeting all of the councillors and that he has 28 lined up. Presumably meaning

- 12:36:11 1 28 lined up to meet, isn't that right?
- 2 A. I think so, yes.
- 3 Q. 363 Right. And he proposed meeting all 78 of the councillors over the next month
- 4 and that they were going to be actively canvassing, isn't that right?
- 12:36:20 5 A. Yes.
- 6 Q. 364 So the plan of campaign at this stage on the 18th of March 1992, is to
- 7 reactivate the lobbying campaign involving the councillors to progress the
- 8 zoning of Quarryvale?
- 9 A. Correct.
- 12:36:30 10 Q. 365 And that is being done in the light of the advice received by the bank from Mr.
- 11 Dunlop that it's likely that the Quarryvale matter will come before the Council
- 12 in September of 1992?
- 13 A. Yes I think so, yes.
- 14 Q. 366 So this is now March and so time is moving on. There are 78 councillors to be
- 12:36:46 15 met and it's going to be dealt with or disposed of in September '92 and this is
- 16 the plan of action that's being laid out, isn't that right?
- 17 A. Yes, I think we also had some other professional opinions to the effect that
- 18 things were not looking good.
- 19 Q. 367 Yes I think that you had an opinion from I think in fact from Mr. John Mulcahy.
- 12:37:08 20 A. Oh, John Mulcahy of JLW.
- 21 Q. 368 Of JLW and I think that Mr. Dunlop took issue with Mr. Mulcahy's report. It
- 22 was furnished to Mr. Dunlop and he furnished a report in turn in which he had a
- 23 fairly -- disagreement with Mr. Murphy's view of the matter, isn't that right?
- 24 A. Mr. Mulcahy's.
- 12:37:29 25 Q. 369 Mr. Mulcahy's view of the matter, isn't that right?
- 26 A. Yes.
- 27 Q. 370 And I think that's the report in which Mr. Dunlop informed the bank at 6870 in
- 28 the second last paragraph he said "the voting patterns outlined at the
- 29 conclusion of the JLW opinion are quite frankly irrelevant. We deal with what
- 12:37:50 30 we have. We have already met the vast majority of the new council. Some of

12:37:52 1 them more than once and we'll continue to do so until the vote. Don't be
2 surprised if the number of those expressing opposition to Quarryvale have to
3 attend their grandmother's funeral in Kerry on the day of the vote! Finally can
4 I say, as the coordinator of the Quarryvale vote I firmly believe this site
12:38:07 5 will maintain its current zoning with or without the co-operation of Green
6 Properties".
7
8 And I think that Mr. Mulcahy had been quite pessimistic in his report about --
9 A. He was.
12:38:19 10 Q. 371 But I think Mr. Dunlop was more up beat in his report and certainly seemed to
11 be suggesting there that some people who were opposing Quarryvale wouldn't be
12 present when the vote came to pass, isn't that correct?
13 A. That's correct, yes.
14 Q. 372 That information would have been available within the bank and the bank would
12:38:34 15 have known about it, isn't that right?
16 A. Yes but I think every the overall sentiment coming from Mr. O'Callaghan was
17 that it was going to be an uphill task.
18 Q. 373 But in any event, uphill or otherwise, the task is being resumed in March of
19 1992, isn't that right?
12:38:48 20 A. Yes.
21 Q. 374 And the bank are being told on the 18th of March, that Mr. Deane and Mr.
22 O'Callaghan are going to re-start the lobbying campaign?
23 A. Yes but I think it would be fair it to say that they are had probably never
24 really stopped it. But a re, it was going to be reinvigorated in some manner.
12:39:04 25 Q. 375 Right. In the next paragraph they deal with the alternative use of Quarryvale
26 which was the Stadium issue. "In relation to the alternative site of
27 Clondalkin: They are progressing the concept of a stadium and have produced
28 model. They believe that the Stadium could be viable at a total cost of 32
29 million pounds which would be funded by 10 million pounds from the State, 10
12:39:24 30 million from the sale of ten-year tickets and perhaps another 10 million pounds

12:39:27 1 from private promoters. This would be 40,000 seating capacity."

2

3 Did Mr. O'Callaghan or Mr. Deane I beg your pardon. 6934. In the fourth

4 paragraph on that page, did Mr. O'Callaghan or Mr. Deane explain to you how

12:39:43 5 they expected that they might get 10 million pounds subvention from the State

6 in relation to the Stadium?

7 A. No they didn't. And in fact they had certainly mentioned to us the possible

8 alternative use in of the Neilstown site as a stadium and I suppose it would be

9 fair to say that I really didn't want to know too much about that because it

12:40:07 10 was going to involve additional costs which we would, we probably would have

11 been asked to finance and we'd enough problems as matters stood.

12

13 However, we were in broad agreement that it made sense to have an alternative,

14 possible alternative use for the Neilstown land. But certainly we didn't get

12:40:29 15 involved in any detailed discussions about it at that stage, not in my time.

16 Q. 376 From the very beginning I think, from the time that AIB became involved and at

17 the time that Mr. McGrath put in the motion on the 15th of February 1991, the

18 bank were aware of the necessity of providing a viable alternative for the

19 Neilstown site as a, as the other side of promoting the zoning in Quarryvale,

12:40:53 20 isn't that right?

21 A. Oh, yes we were. But as I said, my main preoccupation other than trying to

22 facilitate the rezoning was to keep a lid on the spending out of the Barkhill

23 account and I didn't welcome expenditure being incurred in relation to a

24 possible Stadium project but so I, as far as possible tried to keep it as arm's

12:41:17 25 length.

26 Q. 377 In the next paragraph the following is stated "when asked about the progress of

27 the success of the zoning as of now, Owen O'Callaghan considered that it's

28 about 40 per cent likely. But he would hope to bring that to better than 50

29 per cent over the next four to six weeks".

12:41:35 30

- 12:41:35 1 Did he give you any indication as to how he expected that he would achieve that
2 increase of all at least 10 per cent over the next four to six weeks?
- 3 A. No. Other than by an intensive lobbying campaign and sort of reminding people
4 who might have given tentative support before and were now somewhat lukewarm or
12:41:54 5 whatever. But other than in a more intensive lobbying campaign he didn't
6 elaborate on it to my recollection.
- 7 Q. 378 "He indicated that there are ongoing fees between now" and the document says
8 "disowning" but I presume it's meant to say the "zoning vote".
- 9 A. It must be. Yes.
- 12:42:13 10 Q. 379 So it would read "He indicated that there are ongoing fees between now and the
11 zoning vote of 150,000 pounds and decision will have to be taken as to whether
12 the bank is willing to fund this amount."
13
- 14 Now, did you get any breakdown first of all of that figure of 150,000 pounds?
- 12:42:28 15 A. I don't think so. I think it was just a global figure and I probably reacted
16 pretty negatively to it.
- 17 Q. 380 Yes. And insofar as that figure of 150,000 pounds is concerned, were those
18 fees connected with the zoning vote?
- 19 A. Well sorry I think they were just in connection with the overall project. I'm
12:42:48 20 not sure. They were broken down as to whether they were lobbying costs or
21 other costs but they were. I think we were told that there was an overall
22 requirement for about 150,000 towards keeping the project on track.
- 23 Q. 381 Yes. What is recorded there is "There are ongoing fees between now" which is
24 the 18th of March 1992 "and the zoning vote" which is at that stage was
12:43:12 25 anticipated to be September '92.
- 26 A. Yes.
- 27 Q. 382 Of 150,000 pounds.
- 28 A. Yes.
- 29 Q. 383 Would that not suggest to you, Mr. Kay, that the sum of 150,000 pounds was
12:43:21 30 connected with the zoning vote?

- 12:43:25 1 A. Well some of it would have been I'm sure, yes.
- 2 Q. 384 Yes. "Decision will have to be taken as to whether the bank is willing to fund
3 this amount. By implication he is not prepared to do so" was that your view
4 that Mr. O'Callaghan wasn't prepared to pay the 150,000 pounds?
- 12:43:41 5 A. Oh, yes I'm sure it was. And equally, we weren't very enthusiastic about
6 paying it and I suppose I probably hoped that it could be pushed on until well
7 as long as possible to be candid.
- 8 Q. 385 And that seems to be the position because your next remark is that this matter
9 was left in abeyance. In other words, no decision was made. You certainly
10 don't appear to have said that the bank were going to fund it whatever it was.
- 11 A. I'm sure I didn't.
- 12 Q. 386 But it would appear to be the position that there are two things of importance
13 in that memorandum, Mr. Kay. One is that Mr. Kay and Mr. Deane are
14 reactivating the ongoing lobbying campaign, isn't that right?
- 12:44:15 15 A. Yes.
- 16 Q. 387 And they are also informing the bank that there will be fees required of
17 150,000 pounds between that date the 18th of March '92 and the zoning vote
18 which at that stage was considered to be September 1992, is that fair?
- 19 A. Yes.
- 12:44:28 20 Q. 388 Right. Now, in the final paragraph "Overall O'Callaghan seemed very cautious
21 about the prospects about bringing a Green deal to fruition or indeed managing
22 to keep the zoning in place" and would it be fair to say that at that stage
23 that you felt that Mr. O'Callaghan was quite pessimistic about the prospect of
24 keeping the zoning?
- 12:44:47 25 A. Yes, I would. And taken in conjunction with what John Mulcahy had said, the
26 prospects did not look good.
- 27 Q. 389 But Mr. O'Callaghan seemed to be of the view that while he felt he had 40 per
28 cent support at this stage that within the next four to six weeks he'd be able
29 to bring it up to at least 50 per cent, isn't that right?
- 12:45:06 30 A. He did, yes.

- 12:45:07 1 Q. 390 Now, first of all other than lobbying did Mr. O'Callaghan give you any idea as
2 to how he intended to achieve that uplift in the percentage of councillors who
3 would vote in favour of Quarryvale?
- 4 A. No, but I would have assumed that it included professional fees to perhaps
12:45:27 5 architects or whoever.
- 6 Q. 391 Right. Two days later, Mr. Kay, on the 20th of March 1992 at 6941, Mr. Dunlop
7 through Shefran issued an invoice to Riga in the sum of 40,000 pounds, isn't
8 that right?
- 9 A. Yes.
- 12:45:46 10 Q. 392 And that invoice is the first invoice from Shefran that was paid directly by
11 Barkhill, isn't that right?
- 12 A. Yes.
- 13 Q. 393 Right. In the first place can I ask you, did you see any connection between
14 the matters that were discussed with Mr. O'Callaghan on the 18th of March 1992
12:46:02 15 and then the invoice from Shefran two days later in the sum of 40,000 pounds?
- 16 A. No, I didn't except that I suppose I was aware that Mr. Dunlop was part of the
17 lobbying process and no doubt would incur some costs in relation to that. And
18 I can remember contacting Mr. O'Callaghan about that invoice because I must
19 admit at the time I didn't relate it to the payments that had been made to
12:46:37 20 Shefran through Riga. And it was the first one that sort of directly was
21 confronting the bank as being required to be paid. And I can remember speaking
22 to Mr. O'Callaghan and asking what it was about and obviously I knew it was
23 something to do with Mr. Dunlop. And my recollection is that he said well this
24 is part of Dunlop's fee.
- 12:47:08 25
- 26 And, you know, it didn't seem unreasonable at the time that as far as we were
27 aware during 1992 Mr. Dunlop had not been paid any fees to my knowledge. And
28 as I said, maybe yesterday, the entire project was being run out of his office.
29 So a request of 40,000 pounds didn't seem to be out of line with other payments
12:47:35 30 that were being made out of the account. And while obviously I wasn't happy to

- 12:47:40 1 see it but I was unhappy largely because it was another 40,000 on to the debt
2 rather than for any other reason.
- 3 Q. 394 In the meeting of the 18th of March 1992, Mr. Kay, Mr. O'Callaghan and
4 Mr. Deane had told you that there would be ongoing fees between the 18th of
12:48:00 5 March '92 and effectively September '92 of 150,000 pounds, isn't that right?
6 A. They did yes.
- 7 Q. 395 Coming up to the zoning vote. Did you regard the invoice of 40,000 pounds from
8 Shefran Limited which was Mr. Dunlop's company, as being part of that 150,000
9 pounds?
12:48:16 10 A. I probably did. I probably did, yes.
- 11 Q. 396 As you've said, this was the first invoice that's coming directly in to the
12 bank, isn't that right?
13 A. Yes, yes.
- 14 Q. 397 Now, you said that you were aware that no other invoice had come in from
12:48:29 15 Shefran in January in 1992 to this point in time, isn't that right?
16 A. Yes, yes. And as far as I'm aware, no. Well there were invoices in respect of
17 Dunlop & Associates. But I don't think any of them referred to a fee. They
18 were all for outlay and other bits and pieces.
- 19 Q. 398 Yes.
- 12:48:48 20 A. So it was against that background that I, as far as I can recollect, I said
21 well this appears to be his fee and I suppose it doesn't sound out of line.
- 22 Q. 399 Well what you knew from January 1992, when you received the fax from Mr. Aidan
23 Lucey was that in 1991 Shefran had been paid 80,000 pounds, isn't that right?
24 A. That's correct, yes.
- 12:49:12 25 Q. 400 Right. And you hadn't raised any query in relation to the 80,000 pounds
26 incurred in connection with Shefran in 1991, isn't that right?
27 A. No, I don't think we did.
- 28 Q. 401 Right. And when you came and received the invoice directly for the first
29 occasion dated the 20th of March 1992, you telephoned Mr. O'Callaghan?
12:49:31 30 A. Yes.

- 12:49:31 1 Q. 402 And did you ask Mr. O'Callaghan look, what is this going to cost overall? What
2 is the totality of this fee?
- 3 A. I don't think I ever got a precise figure as to what Mr. Dunlop's fee was going
4 to be but I presumed that I assumed it would have been roughly similar to what
12:49:55 5 had been incurred in '91. I can't actually categorically say that I put those
6 two together but I think it's likely that I did.
- 7 Q. 403 Did that invoice come in to you, Mr. Kay, do you believe from a Mr. Dunlop or
8 from Mr. O'Callaghan?
- 9 A. I think it must have come interest from Mr. O'Callaghan because it's directly
12:50:13 10 to directed to Riga.
- 11 Q. 404 Okay. Did you not, would you not have considered it prudent, Mr. Kay, to have
12 inquired of Mr. O'Callaghan how much is the totality of this fee. Particularly
13 in view of the fact that you knew that the fee that the monies that had been
14 paid to Shefran in 1991 was double what this invoice was, isn't that right?
- 12:50:34 15 A. Well perhaps I should have but I don't think I did.
- 16 Q. 405 Did you make any inquiry as to how this money was being expended? In other
17 words, what was the fee being paid for?
- 18 A. Well I assumed it was Mr. Dunlop's professional fee for acting for the project
19 because as far as I was aware he hadn't received any monies from Barkhill or
12:50:57 20 from Riga during 1992.
- 21 Q. 406 This was paid isn't that correct, in April, Mr. Kay, by way of bank draft drawn
22 on the a Barkhill No. 2 account, isn't that right?
- 23 A. I assume it was, yes.
- 24 Q. 407 Yes. And I think at 6944 there is a copy of the bank draft for 40,000 pounds?
- 12:51:24 25 A. Oh, yes. I've seen that in the file.
- 26 Q. 408 And I think in fact if you look at 16588 it's possible to see that it's dated
27 the 13th of April isn't, is that right?
- 28 A. Yes.
- 29 Q. 409 On the 23rd of March 1992, Mr. Kay, at 6967, Frank Dunlop & Associates issues
12:51:57 30 an invoice No. 631 in the sum of 954.55, do you see that?

12:52:04 1 A. I do.

2 Q. 410 And there is an authorisation for that payment at 6968. And you will see in
3 this authorisation, Mr. Kay, that two amounts are being authorised well four
4 amounts are being authorised but there's only two I'm interested in. The first
12:52:21 5 amount is 10,000 pounds which is referred to as being a loan to Mr. Kelly in
6 some documents. The last two is an authorisation in relation to the payment to
7 Frank Dunlop and the second is an authorisation in relation to Shefran, isn't
8 that right?

9 A. That's right.

12:52:37 10 Q. 411 So it's clear from this document that there were two methods of making payments
11 to Mr. Dunlop, isn't that right?

12 A. Oh, yes well I was well aware of that from going from ... well was I -- well I
13 suppose I must have been, yes.

14 Q. 412 Well you had to be aware of it, isn't that right, Mr. Kay?

12:52:55 15 A. Yes.

16 Q. 413 Because at in stage having received the first Shefran invoice --

17 A. Yes, I was aware. I must have been aware of it.

18 Q. 414 You have also received a Frank Dunlop & Associates invoice so for the first
19 time in March of 1992 the bank are faced with two pieces of paper.

12:53:10 20 A. Yeah.

21 Q. 415 One is an invoice from Shefran Limited whom you know is Mr. Dunlop and the
22 other is an invoice from Frank Dunlop & Associates whom you know also is Mr.
23 Dunlop.

24 A. Yes, and I think going back.

12:53:22 25

26 JUDGE FAHERTY: Ms. Dillon in, January 1992 I understood there was a document
27 with Mr. Kay's FDU against ...
28

29 MS. DILLON: Against the -- yes that's the expenses the Westpark expenses
12:53:35 30 document, Judge.

12:53:36 1
2 JUDGE FAHERTY: 6500 I think.
3
4 MS. DILLON: Yes.
12:53:40 5
6 JUDGE FAHERTY: I just want to ask Mr. Kay. Sorry to interrupt you, Mr. Kay.
7
8 MS. DILLON: No.
9
12:53:44 10 JUDGE FAHERTY: You felt this was the first time that Mr. Dunlop had been paid
11 a fee but in this document which is January, maybe I'm wrong in this. 2nd of
12 January '92 as I understand it. I thought you said this writing to the right
13 was your writing Mr. Kay?
14 A. Oh, yes, it is.
12:54:02 15
16 JUDGE FAHERTY: Right.
17 A. But I think. Sorry. I think that referred to 1991.
18
19 JUDGE FAHERTY: Yes but that's what I'm asking you because you I understand
12:54:12 20 you to say that you believed up to this point Mr. Dunlop hadn't been retained,
21 been paid outlay, that he hadn't received any fees.
22 A. Sorry I meant during 1992.
23
24 JUDGE FAHERTY: Thank you for clarify that go because I had understood you to
12:54:25 25 mean that he hadn't received any fees at all. I recalled that he had received
26 fees as far as you are concerned.
27 A. Yes.
28
29 JUDGE FAHERTY: Because you had this document. That's your writing I think.
12:54:35 30 A. It is indeed, yes.

12:54:36 1
2 JUDGE FAHERTY: Very well.
3
4 MS. DILLON: I had understood Mr. Kay to say that he agrees he must have known
12:54:40 5 from January of '92, when we received this document Shefran had received these
6 and that Shefran was Mr. Dunlop. I had understood that but maybe I'm incorrect
7 on that.
8
9 JUDGE FAHERTY: No no. Absolutely. But he had also said that he Mr. Dunlop
12:54:53 10 hadn't been paid any fees. But he was talking about 1992 I think in fairness
11 to Mr. Kay and he has clarified that.
12
13 Q. 416 MS. DILLON: Yes. Yes.
14 At this point in time, Mr. Kay, in March of 1992 there are two invoices. One
12:55:09 15 is from Shefran, whom you know is Mr. Dunlop, isn't that right?
16 A. Yes.
17 Q. 417 And one is from Frank Dunlop & Associates.
18 A. Yes.
19 Q. 418 Isn't that right? And surely you asked yourself initially in the first place
12:55:20 20 why are there two separate methods of payment going on here?
21 A. Not really. I assume that he, that he collected his fees and in some different
22 manner to how he collected his outlay. But I didn't, I didn't really dwell on
23 it to be honest. I just. I was told it was Shefran was Dunlop. I had no
24 reason to think otherwise. And I didn't, as I said, I didn't spend much time
12:55:50 25 thinking about it.
26 Q. 419 Well from your experience in the, in dealing with creditors and in dealing with
27 customers of the bank. Do you know of many businesses who have a separate
28 company for collecting outlay and another company for collecting professional
29 fees, Mr. Kay?
12:56:06 30 A. I probably didn't but ...

- 12:56:10 1 Q. 420 It would be very unusual, isn't that right?
- 2 A. It probably would be unusual. But in respect of my experience in paying
- 3 creditors and so on, I didn't really have much experience in paying creditors
- 4 because it was all at one step removed. The customer would have paid the
- 12:56:24 5 creditor, not the bank.
- 6 Q. 421 But I suggest to you, Mr. Kay, that it wouldn't be normal practice for anybody
- 7 providing a service to claim their professional fee through one entity such as
- 8 a company called Shefran and their outlay in relation, in a second company,
- 9 isn't that right?
- 12:56:43 10 A. Well I'm, you're probably right that it's unusual but I don't see any reason
- 11 why it couldn't happen.
- 12 Q. 422 But accepting for the moment then, Mr. Kay, that it's unusual.
- 13 A. Yes.
- 14 Q. 423 What steps did you take to satisfy yourself as to the reason why it was that
- 12:56:57 15 Mr. Dunlop was conducting his business in this way?
- 16 A. I took no steps.
- 17 Q. 424 But I think you did at least speak to Mr. O'Callaghan, isn't that right?
- 18 A. Oh, yes.
- 19 Q. 425 In relation to the Shefran payment, isn't that right?
- 12:57:09 20 A. Oh, yes but I mean I didn't take any steps to establish why his accounting
- 21 practices or wherever --
- 22 Q. 426 Yes.
- 23 A. -- were conduct you had conducted in such and such a manner. It didn't occur
- 24 to me.
- 12:57:20 25 Q. 427 You never spoke to Mr. Dunlop at all about the matter, isn't that right?
- 26 A. Absolutely not.
- 27 Q. 428 But when you got the invoice for 40,000 pounds you did speak to Mr.
- 28 O'Callaghan?
- 29 A. I did, yes.
- 12:57:30 30 Q. 429 And Mr. O'Callaghan, did Mr. O'Callaghan explain to you that Shefran was Mr.

- 12:57:33 1 Dunlop?
- 2 A. Yes, he probably had explained that to me earlier when the amounts that were
- 3 payable to Shefran through Riga were being paid I'm sure. I'm sure I would
- 4 have said or either I or one of my colleagues would have said who are Shefran
- 12:57:53 5 or we wouldn't have just paid three amounts without knowing anything about who
- 6 they were.
- 7 Q. 430 You wouldn't have rubber stamped it?
- 8 A. No.
- 9 Q. 431 No. And did you ever go to Mr. Gilmartin and ask him who Shefran was?
- 12:58:08 10 A. The first time I ever discussed, probably the only time I ever discussed
- 11 Shefran with Mr. Gilmartin, was when the 30,000 pounds payment was being made
- 12 and when I spoke to him on the telephone. And I think, and I was trying to
- 13 work out in my own mind why it was I asked Mr. Gilmartin about the 30,000
- 14 pounds payment and yet apparently had done nothing about getting his say so or
- 12:58:37 15 even talking to him about the 40,000.
- 16
- 17 And what I think probably happened was that I was talking to Mr. Gilmartin on
- 18 the day or thereabouts when the 30,000 pounds invoice came in. And I talked to
- 19 him I think as I've said many times, I've spoken to Mr. Gilmartin quite
- 12:58:59 20 frequently. Probably more frequently than I would have liked but I did. And I
- 21 presume what happened was that when the 30,000 pounds invoice was presented I
- 22 happened to be speaking to Mr. Gilmartin and said oh, by the way we've been
- 23 asked to pay 30,000 pounds out of the account today and would have told him
- 24 what it was and that set the process in motion.
- 12:59:21 25 Q. 432 Yes but that's July, isn't that right?
- 26 A. That's July, yes.
- 27 Q. 433 But when you get this invoice?
- 28 A. The 40,000 pounds. No I didn't ask him.
- 29 Q. 434 You didn't ask him no?
- 12:59:31 30 A. I did not.

- 12:59:32 1 Q. 435 Did anybody ever give you an explanation to the effect that Shefran was
2 utilised for the receipt of professional fees so that Mr. Gilmartin would be
3 unaware of the fact that Mr. Dunlop was receiving these fees?
4 A. I've read that in the correspondence but it doesn't accord with my memory.
- 12:59:59 5 Q. 436 Right. Did Mr. O'Callaghan tell you that he made an agreement with Mr. Dunlop
6 when he agreed to retain him as a lobbyist that in order that Mr. Gilmartin
7 would be unaware of the payments to Shefran that the payments would be routed
8 through a company called Shefran, Mr. Dunlop's professional fee?
9 A. No, he didn't.
- 13:00:09 10 Q. 437 And Mr. Dunlop in his evidence to the Tribunal has told the Tribunal that he
11 made that arrangement with Mr. O'Callaghan because of the fact that Mr.
12 Gilmartin did not want Mr. Dunlop involved in the Quarryvale project. Was that
13 ever explained to you when you went to Mr. O'Callaghan and asked him about
14 Shefran and why Shefran was being paid 40,000 pounds?
13:00:30 15 A. No, it wasn't and it doesn't make much sense because there were payments being
16 made to Dunlop & Associates around about the same time. So Mr. Gilmartin would
17 have been aware that payments were going to Dunlop.
- 18 Q. 438 Yes. And Mr. Gilmartin had indeed in December on the 19th of December 1991,
19 while there is a question mark beside Mr. Dunlop's name, he had signed the
13:00:52 20 authorisation for you on the 19th of December 1991, authorising the payment of
21 money to Mr. Dunlop, isn't that right?
22 A. Yes, he did.
- 23 Q. 439 Right. So is it fair to say that you don't understand the point that was being
24 made if it's being suggested that the reason for the payments to Shefran was to
13:01:09 25 keep Mr. Dunlop's involvement in Quarryvale a secret from Mr. Gilmartin you
26 can't see how that would be so?
27 A. No, I never heard it.
- 28 Q. 440 Yes.
29 A. And I don't think it makes sense anyhow.
- 13:01:21 30 Q. 441 Did you hear of it since you read the documentation in the Tribunal?

13:01:24 1 A. Yes.

2 Q. 442 Did you see it in Mr. O'Callaghan's statement and I think indeed in Mr.

3 Dunlop's statement?

4 A. Yes, I did.

13:01:32 5 Q. 443 Right. Mr. Gilmartin if your evidence is correct, Mr. Kay, in relation to your

6 recollection of your conversation with Mr. Gilmartin, that would appear to

7 suggest that when you spoke to Mr. Gilmartin in July of 1992, Mr. Gilmartin did

8 not know who Shefran was because he had to ask you who is Shefran?

9 A. Yes, I think that's right.

13:01:51 10 Q. 444 And it would follow from that, that certainly up to July of '92, Mr. Gilmartin

11 didn't know who Shefran was, isn't that right?

12 A. I think that's correct yes.

13 Q. 445 And if Mr. Gilmartin didn't know by July of '92, who Shefran was, he couldn't

14 have known of the 80,000 pounds that had been paid in 1991 to Shefran, isn't

13:02:09 15 that right?

16 A. Yes, that's right.

17 Q. 446 Can you think of any reason why anybody would have wanted to keep those 80,000

18 pounds payments a secret from Mr. Gilmartin?

19 A. No, other than the suggested reason that for some reason or other they wanted

13:02:25 20 to minimise the contact between Barkhill and Mr. Dunlop. But it just doesn't

21 seem to make a lot of sense to me.

22

23 CHAIRMAN: It's one o'clock.

24

13:02:36 25 MS. DILLON: Yes, Sir.

26

27 CHAIRMAN: And.

28

29 MS. DILLON: Two o'clock.

13:02:39 30

13:02:39 1
2
3
4
13:02:52 5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

CHAIRMAN: Two o'clock.

MS. DILLON: Thank you, Sir. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2:00 P.M.:

- 13:02:56 1
- 2
- 3
- 4 CHAIRMAN: Good afternoon, Mr. Kay.
- 14:05:06 5 A. Good afternoon.
- 6
- 7 CHAIRMAN: Ms. Dillon.
- 8
- 9 Q. 447 MS. DILLON: Good afternoon, Sir. Good afternoon, Mr. Kay.
- 14:05:12 10
- 11 I think you had mentioned this morning, Mr. Kay, that in the course of the
- 12 financing that Mr. Gilmartin was endeavouring to put in place in early 1992,
- 13 that letters had been written both by O'Callaghan Properties and the bank in
- 14 support of Mr. Gilmartin's application for refinancing, isn't that right?
- 14:05:30 15 A. Yes, we had both confirmed that we were willing to be taken out.
- 16 Q. 448 Yes. And I think Mr. O'Callaghan's letter is at 6978. Where he confirms on
- 17 behalf of O'Callaghan Properties and Riga that "He was prepared to terminate
- 18 their involvement in Barkhill and Westpark on payment of the agreed amount of
- 19 1.61 million to O'Callaghan Properties and Riga and 1.1 million to AIB on
- 14:05:56 20 behalf of Riga". Isn't that right?
- 21 A. Yes.
- 22 Q. 449 And I think the bank's letter is at 6979. And on the 23rd of March '92 signed
- 23 by yourself I think, you confirmed that you "also would be willing to terminate
- 24 the share subscription agreement provided all the parties were willing and the
- 14:06:14 25 Barkhill debts to AIB were cleared in full".
- 26
- 27 But notwithstanding Mr. Gilmartin's endeavours with McEnroy Financing and
- 28 notwithstanding those letters in support the financing came to nothing, isn't
- 29 that right?
- 14:06:26 30 A. That's correct.

- 14:06:26 1 Q. 450 And I think it would be fair to say that from early 1992, Messrs. Deloitte &
2 Touche were initially involved in relation to the VAT but subsequently in 1992
3 were appointed to deal with the audit of the first Barkhill period, isn't that
4 right?
- 14:06:41 5 A. That's correct.
- 6 Q. 451 Right. And you had a number of meetings with I think Deloitte & Touche in that
7 regard and there was correspondence passing between the parties.
- 8 A. That's correct, yes, we were concerned that no accounts had been produced.
- 9 Q. 452 Yes. But before you retained Messrs. Deloitte & Touche in connection with the
14:06:57 10 audit, I think that another invoice was furnished to the bank at 7429, from
11 Shefran on the 30th of April 1992.
- 12 A. Yes.
- 13 Q. 453 Now, this is an invoice in the sum of 30,000 pounds and it has the same
14 features as the previous Shefran invoices. It's for a round figure sum. There
14:07:18 15 is no element of VAT and no reference to a VAT number on the document. Isn't
16 that correct?
- 17 A. That's correct.
- 18 Q. 454 This however, is the second Shefran invoice that's provided to the bank, isn't
19 that right?
- 14:07:27 20 A. Yes.
- 21 Q. 455 And we had seen with the previous invoice of March 1992, that that was
22 authorised by Mr. O'Callaghan, isn't that correct?
- 23 A. Yes.
- 24 Q. 456 And that there was at that stage no authorisation from Mr. Gilmartin, isn't
14:07:39 25 that right?
- 26 A. That's correct.
- 27 Q. 457 And I think that it wasn't until July of 1992, that you sought Mr. Gilmartin's
28 authorisation retrospectively in respect of the 40,000 pounds invoice dated
29 March 1992, isn't that right?
- 14:07:54 30 A. Yes.

- 14:07:55 1 Q. 458 Now, when this invoice was received by the bank, Mr. Kay, I will just take you
2 through some documents first and then ask you some questions. At 7129: This
3 is the authorisation or organisation within the bank for the drawing of the
4 debit for a draft for 30,000 pounds in favour of Shefran, isn't that right?
- 14:08:13 5 A. Yes.
- 6 Q. 459 And I think you will see at the bottom it's signed by both Mr. Donagh and
7 yourself.
- 8 A. It is.
- 9 Q. 460 And I think that a draft dated the 5th of June '92 at 7130 did issue to
14:08:32 10 Shefran. And was debited to the Riga to the Barkhill bank account at 7133.
- 11 A. Yes.
- 12 Q. 461 It is the third I think entry the second debit on that account, isn't that
13 right?
- 14 A. I see it, yes.
- 14:08:49 15 Q. 462 Now, I think that you had told the Tribunal this morning that you had spoken to
16 Mr. Gilmartin, isn't that right?
- 17 A. I had.
- 18 Q. 463 And I can show you a letter at 7428, dated the 10th of June, and in it you say
19 "Barkhill Limited: Dear Tom, I refer to our telephone conversation on Friday."
14:09:07 20 And that Friday, Mr. Kay, it might help you to know was the 5th of June. "And
21 enclose a copy of an invoice for 30,000 pounds payable to Shefran Limited which
22 as agreed, we have paid. I should be grateful if you would confirm your
23 authorisation for this payment to be made to keep our records correct." Isn't
24 that right?
- 14:09:26 25 A. Yes.
- 26 Q. 464 Now, this was your first conversation with Mr. Gilmartin in connection Shefran,
27 isn't that right?
- 28 A. It was, yes.
- 29 Q. 465 And that conversation appears to have taken place on the 5th of June because
14:09:35 30 you refer to your communication on Friday, isn't that right?

- 14:09:38 1 A. Yes, that's right.
- 2 Q. 466 And that is the same date as the draft is dated, isn't that right?
- 3 A. Yeah well I assume it is, yes, okay.
- 4 Q. 467 Well I think we saw that.
- 14:09:55 5 A. Yeah, well I accept that.
- 6 Q. 468 Right. Now, that would mean that on the same date that the bank is processing
7 the application on foot of the authorisation signed by Mr. O'Callaghan, you
8 telephone or have reason to talk to Mr. Gilmartin, isn't that right?
- 9 A. That's correct.
- 14:10:01 10 Q. 469 And in the course of that conversation you spoke to him about Shefran and Mr.
11 Gilmartin queried who Shefran was, isn't that right?
- 12 A. He did, yes.
- 13 Q. 470 And you explained to him who your understanding of Shefran.
- 14 A. I believe I did. I can't specifically say that I remember the details of it
14:10:19 15 but I knew who Shefran was and I'm certain that I would have told him because I
16 knew myself.
- 17 Q. 471 Yes. But Mr. Gilmartin didn't know until you explained to him on the 5th of
18 June 1992 who Shefran was.
- 19 A. That's correct.
- 14:10:34 20 Q. 472 Right. And you had not had any communication with Mr. Gilmartin in relation to
21 the earlier payment of 40,000 pounds which you had processed in April of 1992
22 on foot of the invoice in March of 1992, isn't that right?
- 23 A. That's correct.
- 24 Q. 473 And in fact, the authorisation that you subsequently sought in writing from Mr.
14:10:54 25 Gilmartin was in July of 1992, is that right?
- 26 A. Yes.
- 27 Q. 474 Now, in your letter that's on screen, you say in relation to the 30,000 pounds
28 "which as agreed we have paid" isn't that right?
- 29 A. Yeah, I do.
- 14:11:12 30 Q. 475 That would suggest, Mr. Kay, that it was your understanding when you wrote this

- 14:11:17 1 letter that you had already agreed with Mr. Gilmartin in your telephone
2 conversation that the 30,000 pounds could be paid, isn't that right?
- 3 A. Oh, absolutely. Because I had a pretty good open relationship with Mr.
4 Gilmartin and I simply would not have said that if we hadn't agreed it.
- 14:11:32 5 Q. 476 Yes. In any event, even if you had made a mistake, Mr. Kay, Mr. Gilmartin
6 didn't write back and say in fact you are wrong Mr. Kay, you've made a mistake,
7 I didn't agree the 30,000 pounds, isn't that right?
- 8 A. That's correct, yeah.
- 9 Q. 477 And there is no record within the bank files of Mr. Gilmartin contacting you in
10 response to this communication, isn't that right?
- 11 A. No, I don't think he did.
- 12 Q. 478 Right. Now, you furnished to him -- you faxed him the correspondence at 7427.
13 This is the fax cover sheet dated the 10th of June 1992. And you send four
14 pages one of which would be the fax cover sheet the second of which would be
14:12:12 15 7428 the letter itself, isn't that right?
- 16 A. Yes.
- 17 Q. 479 The next of which was a copy of the actual invoice, isn't that right?
- 18 A. Yes.
- 19 Q. 480 And I would suggest to you that it's likely this is the first invoice that Mr.
14:12:22 20 Gilmartin would have seen from Shefran.
- 21 A. Oh, I'm sure it was, yes.
- 22 Q. 481 And then you also appear to have faxed him according to the file at 7430. The
23 authorisation which had been signed on the 4th of June 1992 by Mr. O'Callaghan.
- 24 A. Yeah, I must admit I wasn't aware of that but yes, I obviously did.
- 14:12:44 25 Q. 482 Now, you would have been happy enough if I understood your earlier evidence
26 correctly, Mr. Kay, to have paid out on foot of the authorisation of Mr.
27 O'Callaghan alone, isn't that right?
- 28 A. I would, yes.
- 29 Q. 483 Why on this occasion did you contact Mr. Gilmartin about the Shefran payment?
- 14:12:59 30 A. I don't believe I did specifically for that. I think I must have been talking

- 14:13:03 1 to him about whatever and it was a reasonably frequent occurrence perhaps two
2 or three times a week I spoke to him. And I assume, I can't say categorically
3 but I assume that I happened to be talking to him and said oh, bring the way we
4 have a request to pay 30,000 today and it led on from there.
- 14:13:25 5 Q. 484 And in response to that, Mr. Gilmartin asked you who were you paying the 30,000
6 pounds to?
7 A. Yes, exactly. Yes.
- 8 Q. 485 And you had your conversation about Shefran. You explained what you understood
9 Shefran was and Mr. Gilmartin agreed to the 30,000 pounds.
- 14:13:39 10 A. That's correct.
- 11 Q. 486 But it would be fair to say to up to this point in time it's your understanding
12 that he didn't know who Shefran was?
13 A. I'm pretty certain he didn't.
- 14 Q. 487 And therefore -- sorry can I ask you in that conversation, did you indicate to
15 Mr. Gilmartin or tell him that in fact Shefran had been paid the 80,000 pounds
16 the previous year?
17 A. I don't think I did.
- 18 Q. 488 Would you have mentioned to him the previous payment you had processed of
19 40,000 pounds in March of 1992?
20 A. I might well have done but I don't, I couldn't say for certain.
- 21 Q. 489 Yes. Now, I think that at around the same time, Mr. Kay, in April of 1992 at
22 7152. In fact on the 30th of April 1992, which is I think the same date as the
23 Shefran invoice, isn't that right, it's also dated the 30th of April 1992?
24 A. Yes.
- 14:14:31 25 Q. 490 You will have seen the Shefran invoice at 7429 is dated the 30th of April. And
26 this invoice from Frank Dunlop & Associates at 7152 is also dated the 30th of
27 April 92, isn't that right.?
28 A. Yes.
- 29 Q. 491 Now, this is an invoice that has been provided to the Tribunal from the bank's
14:14:48 30 files and I think that in the first instance what happened here is that Mr.

- 14:14:52 1 Dunlop's invoice was paid by Riga.
- 2 A. Yes.
- 3 Q. 492 Can I just draw to your attention the notation that is written beside the words
- 4 "secretarial services", you see?
- 14:15:03 5 A. I do yes.
- 6 Q. 493 The second entry. Do you see the name that is it written there?
- 7 A. I do.
- 8 Q. 494 That appears to have been the name of Mr. Colm McGrath.
- 9 A. Yes.
- 14:15:11 10 Q. 495 Did you or were you aware at the time that included in this invoice was a
- 11 payment of 1,000 pounds plus VAT to a secretarial services company run by
- 12 Mr. McGrath?
- 13 A. Well I presume I saw the C McGrath on it but it didn't register with me that it
- 14 was one and the same as the Councillor McGrath.
- 14:15:32 15 Q. 496 And in any event, do you -- sorry. Do you recollect whether you queried it in
- 16 any way?
- 17 A. I don't, no, I don't think I did.
- 18 Q. 497 The invoice was in the first instance paid by Riga at 7159. By way of a cheque
- 19 and that was subsequently repaid to Riga at 7161. And if you look at 7163, you
- 14:16:05 20 will see there a bank draft in favour of Riga in the sum of 10,253.27.
- 21 A. Yes.
- 22 Q. 498 Which is the reimbursement to Riga by Barkhill of the sum paid to Frank Dunlop
- 23 & Associates.
- 24 A. Yes.
- 14:16:17 25 Q. 499 Yes. And again, the bank would have had no difficulty in making that payment
- 26 on foot of the invoice that was provided to it, is that right?
- 27 A. That's correct.
- 28 Q. 500 Or in fact making the reimbursement to -- making the reimbursement to Riga on
- 29 foot of the monies it had paid out on behalf of Barkhill?
- 14:16:35 30 A. That's correct.

- 14:16:38 1 Q. 501 Can you think of any reason why it appears to be the position, Mr. Kay, if your
2 understanding of the situation is correct, that one of the directors of
3 Barkhill was unaware of the fact that a company called Shefran was in receipt
4 of payments from Barkhill?
- 14:16:55 5 A. Well --
- 6 Q. 502 Up to the time you had your conversation with him on the 5th of June of 1992?
7 A. No, no. I can't and I don't think there was any deliberate campaign certainly
8 on the bank's side to withhold such information from him. It just, that's the
9 way it happened.
- 14:17:11 10 Q. 503 Mr. Gilmartin has suggested to the Tribunal that the first he knew of Shefran
11 arose out of a conversation he had with you.
12 A. Yes.
- 13 Q. 504 Where you spoke to him about Shefran.
14 A. That's correct.
- 14:17:23 15 Q. 505 Right. And that you, he queried you about Shefran and it was from you he came
16 to understand that Shefran had a connection Mr. Dunlop and up to that point in
17 time he was unaware of the payments.
18 A. I think that's correct, yes.
- 19 Q. 506 Now, I think that Mr. Gilmartin goes further and he then suggests that you were
14:17:39 20 moved within the bank as a result of giving that information to Mr. Gilmartin.
21 Do you agree with that?
22 A. No, I do not.
- 23 Q. 507 Right.
24 A. And it's not correct.
- 14:17:47 25 Q. 508 That's not correct.
26 A. Absolutely not.
- 27 Q. 509 You did, it is however a fact that you did change your position within the bank
28 in August of 1992, isn't that right?
29 A. I did, yes. And actually I have read your questioning of Mr. Dunlop regarding
14:18:05 30 this matter and I must admit I was incensed when I read it because it seemed to

- 14:18:14 1 be a reflection on me and it was damaging my reputation which had been hard
2 earned over 40 years and worst of all, it was completely untrue.
- 3 Q. 510 Yes. I think the questions that were put to Mr. Dunlop arose out of what Mr.
4 Dunlop had told the Tribunal at his private interview, isn't that right,
14:18:35 5 originally, Mr. Kay, isn't that right? You will have seen that in the
6 transcripts, isn't that right?
- 7 A. Well I'm not sure about that. But I know in the transcripts where you are
8 questioning him he seemed reluctant to comment on it but I think you persisted
9 until he did.
- 14:18:49 10 Q. 511 Yes. I think that if you look at the transcript, Mr. Kay, of the private
11 interviews you will see that -- I think subject to correction, that Mr. Dunlop
12 had dealt with that matter. But in any event, in relation to your actual move
13 within the bank in August of '92, you say it had nothing to do with your
14 conversation with Mr. Gilmartin in June of 1992, is that the position?
- 14:19:09 15 A. Absolutely not. I was not transferred unwillingly. I volunteered for a
16 particular job and I can prove that if necessary.
- 17 Q. 512 And it's your position that it was not in any way connected with your
18 conversation with Mr. Gilmartin and the information you imparted to
19 Mr. Gilmartin in connection with Shefran?
- 14:19:28 20 A. No, I think it's supports Mr. Gilmartin's conspiracy theory.
- 21 Q. 513 I think Mr. Gilmartin in providing information to the Tribunal had indicated
22 his belief I think that the change of your position within the bank, he
23 connected, whether he was right or wrong with the matter, he connected it with
24 the information you had provided to him but you say he is completely mistaken
14:19:53 25 in that recollection, isn't that right?
- 26 A. He is absolutely mistaken. As I said, it can be proven that he is mistaken.
- 27 Q. 514 Right. And you volunteered for a position in August of 1992.
- 28 A. Well perhaps I can just outline it.
- 29 Q. 515 Of course.
- 14:20:08 30 A. In 1992, I had been in Corporate Banking for almost ten years doing an

14:20:12 1 extremely tough job virtually 24 hour a day job. And I was 56 years of age at
2 the time, I was obviously not going to go anywhere in Corporate Banking. This
3 offer of a job came up in Bank Centre. It was a prestigious job, it was the
4 headquarters branch, in effect at that stage it was virtually the private
14:20:40 5 banking arm of AIB. So I displayed some interest in it and made inquiries and
6 was offered a substantial salary increase and I decided to go and have a
7 somewhat easier life, which it was.

8 Q. 516 I am just going to find, Mr. Kay, for you -- and I am not able to put my hand
9 on it at this precise moment, what Mr. Gilmartin had told the Tribunal. That's
14:21:15 10 not ... now, yes, I think I have it now, Mr. Kay. Yes. Could I have page
11 16084, please.

12
13 Now, this is the genesis of the questioning of Mr. Dunlop and also indeed the
14 questioning of Mr. Gilmartin in relation to this matter. At 16084 in the first
14:21:52 15 paragraph Mr. Gilmartin recounts as follows:

16
17 "Mr. Gilmartin then turned to the meeting of Barkhill Limited at the Allied
18 Irish Bank Centre in Ballsbridge which took place on 9th of February '93. He
19 said he refused to go to this meeting until he got a list of the payments to
14:22:07 20 Shefran Limited. The day after he got the letter about the meeting he spoke to
21 Eddie Kay and said he would not go until he had a list setting out those
22 payments were.

23
24 Eddie Kay then faxed him a list of the payments. That's where this list came
14:22:18 25 from. Eddie Kay was then suddenly moved. Mr. Gilmartin believes that Mr. Kay
26 was moved as a result of sending him the list. Mr. Gilmartin says that he felt
27 embarrassed because he felt that he had cost Mr. Kay his job."

28 A. Well --

29 Q. 517 If that was Mr. Gilmartin's belief Mr. Kay, you say he was completely wrong in
14:22:37 30 relation to that?

14:22:37 1 A. Well it's not a question of me just saying it. He absolutely was wrong. Full
2 stop.

3 Q. 518 Right.

4 A. And as I said, I think I've outlined the reasons why I moved but I was not
14:22:50 5 transferred. I was not unilaterally transferred with my job.
6

7 MR. NESBITT: Just one other matter, Mr. Chairman. There is no evidence to
8 sustain the questioning that has been now put to this witness.
9

10 He gets into the witness box. He is faced with the belief of somebody who has
11 no reason to say it other than he thought it up. And no I want to finish
12 please.
13

14 And when he explains the questioning he is persisted with on the basis of
14:23:18 15 somebody thought it might have happened.
16

17 CHAIRMAN: No, no. It's not persisting.
18

19 MR. NESBITT: That's exactly what has happened, Mr. Chairman.
14:23:24 20

21 CHAIRMAN: It's not. This happens time and time again.
22

23 MR. NESBITT: It shouldn't happen.
24

14:23:28 25 CHAIRMAN: No. It should happen.
26

27 MR. NESBITT: No it shouldn't.
28

29 CHAIRMAN: It has been put to Mr. Kay exactly what because it's important for
14:23:37 30 from Mr. Kay's perspective. It's been put to Mr. Kay what Mr. Gilmartin had

14:23:42 1 said and had told the Tribunal in both in evidence and in his statement. And
2 it's important. It allows Mr. Kay the opportunity to firmly place his position
3 on the record, given that this other alternative position is already incorrect.
4 MR. NESBITT: But the alternative position is based on Mr. Gilmartin believing
14:24:06 5 he was moved. He has no evidence to support that other than his belief. And
6 Mr. Kay then explains what happened. Embarrassed. Damaged. Not a word of
7 apology. And the questioning continues.

8
9 CHAIRMAN: It's not --

14:24:29 10
11 MR. NESBITT: Are you saying that Mr. Gilmartin is wrong in his belief. Mr.
12 Gilmartin doesn't even offer one piece of factual evidence.

13
14 MS. DILLON: I never said that.

14:24:29 15
16 CHAIRMAN: It has been put to Mr. Kay it would be inappropriate in my view not
17 to put to Mr. Kay what had been put by -- what had been placed on the record
18 both in his statement and in his evidence by Mr. Gilmartin. And that allows
19 Mr. Kay to emphatically state his position.

14:24:48 20 A. Well if I -- sorry. If I may say so, Chairman, I would have thought that the
21 Tribunal should be able to differentiate between Mr. Gilmartin's more
22 outrageous allegations and ones which have some substance. And I think the
23 very fact that I have attended at this Tribunal for the last two or three years
24 in effect representing the bank, would indicate that I must be in reasonably
14:25:13 25 good stead with the bank. And had I been moved from my position, it's very
26 likely I would have appeared here for the last two or three year's years on the
27 bank's behalf.

28
29 CHAIRMAN: But Mr. Kay, just to explain it's really making the same point.
14:25:27 30 The fact is that Mr. Gilmartin had made this statement to the Tribunal. It was

14:25:33 1 part and parcel of his evidence. Now, Mr. Nesbitt points out, quite correctly,
2 that Mr. Gilmartin never put forward any proof that you had been moved your job
3 for the reasons he suggested.

4 But that is still part and parcel of what his evidence was. And the weight
14:25:55 5 that would be attached in any event to evidence would clearly be linked to the
6 extent to which some, any particular evidence was furnished to the Tribunal
7 with proof.

8
9 But the fact is that this was stated by Mr. Gilmartin. We are not in a
14:26:15 10 position to control what a particular witness will say about particular events.
11 And once this was put to the Tribunal and became part of Mr. Gilmartin's
12 evidence in public, it was quite appropriate that you as the person affected by
13 that evidence would be allowed state emphatically that you disagree with it.

14 A. Well I think, Chairman, if I may say so, that unfortunately, by highlighting
14:26:44 15 this matter, it draws attention to it.

16
17 CHAIRMAN: Absolutely.

18 A. And mud sticks and ...

19
14:26:51 20 CHAIRMAN: I know. I can appreciate that. But the fact that it was there on
21 the record, it still is the position that it's appropriate that you had should
22 be in a position to ... all right.

23
24 Just Keys has reminded me. That's one, if you like, of the disadvantages of a
14:27:17 25 public inquiry that evidence, including evidence which may not be true or
26 accurate, does come out in public.

27 A. I accept that, Chairman, but unfortunately, it doesn't help me.

28
29 JUDGE KEYS: There is no other process available to us to do it in any other
14:27:35 30 way.

14:27:36 1 A. Okay.
2
3 CHAIRMAN: All right.
4 A. So be it.
14:27:39 5
6 MS. DILLON: Yes. I object to the suggestion made by Mr. Nesbitt that there is
7 any deliberate attempt to in any way damage this witness.
8
9 JUDGE KEYS: Absolutely.
14:27:50 10
11 MS. DILLON: And I am more than surprised at the less than helpful
12 interventions.
13
14 JUDGE KEYS: I am very surprised as well, I must say.
14:27:57 15
16 CHAIRMAN: I don't know if Mr. Nesbitt said it was a deliberate.
17
18 MS. DILLON: Yes. I think that the suggestion clearly by Mr. Nesbitt is to
19 that effect. I am surprised by it. In any event, we'll move on, Mr. Kay.
14:28:09 20
21 Q. 519 MS. DILLON: If I can take you back to the appointment of Deloitte & Touche and
22 take you through some of the accounting documentation which really deals with a
23 number of records in Deloitte & Touche arising from their appointment as
24 auditors.
14:28:19 25
26 Now, I think you were involved in the appointment of Deloitte & Touche as
27 auditors, isn't that right?
28 A. I was yes, but I think it's fair to say that I was not really involved in the
29 mechanics of providing information to them. I'm sure I had some involvement
14:28:34 30 but ...

- 14:28:34 1 Q. 520 Yes.
- 2 A. My knowledge of it would be quite hazy.
- 3 Q. 521 I mean, without in any way tying you down I'll take you through the documents.
- 4 But looking at the documentation we have gone through in the last number of
- 14:28:47 5 days. In general the information you would have had available to you to
- 6 provide to Deloitte & Touche is the information from the bank's files that we
- 7 have gone through over the last three days. Would you think that that is a
- 8 fair --
- 9 A. Yes.
- 14:28:59 10 Q. 522 -- assessment of the information you have available to you?
- 11 A. Yes it is.
- 12 Q. 523 Would you also agree that there were a number of sources of information to whom
- 13 Deloitte & Touche could have gone for information? In the first instance there
- 14 was Allied Irish Bank.
- 14:29:13 15 A. Yes.
- 16 Q. 524 There was Mr. Seamus Maguire solicitor in Blanchardstown who had documentation
- 17 relating to Gilmartin's acquisition of lands and transactions such as that
- 18 sort.
- 19 A. Yes and I think he was a secretary of the company as well.
- 14:29:27 20 Q. 525 And I think that Mr. Maguire had made certain payments on occasion on behalf of
- 21 Mr. Gilmartin in relation to the acquisition of lands?
- 22 A. Yes, I think that's correct, yes, I'm sure it was.
- 23 Q. 526 And there would possibly have been information in Bank of Ireland in
- 24 Blanchardstown where Mr. Gilmartin had had a bank account out of which certain
- 14:29:44 25 monies had been paid including the 1.35 million pounds paid to Mr. O'Callaghan
- 26 in February of 1990.
- 27 A. Yes I think so, yes.
- 28 Q. 527 There would also have been the books and accounts of Riga Limited.
- 29 A. Yes.
- 14:29:54 30 Q. 528 There would have been the books and accounts in relation to the Riga

- 14:29:58 1 subordinated loan as held by Riga, isn't that right?
- 2 A. Yes.
- 3 Q. 529 And there would have been the Allied Irish Bank bank records insofar as Riga
- 4 was concerned.
- 14:30:07 5 A. Yes in Cork.
- 6 Q. 530 In Cork.
- 7 A. Yes.
- 8 Q. 531 Isn't that right?
- 9 A. Yes.
- 14:30:10 10 Q. 532 And there would probably also have been documentation held by Mr. Gilmartin
- 11 himself personally.
- 12 A. Yes.
- 13 Q. 533 Right. It would be fair to say or would you agree, Mr. Kay, that when Deloitte
- 14 & Touche came in there was no single source or repository of all of this
- 14:30:27 15 information?
- 16 A. That's correct. I think in fact it was a frightful mess.
- 17 Q. 534 And yes. And I think they themselves having put in a fee note reassessed the
- 18 situation later because of the differing accounts they were getting and the
- 19 difficulty in assembling all of the information in one place?
- 14:30:43 20 A. Yes.
- 21 Q. 535 So this was not an audit where somebody was able to go in, where there was an
- 22 in-house accountant who had kept all of the separate files in relation to
- 23 banks, building societies, creditors, debtors, VAT payments and matters such as
- 24 that sort?
- 14:30:57 25 A. No, as I understand it they had to virtually create the accounts before they
- 26 could audit them.
- 27 Q. 536 Yes and that in fact appears to be the case and it gave rise to a whole series
- 28 in the first instance of internal questions within Deloitte & Touche and then
- 29 correspondence with the main players.
- 14:31:10 30 A. Yes.

- 14:31:10 1 Q. 537 Including Mr. Gilmartin, isn't that right?
- 2 A. Yes, yes.
- 3 Q. 538 Right. Now, when Deloitte & Touche were appointed, Mr. Kay, I think they wrote
- 4 to you at 7204 in May of 1992. And accepting the appointment and setting out
- 14:31:27 5 the terms of their appointment, isn't that right?
- 6 A. Yes.
- 7 Q. 539 Right. And I think following on that then there was a discussion at 7219. And
- 8 at item six of that discussion there is a reference to "Eddie Kay AIB" and then
- 9 "opening bank statements of the 1st of May 92". And I think that after they
- 14:31:48 10 were appointed they set about getting in the documentation.
- 11 A. Yes.
- 12 Q. 540 And I think that one of the first things I think that happened was that they
- 13 received from the bank at 7297. A letter I think signed by Mr. Donagh but in
- 14 your name, Mr. Kay, on the 21st of May '92. You provided to Mr. Leo Fleming
- 14:32:14 15 the facility letters in relation to Barkhill Limited which would have been the
- 16 letters of offer, isn't that right?
- 17 A. Yes.
- 18 Q. 541 No. 2 the statement of the Barkhill Limited loan account number 1 which was the
- 19 account on foot of which the bank had originally lent the money to Mr.
- 14:32:28 20 Gilmartin to buy the lands, isn't that right?
- 21 A. Yes.
- 22 Q. 542 And that was the agreement that had been made in February of 1990, isn't that
- 23 right?
- 24 A. Yes.
- 14:32:35 25 Q. 543 The third information you provided was the statement of Barkhill Limited loan
- 26 account No. 2 and it says "invoices already provided" and that related to
- 27 effectively the payments out we've been looking at over the last two days,
- 28 isn't that right?
- 29 A. Yes.
- 14:32:51 30 Q. 544 This would have been the operation of the Barkhill account from the time the 3

- 14:32:55 1 million pounds started to be drawn down on foot of the share subscription
2 agreement of September of 1991, isn't that right?
- 3 A. That's correct.
- 4 Q. 545 And then the fourth document you provided was a utilisation of the Riga 1
14:33:07 5 million pounds subordinated loan, isn't that right?
- 6 A. Yes.
- 7 Q. 546 So that just looking then very briefly at those documents at 7298. There is a
8 copy of the loan account, isn't that correct?
- 9 A. Yes.
- 14:33:21 10 Q. 547 And this is loan account number 1 dealing with the original loan to Mr.
11 Gilmartin. At 7299, there is a loan account No. 2. Which starts with the
12 payment to Mr. Sills and then the land deposit Dublin County Council on the
13 following page at 7300, deals with a series of payments including the
14 reimbursement that took place in January of '92, isn't that correct?
- 14:33:49 15 A. Yes.
- 16 Q. 548 And other payments that were made at the end of the page in connection with the
17 acquisition of the Bruton lands. And at 7301 on the following page there are a
18 series of payments including on the 13th of April 1990, the 40,000 pounds
19 payment to Shefran and beneath that some four entries beneath that the 30,000
14:34:10 20 pounds payment to Shefran in handwriting, isn't that right?
- 21 A. Yes.
- 22 Q. 549 Also you had provided at 7302, a copy of the Riga subordinated loan, isn't that
23 right?
- 24 A. Yes.
- 14:34:22 25 Q. 550 Now, contained in the schedule of the Riga subordinated loan were the first
26 three Shefran payments, isn't that right?
- 27 A. Yes.
- 28 Q. 551 So when Deloitte & Touche received this information they are aware of a number
29 of things. They are aware that there were two 10,000 pounds reimbursed to Riga
14:34:39 30 in January 1992, isn't that right?

- 14:34:42 1 A. Yes, they must have been. Yes.
- 2 Q. 552 They are also aware of the fact that there have been five payments to Shefran.
- 3 Two in 1992 directly from the Barkhill account, isn't that right?
- 4 A. Yes.
- 14:34:52 5 Q. 553 And three in 1991 through the Riga subordinated loan account.
- 6 A. Correct.
- 7 Q. 554 Now, the -- in your letter at 7297. In the statement of Barkhill Limited loan
- 8 account No. 2, there are brackets "(invoices already provided)" do you see
- 9 that, Mr. Kay?
- 14:35:18 10 A. I do.
- 11 Q. 555 And that would something that the banks are providing such invoices as they had
- 12 in relation to the payments made on the Barkhill loan account No. 2, would you
- 13 agree with that?
- 14 A. Yes.
- 14:35:28 15 Q. 556 And it would appear from the documentation provided to the Tribunal by Deloitte
- 16 & Touche 7303, please. That in the documentation you provided to Deloitte &
- 17 Touche, there was a section headed "invoices paid by AIB" and within that at
- 18 7304 is the 20th of March '92 invoice from Shefran for 40,000 pounds and at
- 19 7305 on the 30th of April, the second invoice paid by Barkhill dated the 30th
- 14:36:02 20 of April '92.
- 21 A. Yes. Could I just say that while my signature probably appears on a number of
- 22 these letters or at least my name.
- 23 Q. 557 Uh-huh.
- 24 A. I had little or nothing to do with the actual handing over of the various items
- 14:36:18 25 to Deloitte & Touche. I mean, I obviously was aware that it was going on but I
- 26 certainly was not the person that found the invoices or the receipts or
- 27 whatever and sent them on.
- 28 Q. 558 Yes. I think you are correct, Mr. Kay, because, may I show you 7279 which I
- 29 was coming to in any event. You will see there from AIB item one. Do you see
- 14:36:43 30 that the second part of the page the second half of the page?

- 14:36:47 1 A. Yes, I do yes.
- 2 Q. 559 And it reads "Carmel O'Brien is our contact and she is furnishing a full loan
3 account".
- 4 A. Oh, yes she was the secretary in our area at the time.
- 14:36:56 5 Q. 560 Yes. And that would suggest that the person to be contacted from Deloitte &
6 Touche in relation to the documentation within Allied Irish Bank was Carmel
7 O'Brien.
- 8 A. Yes.
- 9 Q. 561 And is it likely she's the person who had physically assembled all of the
10 documentation?
- 11 A. Yes, I think Mr. Donagh might have had some hand in it as well. Maybe perhaps
12 in supervisory role. But I think my involvement in it was almost nothing.
- 13 Q. 562 In any event, according to that letter and looking at the documentation at 7297
14 at the commencement of the audit. You provided Deloitte & Touche with the at
14:37:31 15 7297, please -- you provided Deloitte & Touche with the information including
16 the invoices that you had in relation to the payments out of the Barkhill
17 account, isn't that right?
- 18 A. Yes.
- 19 Q. 563 Sow gave Deloitte & Touche the two invoices from Barkhill for 40,000 and 30,000
14:37:47 20 pounds.
- 21 A. Yes, yes.
- 22 Q. 564 You couldn't have given them the invoices in relation to the three payments in
23 1991 because as you've already said the bank never received those, isn't that
24 right?
- 14:37:59 25 A. Yes, that's right.
- 26 Q. 565 So the auditors when they receive your information and they look at the Riga
27 subordinated loan information you've provided will realise that they have no
28 invoices in relation to the first three payments, isn't that right?
- 29 A. Yes, I'm sure that that's correct.
- 14:38:14 30 Q. 566 And in fact they did so because if you look at 7314, Mr. Kay, you will see

14:38:22 1 there that on the notations made on this document which is headed "schedule
2 supplied by AIB" when it comes to the three Shefran payments there is a note
3 "no back up invoices received".

4 A. I see that.

14:38:35 5 Q. 567 Right. But we do know that you had already furnished the back up invoices in
6 relation to the two Shefran payments you had made, isn't that right?

7 A. Yes.

8 Q. 568 Do you think, Mr. Kay, that it's likely that the when it came to unresolved
9 audit matters that Deloitte & Touche were dealing with somebody else in the
10 bank other than yourself?

11 A. Yes I think so. I think I probably took at least one phone call from somebody
12 in Deloitte's during period and we discussed in sort of general outline that
13 there were a fair number of gaps in the information. But I was not involved in
14 actually locating or furnishing any of that information to them.

14:39:22 15 Q. 569 Certainly from an early stage Deloitte & Touche seem to have identified the
16 fact that there were no invoices for the first three Shefran payments and I
17 think that they also identified at an early stage at 7367. Item 7 on this list
18 of matters to clarify where it records "two items in AIB No. 2 loan described
19 as sundry both 10,000 pounds require details as to how monies were spent and
14:39:59 20 whether any VAT arose on the transactions".
21
22 Now, two 10,000 pounds that are being queried there by the auditors are the two
23 sundry items that were are repaid to Riga in January of 1993.

24 A. Yes.

14:40:13 25 Q. 570 And you will see that there is a notation beside them that says "cash amounts
26 treat those".

27 A. I do.

28 Q. 571 Did you ever give that information to the auditors, Mr. Kay?

29 A. No and I don't think I was ever aware that they had queried those two 10,000
14:40:32 30 items, obviously they had but I don't think I was aware of it.

14:40:35 1 Q. 572 And in dealing with the "unresolved matters" at page 25183. At item five on
2 this list and I will read it first and then just one question in relation to
3 it.
4 "Explain why payments on the AIB No. 2 account are described as Riga total
14:41:02 5 56,598. I am puzzled by the reference to equity 630 (credit) it appears that
6 the account was opened towards the latter part of 1991, and therefore very
7 little interest would have accrued. It would seem that Riga incurred expenses
8 in its own right and was reimbursed by AIB from the No. 2 Barkhill loan
9 account. Clarify the status of documentation in relation to Riga
14:41:26 10 transactions."
11
12 And in particular I mean that clearly refers to the transaction in January
13 1992, Mr. Kay.
14 A. Yes.
14:41:33 15 Q. 573 That we've already gone through.
16 A. Yes.
17 Q. 574 Reading my question really my question is directed towards whether the bank
18 ever came to you in connection with documentation surrounding that transaction
19 which is the reimbursement in January to Riga of the 56,598 pounds which
14:41:50 20 includes the 20,000 sundry?
21 A. I don't think they ask. I don't think anyone approached me about it.
22 Q. 575 Yes. Was there anybody in the bank on your team who was dealing with Deloitte
23 & Touche if you weren't dealing with them, Mr. Kay?
24 A. Well Mr. Donagh was from time to time certainly.
14:42:05 25 Q. 576 And in the first instance if they had gone to Ms. O'Brien and she didn't have
26 the answer to the queries which she mightn't have had to this type of query,
27 would she have gone to Mr. Donagh or to somebody else?
28 A. Yes, I think that's very likely.
29 Q. 577 That Ms. O'Brien's contribution to the exercise was to gather the necessary
14:42:22 30 paper and send it across to Deloitte & Touche?

- 14:42:25 1 A. That's correct.
- 2 Q. 578 But she would not of her own knowledge have any information as to how or why
3 any of these payments came to be made or the circumstances in which they came
4 to be made?
- 14:42:36 5 A. No, she wouldn't have been involved.
- 6 Q. 579 Okay. Now, I think that by June of 1992, Messrs. Deloitte & Touche had
7 prepared a list of what she described as "unresolved matters". 7476, please.
8 Item 49 on this list was two amounts in the AIB No. 2 loan re sundry 10,000
9 pounds by two. And the notation is "transfer to directors loan". That would
14:43:02 10 appear to suggest, as indeed appears to have been the case, Mr. Kay, that at
11 some stage the auditors were advised that those two 10,000 pounds were expenses
12 paid for the benefit of Mr. Gilmartin.
- 13 A. I've read that.
- 14 Q. 580 Yes.
- 14:43:15 15 A. In some of the ...
- 16 Q. 581 Do you have any knowledge as to how it was or who it was that advised its
17 auditors that in fact those two 10,000 pounds related to Mr. Gilmartin?
- 18 A. No, and I doubt if there was anyone in the bank because I can't see how we
19 could have related the two together.
- 14:43:32 20 Q. 582 Yes. As far as you were concerned from the letter of the 3rd of December 1991,
21 Mr. O'Callaghan was the person with the information in relation to those two
22 10,000 pounds payments, isn't that right?
- 23 A. That's correct.
- 24 Q. 583 And you had never discussed them I think you've told the Tribunal with Mr.
14:43:46 25 Gilmartin?
- 26 A. No, I haven't.
- 27 Q. 584 Right. Now I think it is the case that ultimately if you look at 7578,
28 Mr. Kay. In the analysis of Mr. Gilmartin's loan at appendix two of the
29 accounts of Barkhill. And if you move down through the document under the
14:44:05 30 heading "description" you will see the third entry dated the 24th of January

14:44:10 1 '92 is described as "reimbursement to Riga by Tom Gilmartin" two by 10,000s
2 20,000.

3 A. I see that yes.

4 Q. 585 Do you have any knowledge as to how this entry came to be written up by
14:44:22 5 Deloitte & Touche?

6 A. No and I only became aware of it from reading the Tribunal's correspondence
7 etc. but at the time certainly I hadn't any knowledge of it.

8 Q. 586 And indeed the knowledge that you did have of those two by 10,000 pounds
9 payments that were made, was that Mr. O'Callaghan was the person with the
14:44:41 10 information about them, isn't that right?

11 A. Yes, that's correct.

12 Q. 587 Now, and moving back to 7476. The second query I wanted to draw to your
13 attention at 7479 was that by the 22nd of June 1992 item 76 "Shefran invoices
14 25,000, 40,000 and 15,000 equalling 80,000 no invoice -- not available". And
14:45:13 15 what they are saying there according to the auditor is that the invoices were
16 not available.

17 A. Uh-huh.

18 Q. 588 Certainly insofar as the bank were concerned the bank didn't have any invoices,
19 isn't that right, for those three payments?

14:45:24 20 A. No, we didn't.

21 Q. 589 Yes.

22 A. But were in fact invoices not issued in respect of those payments at some
23 stage?

24 Q. 590 By December, Mr. Kay, and I don't know whether you would have seen this in the
14:45:35 25 brief or not. Because it is post your time in the bank and I can move to deal
26 with that now.

27

28 On the 15th of December '92, Mr. Kay, at 8784, Mr. Lee Fleming wrote to the
29 bank and he enclosed certain documentation but he also enclosed a list of what
14:45:56 30 he described as "payments or transactions for which Deloitte & Touche have

- 14:46:04 1 received no supporting documentation".
- 2 A. Sorry, is that not, is that letter not addressed to Mr. Lucey?
- 3 Q. 591 Yes, it is.
- 4 A. Oh, sorry it is yes.
- 14:46:14 5 Q. 592 To Mr. Lucey. And I am just going to turn the page and show you, Mr. Kay, at
6 8785 that it was copied to Mr. Gilmartin, Ms. Basquille and Mr. O'Callaghan?
- 7 A. Yes.
- 8 Q. 593 Within the context of that letter he says in the second last paragraph of the
9 first page at 8784 that "At this point in time" which is December '92 "they had
10 comprehensively examined all documentation received in support of the payments
11 and transactions of Barkhill Limited and we have noted there are certain items
12 for which there are no supporting documentation has been received. A schedule
13 of the relevant payments/transactions is also attached.
14
- 14:46:49 15 I would be grateful if would you arrange to have records cheques and copies
16 ever any supporting documents sent to me as soon as possible".
17
- 18 And within that schedule, Mr. Kay, at on that schedule at 8792, which was
19 attached to that letter. I just have a the full document please it's entitled
14:47:07 20 "Payments/transaction which Deloitte & Touche have received no supporting
21 documentation". And item 6, is described as "three amounts paid to Shefran
22 Limited from the Riga subordinated loan on the following dates. The 16th of
23 May '91."
- 24 A. Yes I see that, yes.
- 14:47:25 25 Q. 594 And they are the first three Shefran invoices, isn't that right?
- 26 A. Yes.
- 27 Q. 595 Right. Now, from the Allied Irish Bank documents it would appear Allied Irish
28 Bank's never had those invoices.
- 29 A. To my knowledge, no, they didn't.
- 14:47:39 30 Q. 596 And at item No. 8 it says "two amounts of 10,000 pounds each described as

14:47:45 1 sundries in the Riga reimbursement from the Allied Irish Bank No. 2 account on
2 the 24th of January, which were apparently paid to Tom Gilmartin 20,000 pounds"
3 which are the two by 10,000s. That would mean, Mr. Kay, that by December of
4 1992 that the auditor has not received any supporting documentation in relation
14:48:06 5 to either the two by 10,000 pounds payments or the three payments that were
6 made to Shefran in '91. Would you agree with that?
7 A. Yes.
8 Q. 597 Yes. Now, other than the information that you've provided to the Tribunal.
9 You don't have any further information in relation to those five particular
14:48:22 10 transactions?
11 A. No I haven't.
12 Q. 598 Right. And there is no documentation within the bank in connection with these
13 transactions other than the documentation we've looked at over the last number
14 of days?
14:48:33 15 A. I'm sure there isn't because as far as I know everything the bank held was
16 provided to the Tribunal.
17 Q. 599 Yes. It would follow from that then, Mr. Kay, that the bank never had any
18 copies of the first three Shefran invoices, isn't that right?
19 A. It would, yes.
14:48:47 20 Q. 600 And that if Deloitte & Touche wanted to get those invoices they had to get them
21 from somebody else, isn't that right?
22 A. Yes.
23 Q. 601 And if you are correct about your conversation with Mr. Gilmartin in June of
24 1992, he was up to June of '92, unaware of Shefran until you spoke to him?
14:49:03 25 A. Yes, I'm pretty certain that's correct.
26 Q. 602 And therefore he didn't have any invoices in relation to three payments made in
27 1991, isn't that right?
28 A. That's correct.
29 Q. 603 So that the people then with the information or the documentation in relation
14:49:16 30 to the information was Riga and its books and accounts of records, isn't that

14:49:21 1 right and Mr. Owen O'Callaghan and Mr. Deane?

2 A. Yeah that logically follows, yes.

3 Q. 604 And similarly having looked at two by 10,000 pounds and the letter of the 3rd

4 of December 1991, it would appear that the letter from Mr. O'Callaghan to you,

14:49:35 5 Mr. Kay?

6 A. Right.

7 Q. 605 Yes. It would appear that the information in relation to the payments, those

8 two 10,000 pounds payments rested in the first instance at least with Mr.

9 O'Callaghan isn't that right?

14:49:46 10 A. Yes.

11 Q. 606 And you are satisfied, Mr. Kay, that it was not you or anybody else in Allied

12 Irish Bank who would have advised the auditors that those two sums of 10,000

13 pounds totalling 20,000 pounds were attributable to Mr. Gilmartin?

14 A. I'm sure that's the case, yes.

14:50:03 15 Q. 607 Yes. Now, I think, Mr. Kay, that you did also in June of 1992 receive an

16 invoice, 7408, in the sum of 13,530.04 pounds from Frank Dunlop which in fact

17 was initially paid by Riga and then reimbursed by Barkhill to Riga.

18 A. I see that, yes.

19 Q. 608 Yes. And that the payment to Mr. Dunlop can be seen at 7410. Which is the

14:50:44 20 cheque stub from Riga and the reimbursement to Riga in connection with that

21 payment is 7412. And again in relation to this transaction, Mr. Kay, you are

22 provided with the invoice, isn't that right?

23 A. Yes.

24 Q. 609 And at 7757. Sorry. Can I just have 7408, please. The wording on the invoice

14:51:12 25 is "ongoing costs and expenses" and there isn't any breakdown given, Mr. Kay,

26 in relation to that invoice. But I should tell you that in June, early June of

27 1992 Mr. Dunlop paid 10,700 pounds to Mr. Colm McGrath on behalf of Mr. Owen

28 O'Callaghan. It is agreed by Mr. O'Callaghan that Mr. Dunlop made the payment

29 and it's agreed by Mr. McGrath that he received the payment. And according to

14:51:42 30 Mr. Dunlop he would have put that into an invoice subsequently. And that

- 14:51:46 1 invoice is either the invoice of the 10th of June '92 or the 24th of July '92
2 and it can't be the 24th of July because that's in the sum of 6,314.76 pounds
3 so it's likely to be this invoice.
- 4 A. Yes, from reading the correspondence I was aware about the incident where Mr.
14:52:08 5 Dunlop made a payment at Mr. O'Callaghan's request to Colm McGrath.
- 6 Q. 610 Yes. And that Mr. O'Callaghan was to refund Mr. Dunlop that amount. But I
7 wasn't aware that it had been ultimately charged to --
- 8 Q. 611 Yes.
- 9 A. -- to Barkhill's account.
- 14:52:28 10 Q. 612 Yes. In fairness to all of the parties, it isn't possible to pinpoint on any
11 subsequent invoice any mention of a payment made to Mr. McGrath. However, Mr.
12 O'Callaghan in correspondence with Mr. Dunlop post the payment by Mr. Dunlop
13 asked Mr. Dunlop to include it in on a subsequent invoice and Mr. Dunlop says
14 he did so.
- 14:52:51 15 A. All right.
- 16 Q. 613 This appears to be the next in time invoice, Mr. Kay.
- 17 A. I don't think the bank were aware of that. I'm pretty certain that we
18 weren't.
- 19 Q. 614 That was my question to you. Assuming for the moment that Mr. O'Callaghan is
14:53:03 20 correct in what he will tell the Tribunal and Mr. Dunlop is correct in what he
21 has told the Tribunal. If the sum of 10,700 pounds is included in the invoice
22 at 7408, you were unaware of the fact that that included a payment of 10,700
23 pounds to Mr. Colm McGrath?
- 24 A. That is correct.
- 14:53:21 25 Q. 615 And on the 24th of July '92 at 7757, there is another invoice from Mr. Dunlop
26 again entitled "to ongoing costs re Quarryvale" without a breakdown. And that
27 again is paid at 7758 through the bank and debited to the Barkhill No. 2
28 account.
- 29 A. Yes.
- 14:53:42 30 Q. 616 And again the bank has been furnished with an invoice, isn't that right,

- 14:53:45 1 Mr. Kay prior to making the payment?
- 2 A. Yes. I am a little surprised that those two invoices neither of them have any
3 breakdown.
- 4 Q. 617 Yes.
- 14:53:54 5 A. I think most of the Dunlop invoices had a breakdown as to what the cost
6 referred to but those two haven't.
- 7 Q. 618 It would appear, Mr. Kay, and this was put and you will have seen that in your
8 analysis of Mr. Dunlop's transcripts. That when this issue arose with Mr.
9 Dunlop, Mr. Dunlop was questioned as to why starting in mid June 1992 a series
10 of invoices were put forward to Riga which contained only the words to "ongoing
11 costs re Quarryvale" culminating in late December 1992 in an invoice for 63,000
12 pounds.
13
- 14 And Mr. Dunlop -- information to the Tribunal was that he had agreed the amount
14:54:38 15 of these invoices with Mr. O'Callaghan before he issued the invoices. And that
16 they related to the costs and expenses that he had incurred as he was going
17 along but that no breakdown was provided save for the invoice in late December
18 '92. And I hope that I'm not being in unfair to Mr. Dunlop in any way in that
19 summary of his evidence. But it would appear to have commenced in early or mid
14:55:01 20 1992 that the invoices were put forward under the heading "ongoing costs re
21 Quarryvale".
- 22 A. I must admit I never noticed it at that time because I think when the original
23 invoices came to the bank from Mr. Dunlop I can remember the first one. We
24 requested a detailed breakdown of what it was all about. Subsequently, we
14:55:21 25 probably didn't follow that up but I'm, I am surprised that they are just one
26 liners.
- 27 Q. 619 Yes. And it would appear certainly from this period of the 10th of June '92
28 through to the end of December of 1992, the invoices put to Riga from Frank
29 Dunlop & Associates all simply say to "ongoing costs re Quarryvale".
- 14:55:45 30 A. Yes.

- 14:55:45 1 Q. 620 And breakdown is provided for one of the invoices in December '92, is that a
2 surprise to you?
- 3 A. It is a surprise. I presume we took it for granted that Mr. O'Callaghan must
4 have known, must have had some indication of what the actual ongoing costs
14:56:02 5 were. But I am a bit surprised, yes.
- 6 Q. 621 Mr. Dunlop's evidence has been that he didn't issue any invoice, whether
7 through Shefran or through Frank Dunlop & Associates without having agreed it
8 with Mr. O'Callaghan in advance.
- 9 A. Uh-huh. Well I'm sure that's correct.
- 14:56:18 10 Q. 622 In any event, in both of these cases even though there's no breakdown of the
11 amount given, you have in fact been supplied with an invoice, isn't that right?
- 12 A. Yes, yes.
- 13 Q. 623 Now, I think this in, also in July of 1993, I think that Mr. Gilmartin wrote to
14 you, Mr. Kay, at 7690. And I think he asked you for money, isn't that right?
14:56:39 15 You will have seen this letter in the brief. He wrote on the 15th of July and
16 I think you agreed or somebody agreed I shouldn't say you, Mr. Kay, that he
17 would be paid a sum of 3,000 pounds in sterling?
- 18 A. Yeah, I think it was probably me.
- 19 Q. 624 Yes. And I think in, that Mr. O'Callaghan at 7692 authorised it.
- 14:57:06 20 A. I can't say I remember that but I certainly remember Mr. Gilmartin looking for
21 cash at some stage during this period and that I agreed that we should pay him
22 some relatively small sum because insofar as I recollect, his request for the
23 larger sum was unsubstantiated but at any rate, I felt we should give him
24 something.
- 14:57:33 25 Q. 625 Would it be fair to say that at this period in time that Mr. Gilmartin was
26 severely straightened in his personal circumstances?
- 27 A. Yes, that's right and I'm sure that's why I agreed to pay this smallish sum.
- 28 Q. 626 And throughout 1992 can you remember whether Mr. Gilmartin came very much to
29 Ireland?
- 14:57:51 30 A. No.

- 14:57:51 1 Q. 627 At all.
- 2 A. No, he didn't come very often. We always asked him to come when we were
3 holding meetings and I don't know how many times but on numerous occasions I
4 would have telephoned him and he from time to time said he couldn't afford to
14:58:05 5 come or whatever and I said well we want you to come, we'll send you the fare
6 or whatever but notwithstanding that he rarely came.
- 7 Q. 628 Now, can I, after this period, Mr. Kay, which is July of 1992. You effectively
8 ceased to have any further dealings with the Barkhill account, is that right?
- 9 A. Yes. I had some ongoing contact with Mr. Gilmartin all right but it was on a
14:58:36 10 sort of a personal level.
- 11 Q. 629 Was there, was there an understanding in bank in Allied Irish Bank that you
12 were the person who got on best with Mr. Gilmartin?
- 13 A. There probably was. I was always on reasonable terms with him and we never had
14 a serious falling out on a personal level. But we certainly had very many
14:59:00 15 disagreements on facts of the case etc. But on a personal level, yes, I level,
16 yes, I got on quite well with him and tried to reason with him and he probably
17 tried to reason with me. And generally, we were on quite good terms, certainly
18 friendly speaking terms.
- 19 Q. 630 Yes. I think if we look at 7939, Mr. Kay, I think this reflects the view of
14:59:25 20 Mr. O'Callaghan and perhaps Mr. O' Farrell. On the 28th of August 1992, there
21 was a lunch meeting in Bank Centre with Mr. O'Callaghan, Mr. Deane,
22 Mr. O'Farrell and yourself, isn't that right?
- 23 A. Yes.
- 24 Q. 631 And just looking at the fourth paragraph of that. "Eddie is to contact Tom
14:59:43 25 Gilmartin with a view to staying in touch with him notwithstanding the fact
26 that Eddie has moved to another function."
- 27 A. Yes.
- 28 Q. 632 Yes. Would that accurately represent the situation as of August of 1992, that
29 while you had moved to the function as you've described today, Mr. Kay, within
15:00:03 30 your senior position in Allied Irish Bank, you were going to keep in contact

- 15:00:07 1 with Mr. Gilmartin to some degree?
- 2 A. Yes, I think in practice it was, he contacted me more, I'm not sure if I ever
- 3 directly contacted him but I didn't have to because he contacted me.
- 4 Q. 633 Yes.
- 15:00:22 5 A. And we spoke from time to time, quite frequently initially and then with the
- 6 passage of time these calls diminished quite a bit. But even after I had
- 7 retired from the bank in March 1995, I still received the odds phone call from
- 8 Mr. Gilmartin.
- 9 Q. 634 Would it be fair to say, Mr. Kay, that from August of 1992 there are no records
- 15:00:49 10 or memoranda or notes of any telephone calls between yourself and Mr. Kay?
- 11 A. Mr. Gilmartin.
- 12 Q. 635 Or Mr. Gilmartin. I beg your pardon?
- 13 A. Oh, yeah that would be correct. It would have been in our personal capacities
- 14 if you like. And I, as I said, I tried to remain on good terms with him. I
- 15:01:08 15 suppose had I known the allegations he had made, he subsequently made about the
- 16 bank and a million pounds being stolen from his account and so on and I
- 17 probably wouldn't have remained on such friendly terms. But the fact is I was
- 18 on quite good terms with him.
- 19 Q. 636 And Mr. Gilmartin remained on good terms with you, Mr. Kay, isn't that also the
- 15:01:28 20 position?
- 21 A. Yes, I think he had a reasonable regard for me.
- 22 Q. 637 Yes. And indeed I think in his evidence to this Tribunal has been, has given
- 23 very good praise I think to you, Mr. Kay, isn't that right?
- 24 A. He appears to have, had yes.
- 15:01:42 25 Q. 638 Yes. And he has never for example suggested in his allegations against the
- 26 bank as I understand it, I'm sure Mr. Nesbitt will correct me if I'm wrong.
- 27 That he has never suggested that you were knowingly involved in any under hand
- 28 matter or wrong matter, isn't that right?
- 29 A. Yes, I'm not sure I always took that as a great compliment because it implied
- 15:02:02 30 that I didn't know what was going on in the bank.

15:02:04 1 Q. 639 Yes. In any event, Mr. Kay, you went I think in December of 1992 to visit Mr.
2 Gilmartin, is that right?
3 A. Oh, I did, yes.
4 Q. 640 Yes. Would you explain. I think that was on the 17th of December '92, isn't
15:02:21 5 that right?
6 A. Yes.
7 Q. 641 Would you explain to the Tribunal first of all who asked you to go to see Mr.
8 Gilmartin?
9 A. I think it was Mr. McGrath.
15:02:31 10 Q. 642 That's Mr. David McGrath.
11 A. Dave McGrath, yes.
12 Q. 643 Yes.
13 A. And he explained to me that the -- because I was well out of touch with the
14 whole matter at this stage. But he explained to me at this stage that the vote
15:02:44 15 in relation to the zoning of Quarryvale was about to come up and that the bank
16 had been in touch with Mr. Gilmartin about this. I think principally it was
17 Ms. Basquille who had, Mary Basquille who had spoken to him and she took over
18 the role of talking to him quite frequently as to the role that I had formerly
19 taken. My understanding was that Ms. Basquille had been talking to Mr.
15:03:15 20 Gilmartin about the upcoming vote and he told her that he had been made aware
21 some how or other that it was probable that Mr. O'Callaghan would agree to a
22 scaling back in the size of the Quarryvale project.
23
24 I believe as a result of soundings that Mr. O'Callaghan had made in the council
15:03:44 25 it became apparent to get the thing through the more it was scaled back the
26 better. Anyway, Mr. Gilmartin was of the opinion that Mr. O'Callaghan was
27 prepared to scale the whole project back quite dramatically and he felt that
28 this was a deliberate ploy by Mr. O'Callaghan to diminish the size of the
29 project and thereby diminish his equity in it with a view to longer term
15:04:15 30 probably getting the zoning increased and enhancing the value of the project

15:04:23 1 having first got Mr. Gilmartin out of the frame.

2

3 That was the gist of what I was told. And as a result of that, Mr. Gilmartin

4 told Ms. Basquille that he was going to the press and he was going to pour out

15:04:40 5 all of his complaints and grievances about how he had been treated to the press

6 and he would wreck the whole project and bring it down.

7 Q. 644 Yes.

8 A. So it was against that background that Mr. McGrath decided that a last ditch

9 effort should be made to go to London or Luton, I think it was London, to meet

15:05:06 10 Mr. Gilmartin and to try and assuage his concerns and try and get him to change

11 his mind. And because of the fact that I was on pretty good terms with him, I

12 was asked to go. Notwithstanding that I had no function in the Corporate

13 Banking at that stage. So I agreed to go. And Mr. McGrath and I travelled to

14 London on some date in December, I can't remember what it was. But I think it

15:05:37 15 was either the day before the vote or the day of the vote. Perhaps you could

16 ...

17 Q. 645 Mr. Gilmartin says it was the day of the vote.

18 A. It could well have been. And any rate, we travelled to London and we travelled

19 together. And when we got there, there was no sign of Mr. Gilmartin although I

15:05:58 20 had requested him or at least not I, somebody had requested him to attend,

21 possibly I had, I don't know. Anyway, there was no sign of him. And we waited

22 and waited for quite a while, probably a couple of hours I think. And we were

23 on the point of deciding to try and get an early flight back to Dublin when he

24 appeared.

15:06:20 25

26 I know that's contrary to what he has said. But at any rate, what actually

27 happened was that we were waiting for some time for Mr. Gilmartin to appear.

28 He subsequently appeared. We discussed the situation with him, probably

29 Mr. McGrath did most of the talking because he was more familiar I was being

15:06:41 30 brought in as a, I don't know how to describe it but at any rate, I was brought

15:06:46 1 in as the person who could talk to him. So we discussed the situation with him
2 and reached no definite conclusion.
3 Mr. Gilmartin said he would think about what we had said and we eventually
4 parted company, I'm not sure what time it was but we were probably with him for
15:07:06 5 a guess, a couple of hours maybe, something like that. We came back to Dublin
6 and that was the end of my involvement in it but I'm aware of course having
7 read the documentation that Mr. Gilmartin's version is somewhat different.
8 That I arrived on the appointed time and met him and we were waiting for some
9 time for Mr. McGrath to appear and this was all part of a strategy to divert
15:07:38 10 him from being in contact with his, whoever his contact people in Dublin were.
11 But that's not what happened.

12 Q. 646 When Mr. McGrath approached you first, Mr. Kay, one of the matters that you
13 said that Mr. McGrath was concerned about was that Mr. Gilmartin had said that
14 he was going to go to the press --

15:08:02 15 A. Yes.

16 Q. 647 -- with his complaints about everything that had happened.

17 A. Yes.

18 Q. 648 Right. And were you given to understand what those complaints were?

19 A. Well only in a very broad outline I suppose. The complaints were mainly
15:08:17 20 against Mr. O'Callaghan. That if he was going to I presume recount all that
21 had happened in terms of the change of ownership of Quarryvale from being 100
22 per cent his to now being in a minority position and how it had come about.
23 And I don't think there was any suggestion at that stage that he was going to
24 involve the bank as having been involved in any particular wrongdoing.

15:08:46 25 Q. 649 Was he making allegations of wrongdoing against Mr. O'Callaghan?

26 A. Oh, yes.

27 Q. 650 And was he making allegations of corruption against Mr. O'Callaghan?

28 A. No, I don't think he was at that stage.

29 Q. 651 Did he allege that money had been taken from him up to a 1 million pounds had
15:09:02 30 been taken?

- 15:09:03 1 A. No, I don't think the million pounds came up until the start of or shortly
2 before the Tribunal around the time the Tribunal was established. I never
3 heard the million pounds mentioned. But certainly Mr. Gilmartin, he was, he
4 felt a deep sense of grievance about what had happened to him and he felt he
15:09:30 5 had in effect been tricked out of his project.
- 6 Q. 652 You were asked to go to see Mr. Gilmartin to discuss with him the allegation
7 that Mr. Gilmartin proposed to make against Mr. O'Callaghan and which Mr.
8 Gilmartin was proposing as you understood it to take it to the newspapers, is
9 that right?
- 15:09:48 10 A. Yes, that's right.
- 11 Q. 653 And that's the reason you went to London with Mr. McGrath.
- 12 A. It is, yes.
- 13 Q. 654 Did you keep a record of the allegations that Mr. Gilmartin made against Mr.
14 O'Callaghan when you met him on the 17th of December 1992?
- 15:10:01 15 A. No I didn't. And I don't know whether Mr. McGrath did or not but I didn't. I
16 was there as the sort of ... I was going to say honest broker but that's not
17 really the correct term. But I was there as the person who he would probably
18 talk to.
- 19 Q. 655 Yes. And you went over -- you said you discussed the situation with Mr.
15:10:33 20 Gilmartin and that your recollection is Mr. McGrath did most of the talking, is
21 that right?
- 22 A. Yes, I think he did. Basically we tried to reassure Mr. Gilmartin that first
23 and foremost the project seemed to be moving ahead. It surely wasn't in his
24 interest to torpedo it at this stage and that the prospects of the development
15:10:47 25 coming to fruition seemed better at this stage than they had for some time and
26 it would be crazy from his point of view to bring the whole thing down, which I
27 understand he had told Ms. Basquille he was quite prepared to do.
- 28 Q. 656 And when you say that he had told Ms. Basquille that. What did you understand
29 or what were you told, Mr. Kay, that Mr. Gilmartin was threatening to could do?
15:11:14 30 How could he bring the whole thing down?

- 15:11:16 1 A. Well I think he felt that by going to the press and by pouring out of all of
2 his grievances it would cause a hiatus which would prevent the zoning vote from
3 being successful.
- 4 Q. 657 And was it the reason then that you went on the 17th of December, which was the
15:11:33 5 date of the vote? Well is that the reason that you travelled on that day and
6 spoke to Mr. Gilmartin on the day of the vote was to ensure that he didn't do
7 anything, whatever he was going to do, that would upset the upcoming vote?
- 8 A. Oh, yes, I'm sure that's correct now. Now, I'm not certain that I think that
9 probably the bank only became aware of this possibility or likelihood perhaps
15:12:00 10 the previous day. I don't know. But I know I was asked at sort of 11th hour
11 would I go. So I don't really know when the bank became aware of this
12 potential major problem.
- 13 Q. 658 It was Mr. McGrath who made the arrangement for the 17th of December and
14 Mr. McGrath who asked you to go, is that right?
- 15:12:18 15 A. Well certainly it was Mr. McGrath who asked me to go. Well sorry. I think it
16 was Mr. McGrath. It was either Mr. McGrath or somebody else on the team.
17 Almost certainly Mr. McGrath.
- 18 Q. 659 And did Mr. Gilmartin gym make a series of allegation gas against Mr.
19 O'Callaghan and Mr. Deane?
- 15:12:34 20 A. I don't think he went into great detail but he just outlined his general
21 concerns which had been outlined to us many times before. Essentially that
22 this was his project, he had identified it, he had brought it forward. He had
23 got to a certain stage that Mr. O'Callaghan had, had muscled in on the project
24 and had managed to effectively get control of it at no net cost to him, as he
15:13:08 25 saw it.
- 26 Q. 660 Did he make a complaint that Mr. O'Callaghan for example had brought in or
27 sought the advices or retained the services of Mr. Liam Lawlor?
- 28 A. I don't think so. He might have done but I don't think so. My recollection is
29 it was more general grievance against how he had been treated overall.
- 15:13:30 30 Q. 661 And did he complain about the fact that Mr. Dunlop had been retained?

- 15:13:35 1 A. He may well have done but that was, as I said, my overriding recollection of it
2 is that the sort of global situation where he now found himself to be.
- 3 Q. 662 And did he make any complaint about the payments to Shefran about which you had
4 first informed him in June of 1992?
- 15:13:54 5 A. No, I don't think he did. I'm pretty -- virtually certain he didn't.
- 6 Q. 663 Do you know whether Mr. McGrath kept a detailed note of this conversation with
7 Mr. Gilmartin?
- 8 A. I think he probably didn't.
- 9 Q. 664 Would it be fair to say that it was a significant event enough event, Mr. Kay,
15:14:12 10 that you were being taken away from your duties in your new position, which was
11 a very senior position in the bank. And you were being asked to go and see
12 this former client of yours, isn't that right?
- 13 A. Well it was something that I was quite happy to do.
- 14 Q. 665 Of course. But it was an unusual event, isn't that right?
- 15:14:28 15 A. Oh, yes it was an unusual event.
- 16 Q. 666 And the purpose of you going to see Mr. Gilmartin was to listen to the
17 complaints he had and seek to prevent him going to the press with those
18 allegations or complaints whatever they were, isn't that right?
- 19 A. I don't know. My recollection is that he had told Ms. Basquille that he would
15:14:48 20 bring the whole project down and --
- 21 Q. 667 Yes.
- 22 A. -- and I think when she said she no doubt queried him as to what he meant by
23 that and he mentioned going to the press. Now, he may have had other plans, I
24 don't know.
- 15:15:01 25 Q. 668 Yes. However, notwithstanding seriousness of the situation, that the bank
26 must have been sufficiently concerned about what Mr. Gilmartin was saying in
27 that they took the unusual step of asking you to go as an ambassador for the
28 bank to see Mr. Gilmartin, isn't that right?
- 29 A. That's right.
- 15:15:18 30 Q. 669 Notwithstanding that, Mr. Kay, you don't appear yourself to have made a single

15:15:23 1 note in relation to any of the allegations that Mr. Gilmartin made about your
2 client and the bank's client Mr. O'Callaghan, isn't that right?

3 A. No, I don't think it occurred to me really to make any note of the proceedings.
4 I was effectively out of it. My role there was to keep the parties talking if
15:15:39 5 possible.

6 Q. 670 And in fairness to you, if you saw your role not as keeping it a note, would it
7 be fair to say that Mr. McGrath, who is now the person who is in overall charge
8 of the situation from the bank. He would have needed a detailed note about Mr.
9 Gilmartin's allegations so at the very least he could have discussed them with
15:15:56 10 Mr. O'Callaghan when he came back?

11 A. Well he may well have taken notes. I just don't remember that part.

12 Q. 671 Right. Do you remember what time you left Mr. Gilmartin at?

13 A. I think it was sometime in the early evening. Well now whether my memory is
14 prompted by having read that in the correspondence that I think Mr. Gilmartin
15:16:19 15 says that we met and we, we parted sometime in the early evening.

16 Q. 672 Uh-huh.

17 A. But I think he is probably correct in that.

18 Q. 673 And you went over in the morning, is that right?

19 A. Yes, I'm sure we did.

15:16:31 20 Q. 674 How long did you spent with Mr. Gilmartin, when everybody finally met up?

21 A. I'm sure we were at least a couple of hours.

22 Q. 675 All right. And in the course of those two hours, did Mr. Gilmartin do nothing.
23 Sorry. I will rephrase that. In the course of those two hours was it
24 concerned substantially with listening to Mr. Gilmartin's complaints and trying
15:16:51 25 to reassure him?

26 A. Yes, it was.

27 Q. 676 However, there doesn't appear to exist anywhere, Mr. Kay, as I'm sure you know
28 from reviewing the file, a single note within Allied Irish Bank of any
29 complaint that was made by Mr. Gilmartin in the course of that meeting on the
15:17:08 30 17th of December 1992?

- 15:17:10 1 A. In a way I think that's understandable because they were all complaints that
2 had been made many times before.
- 3 Q. 677 Yes. Yes. This is a two hour meeting with a person who is threatening to go
4 to the press and he is going to bring down the project, isn't that right?
- 15:17:24 5 A. Yes.
- 6 Q. 678 Yes.
- 7 A. But, again, from hazy memory, I'm sure we, we broadened out the conversation to
8 include where the project was at that stage and, you know, obviously Mr.
9 Gilmartin didn't spend two hours expressing his complaints in a sort of a
10 global way. There must have been more to it than that.
- 15:17:46 10 Q. 679 Did Mr. Gilmartin make any complaint about an article that had appeared in the
11 newspaper about him some four days earlier? Can you remember? I'll show you
12 the article, Mr. Kay? 9757 please.
- 13 A. Would it be about his tax affairs?
- 15:18:03 14 Q. 680 Well in part it is. It's this article which is headed "Gilmartin declared
15 bankrupt in England". This is an article by Mr. Ted Harding. And you may not
16 have known it, Mr. Kay, at the time but Mr. Harding was contacting Mr. Dunlop's
17 office prior to this article being published. This is published on the 13th of
18 December and you visit with Mr. Gilmartin in Luton, in London on the 17th some
19 four days later. And I want to draw to your attention two particular things.
- 15:18:28 20 The second paragraph quotes "Gilmartin retains no interest in the land at
21 Quarryvale which is now owned by developer Owen O'Callaghan and AIB". Do you
22 see that?
- 23 A. I do.
- 15:18:42 24 Q. 681 Is that a true statement?
- 25 A. No.
- 26 Q. 682 All right. And in in the next paragraph "This week Dublin County Council is
27 expected to decide whether a scheme less than half the size of the one proposed
28 will be allowed to proceed". That's correct isn't this?
- 29 A. Yes I think that would have been generally known because the original proposal
15:18:55 30

- 15:18:59 1 was for over a million square feet and now the max that was being spoken of was
2 500,000.
- 3 Q. 683 And in the second column on the next page. Fourth paragraph down, Mr. Kay, the
4 following is stated. "Gilmartin's involvement in the land ended almost two
15:19:17 5 years ago according to O'Callaghan". Is that a true statement?
- 6 A. No.
- 7 Q. 684 All right. Did you, did Mr. Gilmartin mention in the course of your two hour
8 discussion with him this particular article in which he appeared and is named
9 in the headline and which had been published some three or four days prior to
15:19:34 10 your meeting with him in London?
- 11 A. I don't think he did.
- 12 Q. 685 Yes.
- 13 A. He might possibly have. I don't think so because I think that would have stuck
14 in my mind.
- 15:19:45 15 Q. 686 At 8757. Did you have any discussion with Mr. Gilmartin -- if I could have the
16 full article, please. About the fact that he had been declared bankrupt in or
17 around that time?
- 18 A. Oh, I am sure it was mentioned yes because it was a live issue.
- 19 Q. 687 And coming up to the vote in Dublin County Council, Mr. Kay, can I ask you did
15:20:11 20 anyone to your knowledge in Allied Irish Bank provide any of the information
21 I'm not suggesting that they ask did but I have to ask you the question just
22 before you object to it or Mr. Nesbitt does. Did anybody in Allied Irish Bank
23 provide any information leading to the publication of this article to your
24 knowledge?
- 15:20:23 25 A. No, I'm certain we didn't. And I know Mr. Gilmartin has alleged that we
26 passionate on information about has financial difficulties to whoever. Well
27 firstly, I think to Mr. O'Callaghan. That's not true.
- 28 Q. 688 Yes. But in any event, insofar as this article is concerned, which is
29 published on the 13th of December 1992, you have no knowledge of how the
15:20:44 30 article came to be published or who provided the information to Mr. Harding?

- 15:20:48 1 A. No, I think it would be a gross breach of banker/customer confidentiality if we
2 had done and I'm certain nobody in the bank would have done it.
- 3 Q. 689 But through your own knowledge and certainly from your discussions with
4 Mr. McGrath on the 17th of December 1992, Mr. Gilmartin still had an interest
15:21:04 5 in the lands at Quarryvale, isn't that right?
- 6 A. Oh, yes he had. 40 per cent stake in it.
- 7 Q. 690 Yes. And he continued to have that stake up until 1996, isn't that right?
- 8 A. Yes, I think so, yes.
- 9 Q. 691 And until ultimately the matter was concluded.
- 15:21:17 10 A. Yeah well I'm not -- a bit hazy on those dates.
- 11 Q. 692 Yes.
- 12 A. He certainly had a stake in it at that time, up to. I suppose if he hadn't a
13 stake in it, why would we have gone to London.
- 14 Q. 693 Yes. And when you came back to Dublin, Mr. Kay, did you have any discussion
15:21:36 15 with Mr. O'Callaghan about what you had discussed with Mr. Gilmartin in London
16 on the 17th of December 1992?
- 17 A. No, I don't think I did. I, as soon as I had changed jobs I probably largely
18 lost contact with Mr. O'Callaghan, I think I might have spoken to him the odd
19 time. But no I'm sure I didn't.
- 15:21:56 20 Q. 694 Did you, would you have gone back to Ms. Basquille within the bank, Mr. Kay,
21 and discussed with her?
- 22 A. Oh, yes I'm sure I did.
- 23 Q. 695 And do you think it's likely she might have prepared a note of what you told
24 her happened at the meeting on the 17th of December 1992?
- 15:22:11 25 A. Well I think it's certainly possible. I'm sure I discussed it with
26 Ms. Basquille.
- 27 Q. 696 Is is there anybody else within the bank that you might have discussed your
28 meeting with Mr. Gilmartin in December 1992?
- 29 A. Well I suppose it's possible I spoke to Mr. O'Farrell but I don't think I did.
15:22:25 30 Mr. O'Farrell had replaced me.

- 15:22:28 1 Q. 697 Yes.
- 2 A. But I, I can't recollect. It's quite possible that Mr. O'Farrell might have
- 3 said to me how did you get on yesterday or whatever and I would have said
- 4 something to him because I was and still am on very friendly terms with him.
- 15:22:45 5 Q. 698 Thank you very much, Mr. Kay. There is probably one matter that I am having
- 6 checked that I had mentioned earlier on that I will try and come back to you in
- 7 re-examination but subject to that, Mr. Kay. Thank you very much would you
- 8 answer any questions anybody else may have.
- 9
- 15:23:00 10 CHAIRMAN: Do you wish?
- 11
- 12 MR. KEATING: Yes, Chairman. I have informed all parties here that I intend
- 13 to ask just a few questions and --
- 14
- 15:23:05 15 MS. DILLON: I'm sorry I have forgotten one issue that I have to deal with if
- 16 you don't mind it will take me two minutes. Sorry, Sir.
- 17
- 18 Q. 699 MS. DILLON: I just wanted to ask you about your meeting with Mr. Dunlop,
- 19 Mr. Kay, arising out of his application for a loan to you in May of 1992?
- 15:23:20 20 A. Yes.
- 21 Q. 700 At 7294. It appears from this document which you helpfully transcribe,
- 22 Mr. Kay, that on the 20th of May '92, you had a meeting with Mr. Dunlop?
- 23 A. Yes, and I don't think I made a proper file note I just scribbled down headings
- 24 on a piece of paper.
- 15:23:42 25 Q. 701 Yes. Can I take you through the note which starts off "Naas Road Davy Hickey
- 26 Shubotham and others. Paul Cootes and Harry Dobson and Jim Bolger and then it
- 27 says JB needs cash".
- 28 A. Yes.
- 29 Q. 702 What is your recollection of that entry, Mr. Kay?
- 15:23:57 30 A. Mr. Bolger I think.

15:23:58 1 Q. 703 Yes. Mr. Bolger has told the Tribunal that he never asked Mr. Dunlop to make
2 an approach to Allied Irish Bank for cash?
3 A. Well I think maybe there's a misunderstanding there.
4 Q. 704 Fine.
15:24:13 5 A. I think that the request that came to me from Mr. Dunlop was on his own behalf,
6 was nothing to do with Mr. Bolger wanting money from the bank.
7 Q. 705 Right. So the next section of that says "55 A phase one of 300 acres bought
8 for 20K per annum. FD fee 100K but stake in lieu of cash, 2 per cent. Second
9 phase 200 acres FD has 2 per cent at this stage. JB offered some of his land
10 at max 40K per annum for 10 acres. FD needs 400,000 for JB and roll up for one
11 year".
12
13 What does that mean?
14 A. I think that means Mr. Dunlop wanted to borrow 400,000 pounds to give to
15 Mr. Bolger in return for a portion of the land and he wanted a roll up of
16 interest on the 400,000 for one year.
17 Q. 706 You didn't give any sanction, isn't that right, Mr. Kay, to that?
18 A. No, I -- after Mr. Dunlop left I phoned College -- he told me that he had an
19 account in AIB College Street and that was the first I knew of any involvement
15:25:24 20 in that branch.
21 Q. 707 Uh-huh.
22 A. And he told me that he dealt with Pascal Fuller who was a manager there at the
23 time and John Ahern who was I think the senior deputy manager or, he was some
24 manager there anyhow. And I more or less out of courtesy and to try and get a
15:25:46 25 bit more information I rang College Street and I didn't manage to speak to
26 either of those gentlemen but I spoke to somebody else there and told him the
27 story. It was somebody I knew, I can't remember who it was. But it was
28 somebody who I knew anyhow in College Street and I told him that Mr. Dunlop had
29 been in seeking an advance of around 400,000 pounds and that it didn't look a
15:26:12 30 likely runner as far as I was concerned, it was an open ended bridging loan and

- 15:26:17 1 all very vague and so on. And they told me that he was a respected customer in
2 the branch and I said well just I'm just putting a marker down for you. He is
3 not going to get this 400,000 pounds from us.
- 4 Q. 708 Yes. And I think he came back to you on the 12th of June, Mr. Kay, at 7437.
15:26:40 5 And he gave you some further information, isn't that right?
- 6 A. Yes.
- 7 Q. 709 Including information that he had 185,000 pounds "offshore funds".
8 A. Yes he told me that I think. Well he must have done, I wrote it down.
- 9 Q. 710 Yes. What did you understand from that?
15:26:57 10 A. Well exactly what it says that he had 185,000 pounds offshore. He didn't tell
11 me where it was or who had placed it there or whatever. But he just told me
12 sort of in passing that he had 185,000 pounds offshore.
- 13 Q. 711 Yes. And you knew, of course, at this stage, Mr. Kay, that there was 70,000
14 pounds that had been paid to Shefran, Mr. Dunlop's company from Barkhill, isn't
15:27:21 15 that right?
- 16 A. Yes, that's right.
- 17 Q. 712 Right. Did you at that stage when Mr. Kay -- when Mr. Dunlop tells you that he
18 has 185,000 pounds in offshore funds make any connection or question mark in
19 your own mind between the two Shefran invoices for round figure sums that
15:27:37 20 Barkhill had paid?
- 21 A. No, I didn't. Because it appeared that he had been involved in quite a number
22 of land transactions over the years including Citywest and I think he was
23 involved with Baldoyle I think that's on the previous Baldoyle Race Course, I
24 think. Any rate, he led me to believe that he had been involved in a number of
15:28:05 25 property transactions over the years and I assumed that the 185,000 pounds had
26 come from that.
- 27 Q. 713 Yes.
- 28 A. Or perhaps from his income as a consultant or whatever he was. But, no, I
29 didn't make that connection.
- 15:28:21 30 Q. 714 Did you query him at all in view of your existing knowledge about the fact that

15:28:24 1 Mr. Dunlop was operating a system which in its simplest form was a double
2 charging system in that he had one company that was charging for outlay as you
3 understood it and another company that was charging for a professional fee?
4 Did you in any way take that information and add it to the fact that Mr. Dunlop
15:28:42 5 is now telling you that he has 185,000 pounds offshore and say to yourself, I
6 should really go back and check things a little closer insofar as Mr. Dunlop is
7 concerned?

8 A. No, I didn't. Perhaps I should have but I didn't.

9 Q. 715 Yes. Looking at it now, Mr. Kay, and I know hindsight has perfect vision. But
15:29:01 10 you are now being put on notice by Mr. Dunlop that he has hidden money because
11 you put quotation marks, isn't that right, around offshore funds?

12 A. Yes.

13 Q. 716 In your own mind when you make the annotation there is something questionable
14 about it, isn't that right?

15:29:17 15 A. Yes.

16 Q. 717 Other than that you wouldn't have identified it or highlighted it in that
17 fashion, isn't that right?

18 A. That's correct. But I suppose in the early 1990's it was not uncommon for some
19 people to have money offshore.

15:29:32 20 Q. 718 Yes. But this is not just some people having money offshore, this is a highly
21 respectable political lobbyist, Mr. Kay, whom you have described to the
22 Tribunal as a person whom you were happy to pay round figure sums of 30,000 and
23 40,000 pounds and to whom you didn't regard those figures as excessive, isn't
24 that right?

15:29:54 25 A. Yes. I suppose looking at it in hindsight I possibly should have taken it
26 further.

27 Q. 719 Yes. Isn't that correct, Mr. Kay, because you are being put on notice here by
28 Mr. Dunlop and you have a question mark in your own mind at the time you make
29 this entry in June of 1992 about Mr. Dunlop because you put the annotation
15:30:14 30 around the word offshore funds, isn't that right?

15:30:18 1 A. Uh-huh.

2 Q. 720 And you had to have a question in mark in your own mind about Mr. Dunlop from

3 that point, I suggest to you, Mr. Kay.

4

15:30:25 5 CHAIRMAN: Well Mr. Kay, did you see -- did you think in your own mind any

6 connection between that and what you'd seen in relation to payments to Shefran

7 and so on?

8 A. No, no, Chairman. I must say I didn't equate the two.

9

15:30:39 10 CHAIRMAN: All right.

11 A. And as I said before, I'm sure there were many people who had offshore funds.

12

13 CHAIRMAN: All right.

14 A. Some ...

15:30:50 15

16 MS. DILLON: Sir

17

18 CHAIRMAN: All right.

19

15:30:52 20 Q. 721 MS. DILLON: Just finally, Mr. Kay, on that point. You had spoken to Mr.

21 Gilmartin on the 5th of June about Shefran, isn't that right?

22 A. Could you, that's the day the 30,000?

23 Q. 722 Yes.

24 A. Oh, I had yes. Yes I had yes.

15:31:04 25 Q. 723 That's according your letter. Then you were speaking to Mr. Dunlop on the 12th

26 seven days later.

27 A. Yes.

28 Q. 724 So it wasn't something that had gone passed and you had forgotten to, isn't

29 that right?

15:31:15 30 A. Yes, I'm sure that's right.

15:31:17 1 Q. 725 Thank you, Mr. Kay. I'm sorry for interrupting my friend. If you would answer
2 any questions that anybody may have.

3 **THE WITNESS WAS QUESTIONED BY MR. KEATING AS FOLLOWS:**

15:31:24 5 Q. 726 MR. KEATING: That's all right.

6
7 Mr. Kay, my name is Alan Keating. In the context of this cross-examination you
8 can take it that I represent Mr. O'Callaghan, Mr. Deane, Riga Limited and
9 Barkhill Limited and I want to cover four issues very briefly with you.

15:31:36 10
11 The first one is just the frequency of communications that you say that you had
12 with Mr. Gilmartin. I think today you mentioned quite briefly that you would
13 estimate that you may have contacted him or been in contact with him
14 approximately two or three times per week in 1992, isn't that correct?

15:31:55 15 A. Yes.

16 Q. 727 And would you have had the same level or frequency of contact or communication
17 with Mr. Gilmartin in 1990 and 1991?

18 A. Yes, I think I did.

19 Q. 728 Yes. And I just want to bring up the first document is document No. 4329.

15:32:20 20 And, Mr. Kay, you might remember this document it's the note taken by Mr.
21 Donagh I assume of a meeting between Mr. Gilmartin and Mr. Donagh on the 2nd of
22 August 1990. You weren't present at this meeting but this memo was put to you
23 and approximately three tabs from the bottom, you can see that there is the
24 note "O'Callaghan, Deane have indicated they would take equity stake in the
15:32:42 25 project".

26 A. Yes.

27 Q. 729 And that would appear to be a notation taken by Mr. Donagh of what Mr.
28 Gilmartin said to him.

29 A. Yes.

15:32:51 30 Q. 730 And then if I could direct you to a letter from Mr. Gilmartin to Allied Irish

15:32:56 1 Banks at page 4345 of the brief. I think you will also remember this letter.

2 A. I do remember it, yes.

3 Q. 731 Yes, Mr. Kay. And you will notice on the fourth paragraph down Mr. Gilmartin

4 states "Owen O'Callaghan has also expressed a keen interest in the negotiations

15:33:19 5 regarding the joint venture or some involvement in the project but of course he

6 wants the final payment on my contract with him first".

7

8 And you have given evidence in relation to this, Mr. Kay. And I just hope I

9 characterise it correctly when I say that those would appear to be the first

15:33:36 10 amount to the first occasions on which Mr. Gilmartin suggested Mr. O'Callaghan

11 and Mr. Deane becoming involved in the project as it then was, isn't that

12 correct?

13 A. Yes, I think so. Because Mr. Gilmartin has alleged that the bank forced Mr.

14 O'Callaghan into some sort of a linkage with him whereas the reality is as

15:34:02 15 stated there.

16 Q. 732 And indeed, Mr. Kay, he has alleged that there was collusion between AIB and

17 Mr. O'Callaghan in relation it to his attempts to refinance his position. I

18 don't know if you are aware of that from his evidence.

19 A. Oh, I am aware of that.

15:34:19 20 Q. 733 I think he used a term that they tried to "thwart me" I think on certain

21 occasions.

22 A. Yes.

23 Q. 734 And in evidence on day 841. I don't propose to bring this up it often takes

24 some time to bring the testimony up but you state that you thought that the

15:34:35 25 first knowledge of AIB was a letter from Mr. Gilmartin. And at page 107 on

26 that day you say "It is possible that Mr. Gilmartin might, I don't think he

27 showed any great enthusiasm". Sorry I misquote there that's Mr. O'Callaghan

28 "it's possible that Mr. O'Callaghan might. I don't think he showed any great

29 enthusiasm for it up to that. We probably discussed the payment of his 1.35

15:35:08 30 with him from time to time but I don't believe we ever discussed any equity

15:35:08 1 involvement by him up until this date".

2

3 And that's just evidence you gave in response to the letter of September.

4 A. Yes.

15:35:16 5 Q. 735 1990. And on the basis of that, Mr. Kay, it's clear that up until certainly
6 the latter half of 1990 it's your view that Mr. O'Callaghan didn't show any
7 enthusiasm to AIB in any event in getting involved with the project.

8 A. That is correct.

9 Q. 736 And then in relation to the issue of collusion on day 842 at page 38, question
15:35:40 10 225. Once again you referred to the note and the correspondence I've just
11 referred to from the brief. And at question 225 you were asked "So it would
12 appear by August of 1990, the idea of a participation of some nature with Mr.
13 O'Callaghan had been mentioned to the bank by Mr. O'Callaghan" and Ms. Dillon
14 corrects herself "Gilmartin isn't that right?"

15:36:05 15 A: Yes but I think the important thing is that it was brought forward by" and
16 it was suggested to you by Mr. Gilmartin and you answer "yes and not by the
17 bank". And you were asked "you say where Mr. Gilmartin suggests that there was
18 some hidden purpose or arrangement between the bank and Mr. O'Callaghan that
19 this correspondence disproves that?" and you answer "it does because he alleges
15:36:28 20 that this collusion I think was the word he uses started in the very beginning
21 of our involvement in early 1990 and that is utterly incorrect".

22
23 And once again, you say that these, that this correspondence, the note in
24 correspondence I referred showed that there was no such collusion between AIB
15:36:47 25 and Mr. O'Callaghan.

26 A. There was no such collusion.

27 Q. 737 And indeed, at page 4707 of the brief you might remember, Mr. Kay, that after
28 the Heads of Terms of the 15th of February 1991 Mr. O'Callaghan requests a
29 transfer of money from a Riga account to a Barclays Bank account in London on
15:37:13 30 Mr. Gilmartin's behalf. And sorry that's 4707 I apologise to Mr. Kavanagh for

15:37:24 1 that. 4707. And I'm sure recall that document, Mr. Kay.

2 A. Yes, I do.

3 Q. 738 You can see that Mr. O'Callaghan requests the arrangement of a transfer of

4 45,850 Dollars or its sterling equivalent. And in giving evidence on this you

15:37:47 5 stated that you thought it was in relation to a potential refinancing proposal

6 that had come up through Mr. Gilmartin. And you say that Mr. Gilmartin, your

7 perception was Mr. Gilmartin didn't have the fees to pay that and that Mr.

8 O'Callaghan agreed to do so on his behalf?

9 A. Yes, that correct.

15:38:06 10 Q. 739 And taking that into account, Mr. Kay, wouldn't you agree that this was an

11 attempt on the part of Mr. O'Callaghan to assist Mr. Gilmartin in Mr.

12 Gilmartin's endeavours to refinance the position at that time?

13 A. Yes, I think it was.

14 Q. 740 And would you see that as consistent with Mr. O'Callaghan's approach generally

15:38:27 15 at that time?

16 A. Yes.

17 Q. 741 And wouldn't that be inconsistent then with an assertion that Mr. O'Callaghan

18 was either colluding with AIB or indeed acting of his own accord to, in Mr.

19 Gilmartin's words, thwart Mr. Gilmartin's attempts to refinance his position?

15:38:45 20 A. Yes, I would agree with that.

21 Q. 742 Now, the next issue I want to go on to, Mr. Kay, relates to the Heads of Terms

22 of the 14th of December 1990. And you were asked on day 842 whether or not it

23 was your perception that Mr. Gilmartin was happy with this agreement in the

24 first instance, that is when the agreement was executed in December 1990. And

15:39:17 25 in response to question 551 at page 88, on day 842 you say "I think he was

26 reasonably happy with it but at the back of his mind he always anticipated

27 being able to refinance us. And I think that's probably why clause 11 was put

28 in there. I think it was at his request because he was still pursuing

29 refinancing proposals from various sources and he hoped he would be able to

15:39:41 30 effect this and scrap the agreement signed on the 14th of December".

- 15:39:45 1
2 Clause 11 is a clause I think, Mr. Kay, that allowed him to do that if he was
3 able to refinance, isn't that correct?
- 4 A. Yes.
- 15:39:52 5 Q. 743 So your initial perception was that Mr. Gilmartin was indeed happy albeit
6 perhaps because that clause was contained in the Heads of Terms of 1990.
- 7 A. Well happy is probably too strong a term. But he accepted it reasonably
8 willingly is my recollection.
- 9 Q. 744 Yes. And at page 4562 of the brief. There is a letter, Mr. Kay, which is
15:40:23 10 dated the 24th of January 1991. And I just ask for the third paragraph to be
11 highlighted. Yes. And this portion of this letter, again, from Mr.
12 O'Callaghan to Mr. Gilmartin was put to you during your testimony. And you can
13 see that the first two sentences read as follows "after we signed the piece of
14 paper before Christmas, I was under the impression that you were satisfied with
15:40:59 15 that deal. You have since indicated to me that you did not consider yourself
16 bound by that deal and wanted to tear up that agreement."
17
18 And it was put to you. Sorry, as I said, this letter was put to you in your
19 testimony. And it was suggested to you that this letter suggested that Mr.
15:41:19 20 Gilmartin was not happy with the 1990 Heads of Terms. And indeed, the second
21 sentence seems to suggest that at the date of Mr. O'Callaghan writing the
22 letter, that seemed to be the case. But doesn't it also suggest and in the
23 first sentence I read out there, doesn't that also suggest that initially Mr.
24 Gilmartin also appeared to be satisfied or as you put it, reasonably accepted
15:41:46 25 the agreement in 1990?
- 26 A. Yes.
- 27 Q. 745 And that would accord with your recollection of events wouldn't it?
- 28 A. It would, yes.
- 29 Q. 746 And I just want to cover one last issue with you, Mr. Kay, if I could. If I
15:41:57 30 could just bring up page 4555 of the brief, please. And this is a letter which

- 15:42:09 1 is written by Mr. Colm McGrath, who you now know was a County Councillor sorry?
- 2 A. Yes.
- 3 Q. 747 In relation to what he describes as the Westpark development which is written
- 4 to Mr. Gilmartin and it is dated the 15th of January 1991. And it reads:
- 15:42:26 5
- 6 "further to your comprehensive presentation in the Berkley Court Hotel of your
- 7 proposed Westpark development of North Clondalkin, I am pleased to inform you
- 8 that in the context of the review of the Dublin County Development Plan it is
- 9 my intention to table an appropriate motion at the February review meeting
- 10 which will effect the rezoning of the site as required for the development. I
- 11 am confident that this motion will enjoy unanimous cross party support
- 12 particularly in view of your successful negotiations with the developer of the
- 13 former town centre site at Fox Deane which is not now being proceeded with."
- 14
- 15:43:04 15 And just to inform you, Mr. Kay, and when Mr. McGrath gave evidence he
- 16 clarified that where he referred to the Fox Deane site he was referring what we
- 17 might indeed describe as the Neilstown site. And Mr. McGrath also confirmed
- 18 that he had about been in communication with Mr. Gilmartin at that point. You
- 19 will also be aware, Mr. Kay, that it was Mr. McGrath who ultimately lodged that
- 15:43:30 20 motion. You are probably aware of that at this stage.
- 21 A. Yes, I think I am, yes.
- 22 Q. 748 And this letter was put to you in evidence as well and you said that Mr.
- 23 Gilmartin may have mentioned Mr. McGrath's name to you but you were not aware
- 24 of the letter at the time. And later the issue of a fall-back position was
- 15:43:57 25 discussed with you. Ms. Dillon put questions to you relating to the bank's
- 26 perceived necessity to arrange some fall-back position. And by that I mean, an
- 27 alternative to the position pursued by Mr. Gilmartin in early 1991 which was to
- 28 refinance his position. You will recall that?
- 29 A. I do.
- 15:44:15 30 Q. 749 And you gave evidence to the evidence that Mr. O'Callaghan's. Sorry -- that

- 15:44:22 1 Mr. O'Callaghan appeared to have a degree of control over matters leading to
2 the rezoning. Sorry -- the lodgement of the rezoning motion in February 1991.
3 Do you recall that evidence?
- 4 A. Yes in the context that without him withdrawing his, the Neilstown site it was
15:44:41 5 unlikely that this could proceed.
- 6 Q. 750 Yes. And what you referred to there, Mr. Kay, would suggest are circumstances
7 and it would be a reading of those circumstances that Mr. O'Callaghan's site if
8 you like at Neilstown had, was zoned appropriately. Whereas the Quarryvale
9 lands were not so zoned. And therefore the Neilstown site appeared to have an
10 advantage over the Quarryvale site in that regard, isn't that correct?
- 11 A. That's correct.
- 12 Q. 751 And later you were asked on day 842 at page 111. At question 699. Sorry. I
13 will just give you one moment, Mr. Kay, for the transcript to come up. Thank
14 you, Mr. Kavanagh. And at question 699, which is on page 111.
- 15:46:08 15 A. Yes.
- 16 Q. 752 "Was it your belief that unless Mr. O'Callaghan consented a motion can't be
17 lodged" and you answered "yes" do you see that, Mr. Kay?
- 18 A. Yes, I remember it, yes.
- 19 Q. 753 And then you were asked "from whom did you get that view? Well first and
15:46:23 20 foremost I suppose I got it from Mr. O'Callaghan but I think it would have been
21 confirmed by conversation, conversations with Mr. Gilmartin. As I said just a
22 few moments ago, I wrote to him on probably at least two occasions in relation
23 to this matter and he never came back and said no, you are incorrect there.
24 All I need is one Councillor to -- he certainly appeared to support the view
15:46:46 25 that we couldn't make progress without some accommodation with Mr.
26 O'Callaghan"?
- 27 A. That's correct.
- 28 Q. 754 And you say there that you suppose that you got that belief, namely, the belief
29 that Mr. O'Callaghan's consent was necessary for the motion to be lodged that
15:47:01 30 you supposed you got that from Mr. O'Callaghan, Mr. Kay. But that's not a

- 15:47:05 1 statement of a clear recollection, you just suppose you got it from him and
2 that that was confirmed in conversations with Mr. Gilmartin, isn't that
3 correct?
- 4 A. Yes. But I, I think that Mr. O'Callaghan would have made it clear to us that
15:47:21 5 he was not willing to withdraw the zoning on Neilstown without an accommodation
6 that Mr. Gilmartin -- I don't just think it. I'm certain that's the position.
- 7 Q. 755 Yes but that's just slightly different from saying that his consent was
8 required for the motion to be lodged in February?
- 9 A. Oh, yes, yes, I accept that.
- 15:47:41 10 Q. 756 And I accept what you say in terms of the circumstances it would seem what you
11 say seems reasonable. But it is somewhat different to suggest that his consent
12 was necessary for the lodgement of the motion?
- 13 A. Yes.
- 14 Q. 757 And I would just say that Mr. O'Callaghan's instructions are that he has no
15:47:56 15 recollection of having a conversation with you in which he stated to you that
16 his consent would be necessary for the lodgement of that motion?
- 17 A. Well, sorry. He is probably right on that.
- 18 Q. 758 Yes?
- 19 A. I probably misworded it slightly.
- 15:48:11 20 Q. 759 And just calling to mind the fact that you would have been in frequent, fairly
21 frequent communications with Mr. Gilmartin at this stage. You said two or
22 three times a week and that frequency and we can't be completely accurate about
23 this?
- 24 A. Yes.
- 15:48:27 25 Q. 760 There would have been that frequency early in 1991 as well. And this is in
26 addition to the letters that you wrote to Mr. Gilmartin?
- 27 A. Yes.
- 28 Q. 761 Calling to mind that Mr. Gilmartin was in contact with the person who
29 ultimately lodged the motion and calling to mind the fact that that person
15:48:43 30 indeed wrote to Mr. Gilmartin informing Mr. Gilmartin that he would indeed

15:48:47 1 lodge the motion. Wouldn't it be possible that that belief that you had was
2 actually put or given to you or created by conversations with Mr. Gilmartin?
3 A. Yes, it is possible.
4 Q. 762 Thank you very much, Mr. Kay. Thank you, Chairman.

15:49:06 5
6 CHAIRMAN: Thank you. Mr. Ryan, do you want to ask any questions?

7

8 MR. RYAN: No. Chairman, we have no questions.

9

15:49:11 10 CHAIRMAN: Mr. Nesbitt, do you want to ask any questions?

11

12 MR. NESBITT: I have nothing further to ask.

13

14 CHAIRMAN: Thank you very much, Mr. Kay, for your attendance.

15:49:20 15 A. Thank you.

16

17 **THE WITNESS THEN WITHDREW.**

18

19

15:49:22 20 CHAIRMAN: We are sitting on Tuesday at ...

21

22 MS. DILLON: At 10:30, Sir.

23

24 CHAIRMAN: Thank you.

15:50:12 25

26

27

28 **THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,**

29 **TUESDAY, 8TH APRIL 2008, AT 10:30 A.M.:**

15:50:22 30

15:50:22 1
2
3
4
15:50:32 5
6
7
8
9
15:50:32 10
11
12
13
14
15:50:32 15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30