

10:23:43 1 **THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,**

2 **5TH DECEMBER 2007, AT 10.30 A.M:**

3

4 CHAIRMAN: Good morning Mr. O'Neill.

10:44:46 5

6 MR. O'NEILL: Good morning, Mr. Chairman, Members of the Tribunal.

7

8 In view of the continuing unavailability of Mr. Frank Dunlop to give evidence

9 this week, witnesses who had been scheduled for afternoon sessions have been re

10:44:58 10 scheduled for the morning sessions. And it's hoped that Mr. Dunlop will be

11 available next week to give evidence.

12

13 The witness schedule for today is Mr. Graham O'Brien. Mr. O'Brien, would you

14 come forward to the witness box, please.

10:45:12 15

16 **MR. GRAHAM O'BRIEN, HAVING BEEN SWORN, WAS QUESTIONED BY**

17 **MR. O'NEILL AS FOLLOWS:**

18

19 CHAIRMAN: Good morning Mr. O'Brien.

10:45:42 20 A. Good morning.

21

22 MR. REICHERT: Chairman, at this moment I appear for NCB Stockbrokers Limited

23 and Mr. O'Brien instructed by Marcus Beresford of A&L Goodbody and I would make

24 an application for the limited grant of representation.

10:45:56 25

26 CHAIRMAN: Certainly, granted.

27

28 MR. REICHERT: Most obliged Sir.

29

10:46:01 30 MR. O'NEILL: Good morning Mr. O'Brien.

- 10:46:02 1 A. Good morning.
- 2 Q. 1 You are a director, I think, of NCB group, is that correct?
- 3 A. I am, that's correct.
- 4 Q. 2 And within that group is NCB Stockbrokers Limited, is that so?
- 10:46:12 5 A. That's correct.
- 6 Q. 3 And are you the managing director of NCB Stockbrokers Limited?
- 7 A. No, I am the Finance Director.
- 8 Q. 4 You are the Finance Director.
- 9 A. Yes.
- 10:46:21 10 Q. 5 In 1993 I think you were an employee of NCB group, is that correct?
- 11 A. That's correct, yes.
- 12 Q. 6 And to the extent that it may be relevant, I think that NCB group's ownership
- 13 has changed on a number of occasions during the currency of your employment
- 14 with them and subsequently your becoming a director of that company, isn't that
- 10:46:45 15 so?
- 16 A. That's correct, yes.
- 17 Q. 7 I think initially the company was owned in the main by Mr. Dermot Desmond,
- 18 subsequently his interest was sold in 1994 to Ulster Bank/Nat West Bank, is
- 19 that right?
- 10:47:01 20 A. That's correct, yes.
- 21 Q. 8 And in 2001 Royal Bank of Scotland acquired the interest formerly held by
- 22 Ulster Bank/Nat West Bank, is that so?
- 23 A. Well Royal Bank of Scotland acquired, which included Ulster Bank at the time
- 24 and ourselves.
- 10:47:19 25 Q. 9 I see. So it fell in with that acquisition, is that right?
- 26 A. Yes.
- 27 Q. 10 And subsequently then there was an acquisition by the management of the
- 28 company, is that so?
- 29 A. The management and employees acquired the company in 2003.
- 10:47:32 30 Q. 11 In 2003, yes. In 1993 you were an employee of the firm at the time and I think

- 10:47:42 1 that your title was that of Head of Accounts, is that so?
- 2 A. That's correct, yes.
- 3 Q. 12 And that I think equates to a position of financial controller in most other
- 4 types of organisation, certainly would include the functions of financial
- 10:47:59 5 control, is that so?
- 6 A. It did, yes.
- 7 Q. 13 And in the hierarchy of things, did you report to the Financial Director of the
- 8 company, who was at the time Mr. Chris McHugh?
- 9 A. I did, yes.
- 10:48:14 10 Q. 14 And he in turn to the then managing director, Mr. Padraic O'Connor, is that
- 11 correct?
- 12 A. That's correct, yes.
- 13 Q. 15 Now, the Tribunal has been provided with documentation on the 24th of November
- 14 2006 from NCB Stockbrokers Limited and I'd like to consider that documentation
- 10:48:38 15 with you. It will appear on screen before you, Mr. O'Brien. If we can look
- 16 firstly to page 18904. And if we can turn that document, please? That
- 17 document is an invoice generated by a company called Euro Workforce Limited.
- 18 It's directed to the NCB group. It's then address at Ferry House in Lower
- 19 Mount Street, Dublin for the attention of Mr. Padraig, misspelled, O'Connor
- 10:49:15 20 Managing Director, isn't that so?
- 21 A. That's correct, yes.
- 22 Q. 16 And the service in respect of which it is generated is the preparation of a
- 23 health and safety survey of premises at Mount Street, Dublin 2 in consideration
- 24 of a sum of 5,000 Pounds upon which there is a VAT charge of 21% being 1,050
- 10:49:38 25 Pounds making a total amount of 6,050 Pounds, isn't that so?
- 26 A. That's correct.
- 27 Q. 17 And I think that your responsibilities as head of accounts included the receipt
- 28 of and the payment out of invoices for services, which were provided to the
- 29 company, isn't that so?
- 10:50:04 30 A. Well, that the Accounts Department at the time would have been involved in the

- 10:50:08 1 preparation and payment of any expenses, yes.
- 2 Q. 18 Yes. But you were the person in the Accounts Department who was Head of
- 3 Accounts, isn't that?
- 4 A. So I was the head of that department, yes.
- 10:50:27 5 Q. 19 Yes. And in the normal course, your duties would involve the consideration of
- 6 invoices, which were incoming invoices, and the implementation of the process
- 7 that would result in their being paid to the persons who had billed the
- 8 company, isn't that right?
- 9 A. Usually when invoices come in they'd be addressed to different people in the
- 10:50:43 10 building and would be circulated to those people for approval and would
- 11 generally return to the Accounts Department having been approved.
- 12 Q. 20 Yes. I'm not suggesting that you had to approve every account or indeed any
- 13 invoice which came in, that approval function was one which was carried out by
- 14 the head of the department to which the invoice would have been sent.
- 10:51:03 15 A. Yeah.
- 16 Q. 21 I'm merely asking whether or not the implementation of that was something done
- 17 within the finance side of the house of which you were the Head of Accounts?
- 18 A. It was, yes.
- 19 Q. 22 Yeah. And we'll see in the next document then, page 18905. A document which
- 10:51:21 20 is an internal NCB document headed "NCB non-creditor cheque requisition form."
- 21 And you perhaps can identify that document as being such, isn't that right?
- 22 A. Yes, it's a cheque requisition form, yes.
- 23 Q. 23 And does that document indicate to us that there was an existing procedure in
- 24 1993, within NCB group, that cheques from the company would be preceded by a
- 10:51:51 25 cheque requisition form?
- 26 A. Yes.
- 27 Q. 24 And the purpose of that, I take it, was to be able to prepare a ledger
- 28 identifying the nature of the charge, which was being met by the company, and
- 29 the manner in which it was being met, is that so?
- 10:52:09 30 A. Yes.

- 10:52:10 1 Q. 25 Was this a system which had been set-up by you or one which you had adopted or
2 inherited when you came in to your position?
3 A. It's a system I inherited.
- 4 Q. 26 I see. And it was, I take it, a relatively -- it's a standard form procedure,
10:52:32 5 isn't that right?
6 A. Absolutely.
- 7 Q. 27 There's nothing unusual in it?
8 A. No.
- 9 Q. 28 If we just look at the detail of that in its headings. We see that the company
10:52:47 10 is provided for. I take it that's because there were a number of companies
11 within the NCB group?
12 A. That's correct, yes.
- 13 Q. 29 In this instance this payment, which is reflected here, is attributed to NCBS
14 which is National City Brokers?
10:53:06 15 A. NCBS stands for NCB Stockbrokers.
- 16 Q. 30 NCB Stockbrokers, right. And then the cheque number, which met the invoice, is
17 shown there, isn't that right?
18 A. That's correct.
- 19 Q. 31 And the bank upon which it is drawn, AIBP?
10:53:21 20 A. That's correct, yes.
- 21 Q. 32 I take it that's because the company had a number of different bank accounts
22 which were used to meet its different -- I should say the group had different
23 bank accounts out of which expenditure would be met, is that right?
24 A. Both the group and the company had a number of different bank accounts that ...
- 10:53:41 25 Q. 33 Right. And then this particular document shows that entries can be made under
26 a number of headings. Firstly, "cost centre code."
27 A. Correct.
- 28 Q. 34 To be -- I take, it a range of items that could be --
29 A. Could be yeah.
- 10:53:57 30 Q. 35 -- attributed there. And the "ADM" does that refer to administration?

10:54:02 1 A. It does, yes.

2 Q. 36 And then there's "N/L code" that's nominal ledger.

3 A. Nominal ledger code, yes.

4 Q. 37 3506 that's a number attributed to the transaction, is that right?

10:54:16 5 A. No. that's the number of the nominal ledger account that the cheque was

6 debited.

7 Q. 38 I see. So does that mean that there was an administration nominal ledger

8 prepared?

9 A. The structure of the accounts whether they were split into costs centres and

10:54:33 10 central admin would have been a cost centre. Within each cost centre there

11 would be codes of different expense types that would be applicable to that cost

12 centre.

13 Q. 39 Well in the administration side of things, how would a survey of premises, what

14 code centre would it fall into?

10:54:51 15 A. Into the maintenance code.

16 Q. 40 Maintenance?

17 A. Yes.

18 Q. 41 So obviously somebody had to make a decision --

19 A. That's correct.

10:54:58 20 Q. 42 -- based upon the content of the document as to where it should appear, is that

21 right?

22 A. That's correct, yes.

23 Q. 43 Would that have been your function?

24 A. No, that would have been a function of the person who prepared the cheque

10:55:11 25 requisition form.

26 Q. 44 I see. And for them to carry out that function presumably, they would have to

27 understand what the invoice related to, isn't that right?

28 A. They would, yes.

29 Q. 45 And then the "job project code" is a blank in this instance, is that right?

10:55:29 30 A. Yes, that's because it's irrelevant to this type of cheque.

10:55:32 1 Q. 46 It's irrelevant to this type of cheque.
2 A. Yeah.
3 Q. 47 I see. Then payee description. Firstly, the payee is shown as Eur Workforce
4 Limited, whoever was looking at the document obviously didn't treat the centre
10:55:49 5 "O" as being an "O", isn't that right?
6 A. That's correct, yes.
7 Q. 48 And then it is survey of premises, beneath that is the description presumably
8 of the job, is that right?
9 A. That's correct, yes.
10:56:03 10 Q. 49 And then the total amount is given as 6,050 as the goods value. It then has a
11 provision for the person who requested the cheque to be identified, isn't that
12 right?
13 A. That's correct, yes.
14 Q. 50 And your name is given here or certainly your christian name is given here and
10:56:29 15 we assume that you are the Graham --
16 A. That's correct.
17 Q. 51 -- in that, is that correct?
18 A. Yes.
19 Q. 52 The approval beneath that then has a squiggle to it.
10:56:39 20 A. That's right, yes.
21 Q. 53 Can you identify that for me?
22 A. That squiggle is Chris McHugh's signature.
23 Q. 54 Yes. The date of issue and the number of cheques.
24 A. Yes.
10:56:47 25 Q. 55 Being one, isn't that right?
26 A. That's correct, yes.
27 Q. 56 The document appears then to have been altered at a later stage in time. We
28 can take that as being the 16th of March of 1994, with the date shown there,
29 isn't that right?
10:57:07 30 A. That's correct, yes.

- 10:57:07 1 Q. 57 And the word "cancelled" written across it.
- 2 A. That's correct, yes.
- 3 Q. 58 Isn't that right? And before we leave this document, perhaps you might confirm
- 4 to me that you have been able to identify the person who completed the
- 10:57:22 5 manuscript entries on this document as being Maura Caufield who is an accounts
- 6 clerk within NCB at the time, is that right?
- 7 A. That's correct, yes.
- 8 Q. 59 Now, this document, I take it, indicates that the invoice, which we considered
- 9 a little earlier, was considered within the Accounts Department of NCB and
- 10:57:47 10 acting upon it and its detail a requisition, a cheque was requisitioned based
- 11 on this document here, is that right?
- 12 A. That's correct, yes.
- 13 Q. 60 And the request, it appears, is attributed to a request having been made by
- 14 you, is that so?
- 10:58:08 15 A. That's correct, yes.
- 16 Q. 61 Yeah. And the normal course then is that the accounts staff, having prepared
- 17 the cheque requisition form, would also prepare a cheque with the amount on it
- 18 although it would be unsigned of course, until it was presented to the cheque
- 19 signatories, isn't that right?
- 10:58:29 20 A. That's correct, yes.
- 21 Q. 62 And if we look to the next document then, 18906, we see a cheque which bears
- 22 the cheque number or some of the initials at the very bottom, we can see the
- 23 "50" which is the start of the cheque sequence. Perhaps it's "350" I'm not
- 24 sure. In any event the cheque number there is not complete, isn't that right?
- 10:58:56 25 A. That's correct, yes.
- 26 Q. 63 Right. The cheque itself is made payable to your Eur Workforce Limited, it's
- 27 in the amount of 6,050 and it's dated the 15th of December, which corresponds
- 28 with the cheque requisition form, isn't that right?
- 29 A. That's correct, yes.
- 10:59:15 30 Q. 64 We see that there are two signatories to that cheque. One of whom is

10:59:21 1 Mr. McHugh, isn't that right?

2 A. The one on the right is Mr. McHugh.

3 Q. 65 The one on the right Mr. McHugh and I think the other is your signature?

4 A. The one on the left is my signature.

10:59:30 5 Q. 66 Right. Can we take it with these three documents in combination, that

6 Mr. McHugh had presented to him a cheque made out -- can we identify again

7 Ms. Caufield's writing --

8 A. Yeah.

9 Q. 67 -- as the person who wrote the cheque?

10:59:51 10 A. That's correct, yes.

11 Q. 68 So this cheque would have been presented to him for approval. He would have

12 approved it, as he did with his initial.

13 A. Correct, yes.

14 Q. 69 He would have signed it and you would have signed it either, I take it, after

11:00:06 15 he had approved it, is that the position?

16 A. I presume so, yes.

17 Q. 70 And that is the way it would have gone in the correct sequence of events?

18 A. Correct, yes.

19 Q. 71 And you don't believe that he deviated from that sequence, is that right?

11:00:18 20 A. No, I don't.

21 Q. 72 Right. One of the unusual features of the transaction apparently, is that the

22 cheque had to be reissued or a cheque reissued in lieu of the original, isn't

23 that so?

24 A. That's correct, yes.

11:00:34 25 Q. 73 And this appears, as we see, from page 18918. Where a second cheque

26 requisition form is completed on the 16th of March 1994. It is identical, I

27 think, in its detail except for a different nominal ledger code being given to

28 the transaction, isn't that right?

29 A. That's correct.

11:01:01 30 Q. 74 And also of course it bears the date the 16th of March.

11:01:04 1 A. That's correct.

2 Q. 75 And not the 15th of December, isn't that right?

3 A. Correct, yes.

4 Q. 76 And the generation of this document can be referred back to the original cheque

11:01:22 5 requisition by the date, the 16th of March, and the word "cancelled" across the

6 original, isn't that right?

7 A. That's correct, yes.

8 Q. 77 You're satisfied, I think, that this particular cheque requisition form was

9 prepared in the context of the original cheque not having been met, isn't that

11:01:40 10 so?

11 A. I am, yes.

12 Q. 78 And again we see that this second cheque was requested by you. It was approved

13 by Mr. McHugh and if we look to page 18919, you'll see that cheque in that

14 amount, dated the 16th of March, in the sum of 6,050 Pounds, was issued. On

11:02:12 15 this occasion you were not a signatory to it, but Mr. McHugh was, isn't that

16 right?

17 A. That's correct, yes.

18 Q. 79 And finally, if we look to page 18921. We'll see that the cheque No. 50050 in

19 the sum of 6,050 Pounds was debited to the account of NCB Stockbrokers on the

11:02:36 20 23rd of March 1994. It's the last entry there, isn't that right?

21 A. That's correct, yes.

22 Q. 80 So that from an accounting point of view, and from the point of view of the

23 creditors and credits and debits in the account of NCB Stockbrokers Limited,

24 the transaction, which was reflected in the invoice generated on the 14th of

11:03:02 25 December 1993, ultimately resulted in the account being debited on the 23rd of

26 March of 1994 for the sum of 6,050 Pounds, isn't that so?

27 A. That's correct, yes.

28 Q. 81 Yes. Now, as I say, these were documents provided to the Tribunal by NCB on

29 the 24th of November 2006. They obviously are dealing with historical events,

11:03:30 30 which had taken place some 13 years before that, isn't that correct?

- 11:03:36 1 A. That's correct, yes.
- 2 Q. 82 And I'd like to deal now with your recollection today in the witness box of
3 what transaction it was that is reflected by the documents that we have just
4 considered. And if we can turn, firstly, to perhaps your first recollection,
11:03:56 5 at this point in time, of the transaction which was to be the subject of the
6 invoice generated by Euro Workforce, that is the payment of 5,000 Pounds and
7 VAT in December 1993?
- 8 A. My recollection is that Padraic had been asked to make a political contribution
9 to the constituency expenses of St. Luke's, which is the constituency office of
11:04:28 10 Mr. Ahern.
- 11 Q. 83 Yes. And when was it that you learned of this request having been made of
12 Mr. O'Connor?
- 13 A. Well I can't remember the exact date, but I was in a meeting with Mr. McHugh in
14 his office and Mr. O'Connor came in to the office and spoke to Mr. McHugh about
11:04:49 15 the fact that he had been requested by Mr. Des Richardson to make the
16 contribution and they had a conversation about whether or not the firm wanted
17 to make a contribution to the constituency expenses of St. Luke's.
- 18 Q. 84 Yes. At that point in time can you say whether or not the invoice, which we
19 considered a little earlier, was in the possession, that is the physical
11:05:12 20 possession, of Mr. O'Connor or was he discussing the matter ahead of receiving
21 any form of documentation from Mr. Richardson?
- 22 A. He was discussing the matter ahead of receiving any documentation.
- 23 Q. 85 Right. Have you any recollection as to whether or not at the conclusion of
24 that meeting, that is the meeting at which you were present where Mr. O'Connor
11:05:38 25 and Mr. McHugh discussed this, whether a decision was taken at that point in
26 time to pay monies or otherwise?
- 27 A. Well my recollection is that Chris McHugh didn't object to the payment being
28 made and was leaving it to Padraic to decide, so I suppose I would have left
29 the room with the opinion in my mind that a contribution was going to be made
11:06:02 30 to the constituency office expenses.

11:06:04 1 Q. 86 Yes. Now, of course if that payment was going to be made through NCB
2 Stockbrokers it would pass through the Finance Department, isn't that so?
3 A. It would, yes.
4 Q. 87 And ultimately it would find itself crossing your desk. And it appears that it
11:06:19 5 did so from the references to Graham that we've seen in the cheque requisition
6 documents, isn't that right?
7 A. That's correct, yes.
8 Q. 88 Can you recollect when it was that the invoice was produced? We know it to be
9 dated the 14th of December of 1993 and we know the cheque to bear the date the
11:06:40 10 15th of December of 1993?
11 A. I can't recollect when it was produced, but it must have been on the 14th or
12 the 15th given the dates --
13 Q. 89 Yes.
14 A. -- of the invoice on the cheque.
11:06:55 15 Q. 90 Right. And when this document was produced have you any recollection as to
16 whether it came to NCB Stockbrokers in the post or whether it was hand
17 delivered or whether it came by courier or otherwise?
18 A. I don't have any recollection of that.
19 Q. 91 Right. We saw from the face of the invoice itself that it was addressed for
11:07:18 20 the attention of Mr. Padraic O'Connor.
21 A. That's correct.
22 Q. 92 What would the procedure be in the event that an invoice bearing that address
23 came into the Finance Department? Would it go directly to Mr. O'Connor having
24 been marked for his attention or what would happen?
11:07:39 25 A. Well it wouldn't have come to the Finance Department because it was addressed
26 to him, so it would have gone directly to his office.
27 Q. 93 I see.
28 A. And it would have been passed to the Accounts Department by his office, usually
29 by his PA, who would bring any kind of bills like that that would come in to
11:07:56 30 him up to the Accounts Department.

- 11:07:57 1 Q. 94 Sorry. Your voice has dropped just a little.
- 2 A. The usual practice if an invoice was addressed directly to somebody like
- 3 Mr. O'Connor is that it would go directly to his office.
- 4 Q. 95 Right.
- 11:08:07 5 A. And usually his PA would bring such invoices up to the Accounts Department for
- 6 processing.
- 7 Q. 96 Okay. Now, this invoice, having been produced, obviously it had to be
- 8 approved, isn't that so?
- 9 A. That's correct, yes.
- 11:08:27 10 Q. 97 And if we can revert back to page 18904. We can see that it does bear the
- 11 signature of Mr. O'Connor, isn't that right?
- 12 A. That's correct, yes.
- 13 Q. 98 Which means that he approved it for payment, isn't that right?
- 14 A. That's correct, yes.
- 11:08:46 15 Q. 99 And we also see that it has the nominal ledger code "ADM 3506" entered on the
- 16 side of it?
- 17 A. That's correct, yes.
- 18 Q. 100 Isn't that right? Can you say or do you know whether or not it would have been
- 19 approved for payment when it was received by Mr. O'Connor and then came to the
- 11:09:07 20 Accounts Department or whether it would have come to the Accounts Department
- 21 unapproved and that it would have been approved subsequently?
- 22 A. I can't say that. It could have come up under either scenario.
- 23 Q. 101 Right. In either event, once it had the signature of Mr. O'Connor on it, it
- 24 fell to the financial accounts section to implement the payment, isn't that
- 11:09:33 25 right?
- 26 A. Once it has been approved by Mr. O'Connor it was authorised for payment by the
- 27 Accounts Department, yes.
- 28 Q. 102 Yes. We know that the payment was made by the cheque that we saw a little
- 29 earlier and we know that the cheque requisition form was prepared at your
- 11:09:57 30 request and that it was sanctioned or approved, I should say, by Mr. McHugh,

- 11:10:03 1 isn't that right?
- 2 A. That's correct, yes.
- 3 Q. 103 Would that indicate that both yourself and Mr. McHugh must have had sight of
4 this documentation, that is the invoice that we see here, prior to the cheque
11:10:16 5 having been drawn?
- 6 A. It might. It's also possible that the invoice came to the Accounts Department
7 with a number of other invoices, in which case the batch would have just been
8 passed to Ms. Caufield to be processed. So it's possible that the first sight
9 that Mr. McHugh or myself had of it was actually when we were signing the
11:10:35 10 cheque.
- 11 Q. 104 Do you have a recollection of Mr. McHugh and yourself discussing this
12 particular invoice at all prior to the cheque having been drawn?
- 13 A. I have a recollection of having a discussion with Mr. McHugh about the invoice.
- 14 Q. 105 Yes.
- 11:10:55 15 A. But I can't remember whether the know conversation took place at the time of
16 the first payment or at the time of the second cheque.
- 17 Q. 106 You may know that in the course of his evidence, Mr. McHugh indicated that it
18 was his belief that you brought the invoice to his office although he qualified
19 that by saying that he couldn't be absolutely certain about it.
- 11:11:22 20 A. Yeah.
- 21 Q. 107 He indicated that the reason he believed that you had brought it to his office
22 was that he undoubtedly considered it and had it been Mr. O'Connor who had
23 brought it to his office he would specifically have remembered discussing it
24 with Mr. O'Connor.
- 11:11:40 25 A. Yeah.
- 26 Q. 108 This involved a certain process being followed, isn't that so?
- 27 A. That's correct, yes. I did see a transcript of Mr. McHugh's evidence and I did
28 have a conversation with Mr. McHugh about it.
- 29 Q. 109 Yes.
- 11:11:54 30 A. But I can't remember at what point, whether it was at the first cheque or the

11:11:58 1 second cheque, that the conversation took place. And I know that Mr. McHugh
2 didn't actually recall there being a second cheque.

3 Q. 110 Yes.

4 A. But I definitely did have a conversation with Mr. McHugh about it.

11:12:08 5 Q. 111 Yes. Do you think then that he may well be accurate in his belief that it was
6 you who brought this invoice to his office and that having discussed it, that
7 he then asked you to get Mr. O'Connor to approve it?

8 A. It is possible, but I would have thought if that is what happened that I would
9 have also got Mr. O'Connor to sign the cheque -- the cheque requisition form.

11:12:37 10 Q. 112 Yes. We're just not clear as to whether Mr. O'Connor is in fact a cheque
11 signatory at the time?

12 A. Mr. O'Connor was a cheque signatory at the time.

13 Q. 113 You are certain about that?

14 A. Absolutely.

11:12:50 15 Q. 114 Mr. McHugh says that his recollection was that you came to him with the invoice
16 and you indicated to him that this is the invoice under which Mr. O'Connor
17 wants to make the payment for the political donation which had been discussed.

18 A. Yes.

19 Q. 115 Is that in accordance with your belief?

11:13:10 20 A. That is the conversation that took place, but as I have already pointed out,
21 I'm not sure at what stage that took place because I don't have a recollection
22 at all of the first payment, but I do have a recollection of events around
23 about the cancellation of the cheque and the reissue. And it may be that it
24 was at that stage that I became aware that the particular invoice in question
11:13:32 25 was the one that had been used to effect the payment.

26 Q. 116 All right. So what we're considering here is a four month window of
27 opportunity between December and March, December '93, March '94, you have a
28 memory of discussing the fact that the invoice related to the payment, which
29 was to be made to Mr. Richardson, for the political donation. What you are
11:14:02 30 unclear about is whether in having that conversation with Mr. McHugh you had it

11:14:06 1 at the time of the issue of the second cheque on the 16th of March or at the
2 time of the first cheque on the 15th of December, is that the only issue --
3 A. That's correct.
4 Q. 117 -- that you have on that?
11:14:18 5 A. That's the only issue, yes.
6 Q. 118 Right. Again, it is Mr. McHugh's belief that he indicated that you should
7 bring them the invoice and possibly the cheque, I'm not clear about the cheque,
8 but certainly the invoice, to the attention of Mr. O'Connor?
9 A. I don't recall that, but it is possible that that is the case.
11:14:50 10 Q. 119 When it came to the issue of the cheque then, is it your recollection that at
11 this time a cheque was being written for 6,050 Pounds and that that cheque was
12 being written on foot of an invoice, which was generated by Euro Workforce,
13 which was to represent the political payment to Mr. Richardson?
14 A. At the time of the second cheque, yes.
11:15:20 15 Q. 120 Yes. I take it that if Mr. McHugh is accurate in his evidence, there must have
16 been a discussion between you and he as to how Mr. O'Connor's wish to make a
17 political donation was going to be reflected by a payment from NCB, isn't that
18 so?
19 A. That's correct, yes.
11:15:43 20 Q. 121 And do you have a recollection that it was clear between yourself and
21 Mr. McHugh that this was not going to be made by means of a cheque written
22 directly to Mr. Bertie Ahern or indeed to Mr. Des Richardson --
23 A. Well --
24 Q. 122 -- is that clear?
11:16:00 25 A. Well originally I think that our view was that we were expected to make a
26 cheque payable to St. Luke's or to Fianna Fail.
27 Q. 123 Yes. That was your initial belief?
28 A. That was my initial belief, yes.
29 Q. 124 Well obviously once you got an invoice from Euro Workforce, that belief
11:16:17 30 couldn't have remained, isn't that right?

- 11:16:19 1 A. That's correct, yes.
- 2 Q. 125 Right. So there must have been a discussion as to how that invoice was to be
3 tied in with the political donation that was being made, isn't that so?
- 4 A. Oh, there was a discussion in terms of the payment was being made by way of an
11:16:35 5 invoice to a company connected with Des Richardson.
- 6 Q. 126 Yes.
- 7 A. Which neither Chris nor myself were particularly happy about.
- 8 Q. 127 Yes.
- 9 A. He has said in his evidence that he said to me that's the way Mr. O'Connor
11:16:50 10 wants to do it so ...
- 11 Q. 128 Yes, but you had no doubt then in your own mind but that there wasn't going to
12 be an invoice generated by Fianna Fail or by the O'Donovan Rossa Cumann?
- 13 A. That's correct.
- 14 Q. 129 There was going to be an invoice from a commercial entity which would be
11:17:05 15 treated as a commercial payment, isn't that right?
- 16 A. That's right, yes.
- 17 Q. 130 And that gave rise to the manner of accounting for this payment as an
18 administration cost, whereas the reality was different, isn't that so?
- 19 A. Well, I mean, even if the cheque had been payable to St. Luke's or to Fianna
11:17:24 20 Fail, it would still have been accounted for as an administration cost.
- 21 Q. 131 Sorry. You would have treated a payment to a political party as an
22 administration cost?
- 23 A. Yeah well when we talk about administration costs that's a particular cost
24 centre that attracts expense in the firm at the time, in that it's related to
11:17:46 25 the administrative functions of the firm rather than, you know, a business
26 front office such as equities.
- 27 Q. 132 So administration would cover a myriad, is that it?
- 28 A. Correct, yes.
- 29 Q. 133 Everything that wasn't the core business of the stockbroking company would be
11:18:04 30 treated as administration expenses, is that right?

- 11:18:07 1 A. That's correct, yes.
- 2 Q. 134 But would it not be broken down then within administration expenses into actual
3 administration, which I suppose the upkeep of the premises or the --
- 4 A. Yes, I mean, the administration costs would include a list of different expense
11:18:24 5 headings.
- 6 Q. 135 Right.
- 7 A. So --
- 8 Q. 136 Can we be certain about one thing, Mr. McHugh, and it's this. That this
9 particular payment of 6,050 Pounds was not treated in the administration
11:18:38 10 expenses ledger as being a political donation?
- 11 A. That's correct -- that's correct, yes.
- 12 Q. 137 There is in fact no entry within the NCB records indicating that this was a
13 political donation, isn't that right?
- 14 A. That's correct, yes.
- 11:18:53 15 Q. 138 And, of course, the content of the invoice itself is self evident. It purports
16 to be a payment in respect of a service, isn't that so?
- 17 A. That's correct, yes.
- 18 Q. 139 And I think it is known to you and to Mr. McHugh and to Mr. O'Connor that no
19 such service was in fact provided by this company, isn't that right?
- 11:19:17 20 A. Well I can find no record of any service provided by that company.
- 21 Q. 140 Well leave records aside, Mr. O'Brien, isn't it the case that when the first
22 time this document was produced, it was known by you and by everybody else
23 involved in the process of making this payment, that there was in fact no
24 service produced. Have you any hesitation in agreeing with me on that issue?
- 11:19:41 25 A. Well my only hesitation is because until I've actually found that document in
26 2006, I don't remember that as being the document. So, and I have not been
27 able to find any health and safety review and it would appear from other
28 documentation that the Tribunal's provided to me that the Tribunal has linked
29 that particular company to Mr. Richardson.
- 11:20:06 30 Q. 141 Undoubtedly the Tribunal has adduced evidence that would appear to show such a

11:20:10 1 connection, but what I am asking you is in relation to the first presentation
2 of this document to you, whether it came directly from Jackie Brooks to you or
3 whether it came from Mr. O'Connor to you.

4 A. Uh-huh.

11:20:25 5 Q. 142 This document was considered in one context only, isn't that right?

6 A. It was, yes.

7 Q. 143 It wasn't being considered in the context of it being a payment which was going
8 to be made for a survey, which had been carried out on the premises, isn't that
9 so?

11:20:41 10 A. That's correct, yes.

11 Q. 144 That never happened?

12 A. That's -- so I believe.

13 Q. 145 It was being considered at the time as being the vehicle or conduit through
14 which the payment, which had been agreed to be made by Mr. O'Connor, was to be
11:20:56 15 effected, isn't that right?

16 A. That's correct, yes.

17 Q. 146 So given that at -- that those are the facts, isn't it obvious and evident that
18 at the time the invoice was produced it was known to all three of you that it
19 was bogus to the extent that it did not reflect an actual payment for the
11:21:17 20 provision of a service, isn't that so that?

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

22 Q. 147 Yes. Now, you have indicated your reluctance and that of Mr. McHugh to engage
23 in this method of recording the payment through the books of the company, isn't
24 that right?

11:21:35 25 A. That's correct, yes.

26 Q. 148 But for reasons it was done, isn't that the position?

27 A. That's correct, yes.

28 Q. 149 And do you recall, given that this was at the time recognised as being a bogus
29 invoice, whether or not it was given to or sent, I should say, to Euro
11:22:03 30 Workforce Limited, I'm talking about the cheque, or whether it was sent to

- 11:22:09 1 Mr. Richardson or whether it was sent to any third party? In other words, can
2 you say how it is that the cheque, which left NCB we know, found itself with
3 some other party?
- 4 A. I don't have any knowledge of that. When the cheque was signed it would have
11:22:27 5 been returned to Mr. O'Connor's office.
- 6 Q. 150 Yes.
- 7 A. And Mr. O'Connor, I presume, would have dispatched it in whatever way he saw
8 fit, but I don't know how the cheque was delivered or to who the cheque was
9 delivered to.
- 11:22:41 10 Q. 151 Do the accounting records of the company stop with the signature of the cheque
11 or do they include the cover letter to the person who invoices for the service?
- 12 A. I haven't been able to find any covering letter at all. The only documentation
13 I have been able to locate I provided to the Tribunal.
- 14 Q. 152 I'm talking now really in the generality rather than in this specific instance.
11:23:05 15 Just wondering about the sequence of the records which are kept. We can see
16 that there is a record of the invoice coming in. There is a record of the
17 cheque requisition that follows upon that.
- 18 A. Uh-huh.
- 19 Q. 153 There is a photocopy, presumably, kept of the cheque itself. I'm wondering
11:23:22 20 whether in the normal course of events there also is an indication as to how
21 that payment finds itself with the party who invoices it. Is there normally a
22 copy and covering letter?
- 23 A. Well in the normal course of events the accounting records would stop with the
24 cheque. But, you know, an individual may have a correspondence file in which
11:23:43 25 he may have filed such a letter, if such a letter was written on a payment.
26 But I haven't been able to locate any correspondence file that would have a
27 letter relating to this cheque.
- 28 Q. 154 I see. So the position is that you have no personal recollection as to what
29 happened the cheque once it had been signed by you or countersigned by you?
- 11:24:04 30 A. That's correct, yes.

- 11:24:06 1 Q. 155 You think it may have gone to Mr. O'Connor so as to allow him to effect the
2 payment to whoever it was, was going to get it?
3 A. I would expect that was the case, yes.
- 4 Q. 156 And we know that your next involvement was stemming from the fact that this
11:24:24 5 cheque was not honoured. We see at page 18906, that the cheque apparently
6 found itself, if you can turn that, please. It found itself with AIB who were
7 not prepared to pay out on foot of it because of the absence of the computer
8 track numbers on the bottom left of the cheque and they write "mutilated" on
9 the cheque and it finds itself coming back to you, isn't that right?
- 11:24:56 10 A. That's correct, yes.
- 11 Q. 157 Now, do you have a recollection as to how it came back to you? In other words,
12 did it go to Mr. O'Connor or did it come in the post to yourselves?
13 A. My recollection is that Mr. O'Connor came to me and said to me that
14 Mr. Richardson had been in contact and had informed him that the cheque had
11:25:20 15 been damaged and couldn't be processed by the bank and had asked if it would be
16 possible for a replacement cheque to be issued.
- 17 Q. 158 Yes. And obviously the process that we see reflected in the accounting
18 documentation was that the original cash -- sorry cheque requisition form is
19 marked "cancelled."
- 11:25:45 20 A. That's correct, yes.
- 21 Q. 159 I don't know whether that's necessary is it?
22 A. Well it is because the cheque was still within the six-month period.
- 23 Q. 160 Right.
24 A. So it was still valid so and we didn't have sight of the cheque at the time so
11:25:59 25 it was important for us to cancel it in case it did end up being cashed.
- 26 Q. 161 I see. So you think the cheque came back then, as it would in the normal
27 course, to the person who had tendered that cheque which would --
28 A. My recollection is that the cheque was returned to Padraic O'Connor.
- 29 Q. 162 Yes. Well you did have a the cheque then in NCB, did you?
11:26:26 30 A. The mutilated cheque, yes, we did have it in NCB.

- 11:26:29 1 Q. 163 And you retained it, isn't that right?
- 2 A. We retained it and it was used as the supporting documentation for the raising
3 of the replacement cheque requisition.
- 4 Q. 164 Right. I take it there are relatively few instances in which you would have to
11:26:43 5 go through the process of reissuing cheques?
- 6 A. It did happen, you know, on occasion when people would hold on to a cheque for
7 more than six months. It would need to be either redated or reissued. It was
8 unusual to have a situation arise where a cheque was returned because it had
9 been damaged to an extent that a bank couldn't process it. But the -- there
11:27:09 10 was a procedure for dealing with the cancellation or reissuing of cheques
11 because of the fact that in the norm you would get cheques that would be, I
12 think they would call them stale, and they would have to be reissued.
- 13 Q. 165 Now, the original accounting procedure for this cheque involved the invoice,
14 which we saw a little earlier, which we know to have been a bogus invoice and
11:27:35 15 which was I think of some concern to you that you actually had made a payment
16 out on foot of such a document, isn't that right?
- 17 A. That's correct, yes.
- 18 Q. 166 And I'm sure it was an unwelcome instance to have to deal with this matter all
19 over again, isn't that right?
- 11:27:51 20 A. That's correct, yes.
- 21 Q. 167 And it did, however, have to go through the procedure of having a cheque
22 requisition form completed, having the matter revisited by Chris McHugh.
- 23 A. That's correct.
- 24 Q. 168 Signed by him and ought authorised, isn't that right?
- 11:28:05 25 A. That's correct, yes.
- 26 Q. 169 And you think that it may have been on this occasion that again you drew or
27 sorry, not again, but you drew his attention to the fact that this was the
28 method of payment for the political donation?
- 29 A. My conversation with Chris McHugh about that took place I think whenever I
11:28:25 30 realised that this particular cheque or this particular invoice was what was

- 11:28:30 1 being paid.
- 2 Q. 170 Yes.
- 3 A. So as I say, it could have been at this instance or it could have been earlier
- 4 in the chain.
- 11:28:36 5 Q. 171 Right. So at a minimum it reinforced in his mind the unusual nature of the
- 6 transaction and the fact that it was being dealt with through the accounts of
- 7 NCB in a manner which would not show that it was a political donation, isn't
- 8 that right?
- 9 A. That's correct, yes.
- 11:28:56 10 Q. 172 Now, the cheque having been written, have you any recollection as to how this
- 11 second cheque found itself with Mr. Richardson or the person who was
- 12 subsequently to tender it for payment to the bank?
- 13 A. I don't have any knowledge of that. I would presume it went through the normal
- 14 process of the cheque requisition being prepared and authorised by Chris. Two
- 11:29:24 15 signatories would have signed the cheque and then it probably would have been
- 16 returned to Mr. O'Connor's office for him to dispatch in whatever way he saw
- 17 fit.
- 18 Q. 173 All right. And unlike the first cheque this one presented no difficulties as
- 19 far as you are aware, it didn't have to come back to you for any
- 11:29:41 20 reconsideration, it went through in the normal course, is debited to the
- 21 account on the 23rd of March of 1994, isn't that so?
- 22 A. That's correct, yes.
- 23 Q. 174 And presumably, in your monthly accounting procedures it was -- appeared in the
- 24 appropriate ledger as having been paid and nothing further would arise, isn't
- 11:30:03 25 that right?
- 26 A. That's correct, yes.
- 27 Q. 175 Is it correct to say that the next occasion upon which you had to consider what
- 28 had taken place in 1993, was following a contact which was made with you by
- 29 telephone from Mr. Padraic O'Connor in June 2005?
- 11:30:23 30 A. Yes, Mr. O'Connor contacted me in 2005. I don't recollect the exact month, but

11:30:29 1 --

2 Q. 176 Yes.

3 A. -- I think if he says June maybe that's correct, yes.

4 Q. 177 Mr. O'Connor has given evidence to the Tribunal that in June 2005 he was

11:30:39 5 contacted by Mr. Des Richardson, who arranged to meet him at the Berkley Court

6 Hotel. And at that location a discussion took place where Mr. O'Connor was

7 asked by Mr. Richardson for his recollection of a payment of 5,000 Pounds,

8 which had been made payable to him in 1993. Mr. O'Connor says that he gave his

9 account of, his recollection of events to Mr. Richardson at that time and he

11:31:12 10 was asked whether or not he had any documentation in relation to the

11 transaction. He will say that following upon that conversation with

12 Mr. Richardson -- sorry, at that conversation he indicated that he would check

13 whether or not there was any documentation in relation to the payment and get

14 back to Mr. Richardson. And that that was the context in which he made contact

11:31:37 15 with you by telephone. Does that, does it accord with your recollection, that

16 Mr. O'Connor was asking you what records firstly there were in relation to the

17 payment of 5,000 Pounds?

18 A. That's correct, yes. He rang me and asked me if I had any recollection and if

19 there were any records and then he asked me if I could find any records if

11:32:03 20 there were.

21 Q. 178 Yes. Now, in his evidence Mr. O'Connor said that in -- as a result of that

22 conversation and he was dealing now with two conversations, one which he had

23 with Mr. McHugh regarding the detail of what took place and one which he had

24 with you. Collectively he said that their recollection was well, precisely the

11:32:29 25 same as mine, that is he found that his recollection had been corroborated by

26 your recollection and that of Mr. McHugh, I should say. But in relation to

27 your recollection of events, can you recall the discussion which took place

28 with Mr. O'Connor and yourself concerning this payment. Firstly, I must ask

29 you, did he put his version of events to you or did he ask you what your

11:33:04 30 recollection was, can you remember?

11:33:07 1 A. He asked me -- he said to me that he had met Mr. Richardson and he asked me did
2 I remember the time that contribution was made.

3 Q. 179 Yes.

4 A. Around about 1992, I think he says, to the constituency office of Mr. Ahern.
11:33:23 5 And I said "I've a very vague recollection of it all right, yes." And then he
6 went on to say that Mr. Richardson had been asking about it and he was
7 wondering if I still had or could find any records of it.

8 Q. 180 You said in the first part of that response, Mr. O'Brien, that the year 1992
9 was mentioned to you --

11:33:48 10 A. Yes.

11 Q. 181 -- by Mr. O'Connor?

12 A. Yes, that's correct.

13 Q. 182 Is that your recollection or --

14 A. Yes.

11:33:52 15 Q. 183 -- may you be in error in that?

16 A. No, he definitely said 1992.

17 Q. 184 Right.

18 A. In fact he said 1992 or 1993, but he couldn't remember which year it was.

19 Q. 185 Okay. So he was unclear in his own mind as to whether it was 1992 or 1993,
11:34:11 20 isn't that right?

21 A. At that stage he was, yes.

22 Q. 186 All right. Did he -- was there any lack of clarity about the amount involved?

23 A. Yeah.

24 Q. 187 The 5,000 Pounds?

11:34:22 25 A. The indication that he gave to me was that it was about 2,000 pounds.

26 Q. 188 I see. So then if that is so, your recollection and his were not precisely the
27 same?

28 A. Well I, my recollection was that we had made a payment, but I couldn't recall
29 the amount.

11:34:43 30 Q. 189 But if you say that he mentioned figures of 2,500 pounds to you and that he

11:34:47 1 mentioned that it might have been 1992 or 1993. Could I suggest to you that
2 there is the considerable and obvious difference between those two accounts of
3 events and that it would not have been -- Mr. O'Connor could not have concluded
4 that your views and his were precisely the same, if that conversation had taken
11:35:10 5 place?

6 A. Well in terms of that detail, yes, but --

7 Q. 190 Well was there any more detail that was discussed? Because on the two details
8 you've given so far they are at odds with his?

9 A. Well there's no further detail but, you know, the detail may be different, but
11:35:28 10 the thrust of the conversation was the same. He was asking me did I recall
11 having made the payment and he was asking me could I find any records on it.

12 Q. 191 Uh-huh. Were you in a position to tell him in that telephone conversation that
13 you had or had not got records?

14 A. I was, I didn't say anything like that. I said "look I'll look into it. It's
11:35:46 15 a long time ago and might not have anything."

16 Q. 192 Right. Well did you in fact look into it?

17 A. I told him to leave it with me and I did have a cursory examination and wasn't
18 able to find any records that were relevant. And I went back to him a couple
19 of months later and informed him of that fact.

11:36:05 20 Q. 193 When you went back to him did you get any more information from him or did you
21 seek any further information from him, which would allow you to possibly
22 identify the documentation, which we now know exists in relation to the
23 transaction in question?

24 A. I didn't seek any further information and I didn't get any further information
11:36:25 25 from him.

26 Q. 194 Right. The information which was in the possession of Mr. O'Connor from 2005
27 to 2006 was apparently the subject of a second discussion, which took place
28 between Mr. Richardson and Mr. O'Connor, in July 2006. And in the course of
29 that meeting Mr. O'Connor says that he informed Mr. Richardson again of the
11:36:59 30 detail of what had taken place and indicated to him clearly that it was an NCB

- 11:37:07 1 payment and not a personal payment. Do you have any recollection in your
2 discussions with Mr. O'Connor of it being suggested to you by Mr. O'Connor that
3 Mr. Richardson believed that it was a personal payment from Mr. O'Connor rather
4 than a payment from NCB?
- 11:37:28 5 A. I have no recollection of that at all. I don't think anything like that was
6 said to me.
- 7 Q. 195 Well when the inquiry was made of you obviously in 2005 you were still in NCB,
8 isn't that right?
- 9 A. That's correct, yes.
- 11:37:40 10 Q. 196 Albeit in a different capacity. Did you understand that the query that was
11 being made of you, by Mr. O'Connor, was one being made of you in the context of
12 NCB having been the funder or the payee, if I might call it?
- 13 A. Yeah, the query was in relation to a payment that NCB had made.
- 14 Q. 197 All right. Does it follow then that the question of there being a personal
11:38:06 15 payment by Mr. O'Connor to Mr. Richardson did not arise at any stage, at that
16 point in time I should say?
- 17 A. It never happened at that point in time, no.
- 18 Q. 198 No.
- 19 A. The first I became aware of any suggestion of an amount being a personal amount
11:38:21 20 was when Mr. Ahern gave his television interview to Mr. Dobson.
- 21 Q. 199 Right. And that we know to have been on the 26th of September of 2006.
- 22 A. That's correct, yes.
- 23 Q. 200 Now, prior to that, Mr. O'Brien, the Tribunal have been in contact with NCB
24 Stockbrokers commencing on the 26th -- sorry, on the 25th of July of 2006. And
11:38:54 25 being followed up on the 26th of July 2006. Querying the question as to
26 whether or not there were any payments made by NCB Stockbrokers to either Des
27 Richardson or to Bertie Ahern and putting NCB Stockbrokers on notice of the
28 fact that an Order For Discovery was being considered. You might recollect
29 that?
- 11:39:20 30 A. I do, yes.

11:39:21 1 Q. 201 It's at page 24750 on screen, please. Here it's stated as follows, "I refer to
2 the above and to my earlier conversation with your Mr. Beresford.
3
4 I confirm I have now been directed to extend the terms of the notice letter of
11:39:46 5 the 25th inst. In the terms set out below. As previously stated it is the
6 view of the Tribunal that it may assist them in inquiries to receive from NCB
7 Stockbrokers Limited all details of payments made to Mr. Des Richardson and/or
8 Mr. Bertie Ahern.
9

11:40:00 10 Accordingly, the members of the Tribunal will on Friday the 28th of July 2006
11 consider whether or not to make an order directing your client to make
12 discovery on oath of and to produce to the Tribunal all documentation in their
13 possession, power or control, including electronically stored documentation
14 relating any payments made to Mr. Des Richardson and/or Mr. Bertie Ahern in a
11:40:23 15 personal capacity or for the benefit of any third party or corporate entity for
16 the period 1st January 1991 to 31st December 1994.
17

18 Such documents and records would include correspondence, memoranda, financial
19 records, bank account documents, including bank statements, lodgements and
11:40:42 20 withdrawal slips, copy cheques, copy cheque stubs, bank drafts, cheque
21 journals, books of accounts. It is necessary to procure documentation from
22 other" -- I think that should read -- "if it is necessary to procure
23 documentation from other sources, such as bank accounts and so forth. This
24 list should not be interpreted as being exhaustive and in the event that such
11:41:04 25 an order is made by the Tribunal the criteria to be applied should be that of
26 all documents relevant to any such payments should be discovered and produced."
27

28 It invited submissions and no submissions were made and an Order for Discovery
29 was duly made on the 28th of July 2006, which we see at page 18423.
11:41:24 30

- 11:41:24 1 Now, ultimately the terms of that order became known to you, Mr. O'Brien, isn't
2 that right?
- 3 A. That's correct, yes
- 4 Q. 202 And you had the benefit of being a party who had been in NCB Stockbrokers,
11:41:40 5 albeit in different capacities, from the inception of the inquiry period here
6 and throughout it, isn't that right?
- 7 A. That's correct, yes.
- 8 Q. 203 From 1991 to 1994. And I think you can probably readily agree with me that
9 there was only one payment ever, as far as you're concerned, to Mr. Des
11:42:02 10 Richardson for the benefit of Mr. Bertie Ahern, isn't that correct?
- 11 A. Well there was only one payment that related to Mr. Ahern. I wasn't aware of
12 any payment for the benefit of Mr. Ahern. I was aware of a payment for his
13 constituency offices.
- 14 Q. 204 Yes. Irrespective of its purpose, it was the only payment made to Mr. Des
11:42:24 15 Richardson and/or Mr. Bertie Ahern either in a personal capacity or for the
16 benefit of any third party or corporate entity, isn't that right?
- 17 A. That's correct, yes.
- 18 Q. 205 So the inquiry insofar as it was capable of being identified by you at the
19 time, was, I suggest, one limited to the payment which we have discussed
11:42:49 20 earlier this morning, that is the one which is evidenced by the documentation
21 which passed through the accounts section of NCB Stockbrokers in 1993 and early
22 1994, isn't that right?
- 23 A. That's correct, yes.
- 24 Q. 206 When you received this document on the 28th of July 2006, the subject of such
11:43:18 25 payment had already been raised by Mr. O'Connor a year earlier and could I
26 suggest that he may well have been in contact with you in 2006 also. You have
27 told us that some months after his initial contact, you got back to him. But
28 I'm not clear as to whether that would have been at the end of 2005 or the
29 beginning of 2006?
- 11:43:44 30 A. I don't recall the date myself.

- 11:43:46 1 Q. 207 Yes.
- 2 A. But, yes, I would have had a contact with him.
- 3 Q. 208 Right in connection with the payment to Mr. Ahern or Mr. Richardson, as the
- 4 case may be?
- 11:43:55 5 A. That's correct, yes.
- 6 Q. 209 Yes. And I think you indicate in the statement that you provided to the
- 7 Tribunal, on the 30th of November 2007, and again in a slightly amended form on
- 8 the 3rd of December 2007. Following upon the making of this order you
- 9 contacted Mr. Des Richardson, isn't that right?
- 11:44:21 10 A. I didn't contact Mr. Des Richardson, no.
- 11 Q. 210 I beg your pardon, an error on my part. You contacted Mr. Padraic O'Connor in
- 12 connection with this order, which was querying a payment to Mr. Des Richardson,
- 13 isn't that right?
- 14 A. I did, yes.
- 11:44:36 15 Q. 211 And we know that this order was made on the 28th of July 2006.
- 16 A. That's correct.
- 17 Q. 212 Notice of such an order being intended to be made was given on the 25th of
- 18 July, which I think may have been the first contact by the Tribunal with NCB,
- 19 isn't that right?
- 11:44:57 20 A. That's correct, yes.
- 21 Q. 213 Can you say whether or not it was after you'd received the order or when you
- 22 received the letter of the 25th, that you contacted Mr. O'Connor? In other
- 23 words was your telephone conversation likely to have been on the 25th, 26th,
- 24 27th or was it in the period 28th onward?
- 11:45:18 25 A. I would expect it was in the period 28th onwards.
- 26 Q. 214 Okay. In either event, you had the order before you, I take it, when you went
- 27 to phone him about it?
- 28 A. I did, yes.
- 29 Q. 215 It was the subject of your discussion with him.
- 11:45:32 30 A. It was, yes.

- 11:45:33 1 Q. 216 And you understood that what was being required of you by the Tribunal, indeed
2 what was being ordered to be done by NCB, was the production of any relevant
3 documentation, isn't that right?
- 4 A. That's correct, yes.
- 11:45:47 5 Q. 217 Now, what discussion did you have with Mr. O'Connor at that time concerning the
6 payment, which you knew to have been made by NCB to Mr. Richardson or to a
7 company connected with him?
- 8 A. Well my conversation with Padraig was to inquire of him if he could remember
9 the name of the company that the payment had been made to, which he wasn't able
11:46:10 10 to do so. I suppose in making the contact, which I felt appropriate to do
11 because he was the managing director of the firm at the time that the payment
12 was made. I was hoping that he would be able to give me the name of the
13 company, which would have facilitated me in my searches.
- 14 Q. 218 But at a minimum, of course, you knew that there had been such a payment in the
11:46:33 15 first instance?
- 16 A. Well I knew there had been such a payment in the first instance, which I had a
17 recollection of and also I had had Padraic on to me the previous year enquiring
18 about it, so I knew it was something that he had been considering since then
19 and it may well have been that his considerations had led to him to identify
11:46:53 20 the name of the company, but he wasn't able to tell me.
- 21 Q. 219 You knew that the payment had been made through NCB.
- 22 A. I did, yes.
- 23 Q. 220 Yes. And as regards somebody who was aware of the nuts and bolts of how one
24 made payments for matters other than stockbroking settlements and the
11:47:18 25 stockbroking side of the business, you knew that these were payments which were
26 recorded under the administration aspect of the banking affairs of NCB, isn't
27 that right?
- 28 A. That's correct, yes.
- 29 Q. 221 And I think you knew that AIB bank had provided the chequing account for that
11:47:37 30 type of expenditure until such time as Ulster Bank acquired NCB Stockbrokers at

- 11:47:44 1 which --
- 2 A. That's correct.
- 3 Q. 222 -- at which time it changed to Ulster Bank having that account, isn't that
- 4 right?
- 11:47:49 5 A. That's correct, yes.
- 6 Q. 223 So that you knew two things. Firstly, that any accounting for this type of
- 7 expenditure, if there was a payment, would find itself being entered in the
- 8 nominal ledger under administration, isn't that right?
- 9 A. That's correct, yes.
- 11:48:06 10 Q. 224 And secondly, that the cheque, the only payments that would be made by NCB
- 11 would be by cheque?
- 12 A. That's correct, yes.
- 13 Q. 225 And that that cheque would have come from the AIB account at the time, isn't
- 14 that right?
- 11:48:20 15 A. That's correct, yes.
- 16 Q. 226 Now, obviously while the discussion you had had with Mr. O'Connor in 2005 was
- 17 one in which there was no compulsion on your part to engage in a process of
- 18 analysing how exactly a payment was made or what its details were, that
- 19 position had altered by the time the Tribunal had made an order directing
- 11:48:49 20 discovery to be made on or before the date set out in the order, isn't that
- 21 right?
- 22 A. That's correct, yes.
- 23 Q. 227 Yes. So what had been possibly a matter that you could voluntarily engage in,
- 24 in order to facilitate a query of the former managing director, the status of
- 11:49:12 25 your inquiry had now altered, isn't that right?
- 26 A. That's correct, yes.
- 27 Q. 228 Was Mr. O'Connor in a position to or did you discuss with him the detail of
- 28 what the payment was at that point in time? In other words, were you
- 29 contacting him to see if his knowledge of events had improved any from the time
- 11:49:38 30 that he had first raised the issue with you a year before in 2005?

- 11:49:43 1 A. I was contacting him in the hope that he knew the name of the entity that that
2 payment had been made to, which was facilitating my search. Because in the
3 order -- for starters the order covered four full financial years and in my
4 original conversation with Mr. O'Connor he couldn't remember whether it was '92
11:50:05 5 or '93 and I couldn't remember what year it was, so I was faced with looking at
6 four years of financial records and I couldn't remember the name of the entity
7 and I couldn't remember the amount. So in that time spectrum it meant that I
8 was going to have to inquire into pretty much every single payment that had
9 been made over four years to see if it was the relevant one or not.
- 11:50:26 10 Q. 229 Well the first thing you knew apparently at this point, Mr. O'Brien, was that
11 the payment was made to a company.
- 12 A. That's correct.
- 13 Q. 230 Isn't that right? And what process had allowed you to conclude then that it
14 wasn't a payment made directly to Mr. Richardson?
- 11:50:44 15 A. Well I didn't know. There was only the one payment that I had a recollection
16 of, which was the one that was made to a company but on foot of receiving the
17 order it did occur to me that perhaps there had been other payments made that I
18 wasn't aware of and that, you know, it was necessary for me to go through
19 extensive exercise as a consequence. But in relation to the one payment that I
11:51:08 20 was aware of, I was trying to see if Mr. O'Connor could recollect the name of
21 the company with a view to honing in on that one quickly.
- 22 Q. 231 You also knew, of course, that Mr. McHugh was the person who was the Financial
23 Director of NCB at the time and that any form of payment would require the
24 approval of a person other than yourself, isn't that right?
- 11:51:34 25 A. That's correct, yes.
- 26 Q. 232 Yes. Now, Mr. McHugh has had and has retained a clear recollection of events
27 from 1993 to the present date, isn't that right?
- 28 A. That's correct, yes.
- 29 Q. 233 Had you contacted him in connection with this payment?
- 11:51:51 30 A. No, I didn't. I did speak to him in, I think, September of 2006, which was at

11:52:00 1 the time that he was retiring from IIU and I phoned him to wish him the best of
2 good luck with his retirement. And in that conversation he mentioned to me
3 that Padraic had been on to him about the payment and so I took the opportunity
4 of asking him in the conversation did he remember the name of the entity that
11:52:21 5 had been used and he couldn't remember that.

6 Q. 234 Well are you saying, Mr. O'Brien, that you had totally forgotten about the
7 whole sequence of events that surrounded the consideration of the invoice that
8 was known to be bogus, the decision to pay on foot of that, the fact that it
9 was paid with VAT, on a cheque that subsequently was returned and required to
11:52:51 10 be the subject of the fresh consideration of a new cheque, a new cheque
11 requisition. Are you saying that all of that was simply forgotten by you at
12 this point in time or --

13 A. Well the events --

14 Q. 235 -- or were --

11:53:05 15 A. The events weren't forgotten. The detail that was forgotten was the name of
16 the company. With respect, it was 13 years earlier and, you know, one is not
17 going to remember the name of an entity that one signed a cheque for 13 years
18 ago, no matter what the circumstances are.

19 Q. 236 Well, one certainly isn't going to have it at the forefront of your mind, I'm
11:53:25 20 quite sure you've written hundreds of thousands of cheques since that time.
21 But we know that there is a very precise system of recording payments
22 maintained by NCB at the time. And today if you were to look for this
23 information, I take it it would be a simple matter of establishing, firstly,
24 what the date of the payment was by reference to, let's say, a month. You
11:53:52 25 would then go in to the cheque journal, the nominal ledger, rather, for that
26 month and go through the admin payments and work out if any one of them was
27 5,000 Pounds?

28 A. Well if one had the month and remembered the month, that would be the case.

29 Q. 237 Sure.

11:54:07 30 A. But the reality here, Mr. O'Neill, is that that level of detail wasn't

11:54:12 1 recollected. And in actual fact, I was only able to find the invoice that I
2 did find on foot of Mr. Ahern's interview with Mr. Dobson. Because Mr. Ahern
3 gave a specific date, which was December 1993. And he said it was 5,000 Irish
4 Pounds. And that narrowed things down for me hugely.

11:54:31 5 Q. 238 Well, could I suggest to you, Mr. O'Brien, that Mr. O'Connor at all times
6 remembered that the amount in question was 5,000 Pounds. Didn't recollect the
7 fact that VAT had ultimately been paid in addition to that sum. But he has
8 indicated to the Tribunal that he was at all times clear that that was the
9 amount of the payment that was made and as far as he was concerned this is the
11:54:59 10 information that he was in a position to impart to you and did impart to you?

11 A. Well he didn't impart that information to me, because when he spoke to me back
12 in 2005 he told me that the amount was about 2,000 Irish Pounds.

13 Q. 239 Yes.

14 A. Not 5,000 Irish Pounds.

11:55:15 15 Q. 240 Yes.

16
17 CHAIRMAN: Mr. O'Neill, it's ten to twelve so we will just take a ten minute
18 break.

19
11:55:21 20 MR. O'NEILL: Sure.

21
22 **THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED**
23 **AS FOLLOWS:**

24
11:55:36 25 **CONTINUATION OF QUESTIONING OF MR. GRAHAM O'BRIEN AS FOLLOWS:**

26
27 MR. O'NEILL: Mr. O'Brien, please.

28
29 CHAIRMAN: All right.

12:12:50 30

- 12:12:50 1 MR. O'NEILL: We'll see, Mr. O'Brien, that whilst the discovery order was made
2 on the 28th of July of 2006, your solicitor sought an extension of time in
3 order to comply with the obligation to discover and that took place on the 4th
4 of September of 2006. If we look to page 24751.
- 12:13:23 5 A. That's right, yes.
- 6 Q. 241 Yeah. You will remember that your solicitor contacted the Tribunal's solicitor
7 on the 30th of August seeking an extension of time in order to comply. "Our
8 client is currently undertaking a search of their records in relation to the
9 documents requested by the Tribunal. The search is ongoing."
- 12:13:43 10
11 Now, in the body of that letter you will see it's stated that, "in addition we
12 would be grateful if the Tribunal could provide any further information to
13 assist our client, in particular with regard to any information which could be
14 provided in relation to the identity of the body corporate or person to whom
15 the payments were made". Isn't that right?
- 12:14:00 16 A. That's correct, yes.
- 17 Q. 242 And at this point, of course, you knew that there had been one payment in any
18 event, you were certain of that?
- 19 A. Correct.
- 12:14:12 20 Q. 243 Whatever about there being any other.
- 21 A. That's correct, yes.
- 22 Q. 244 And you knew that that payment was not made to a person, I suggest, but to a
23 company?
- 24 A. That's correct, yes.
- 12:14:23 25 Q. 245 And do you know was the reference then to persons to whom payments were made
26 intended to cover other payments rather than the one which we are now focussing
27 on?
- 28 A. I suppose the word I would have been using was that I knew that it had been
29 made to an entity.
- 12:14:40 30 Q. 246 Yes.

- 12:14:41 1 A. I wasn't quite sure in my recollection whether it was a limited liability
2 company. Really what I was looking for there was if some assistance could be
3 given to me in terms of identifying companies or entities that Mr. Ahern or
4 Richardson were connected with to facilitate me in my search, because you know,
12:15:02 5 those records, they weren't held electronically, so it was necessary for me to
6 go through a paper search over four full financial years.
- 7 Q. 247 Yes. Now, at this time the Tribunal was conducting its inquiries on the basis
8 of information which had been provided to the Tribunal by Mr. Richardson's
9 solicitors regarding the payment of monies by Mr. O'Connor. At the question of
12:15:35 10 it being an NCB payment as opposed to an O'Connor payment was a matter which
11 would become apparent at a later stage. And at the time that we are discussing
12 now, in August or rather at the 4th of September, the Irish Times had yet to
13 publish its article, which led to the question of payments to Mr. Ahern
14 becoming a public issue as opposed to a Tribunal issue, isn't that right?
- 12:16:14 15 A. That's correct, yes.
- 16 Q. 248 And within that period of time, in other words, you had up until the 30th of
17 September, by reason of the extension given by the Tribunal, in order to comply
18 with the discovery obligation, isn't that so?
- 19 A. That's correct, yes.
- 12:16:30 20 Q. 249 And in advance of that deadline expiring there was an article in the Irish
21 Times on the 21st of September, which broke the story of the Tribunal enquiring
22 into payments which are said to have been made by Mr. Ahern's friends, isn't
23 that so?
- 24 A. Well I don't recall the exact article, but I presume that's correct, yes.
- 12:16:57 25 Q. 250 But you have made reference to the fact that there was a television interview
26 at which Mr. Ahern was interviewed by Mr. Brian Dobson on the 26th of
27 September. Again, some four days short of the discovery period expiring. And
28 to that point in time discovery had not been made, isn't that correct?
- 29 A. That's correct, yes.
- 12:17:17 30 Q. 251 So that events to some extent overtook or perhaps coincided. They being the

- 12:17:25 1 public disclosure by Mr. Ahern that he had received money from Mr. O'Connor.
- 2 A. Yes.
- 3 Q. 252 And the deadline approaching for discovery, isn't that right?
- 4 A. That's correct, yes.
- 12:17:36 5 Q. 253 And do I take it that you became aware from the television interview and
6 whatever coverage that followed on that, that Mr. Ahern was indicating that the
7 payment of 5,000 Pounds was made to him by Mr. O'Connor in 1993?
- 8 A. That's correct, yes.
- 9 Q. 254 And of course insofar as you had information in your own mind at that point in
10 time, while you were uncertain as to the amount and uncertain as to the date
11 upon which the payment was made, you knew that NCB had paid money rather than
12 Mr. O'Connor personally, isn't that right?
- 13 A. That's correct, yes.
- 14 Q. 255 Do you recollect getting back to Mr. O'Connor after the 26th of September and
12:18:28 15 prior to the swearing of your affidavit of discovery in relation to the
16 circumstances of the payment or any documents that there might be?
- 17 A. I don't recollect getting back to Mr. O'Connor, no, no.
- 18 Q. 256 All right. Now, we'll see that the period the 30th of September, I think, was
19 a Saturday and therefore the time would have expired on a Saturday. On the
12:18:54 20 29th there was a letter from your solicitor, at page 24753. In which it is
21 stated "our client's search of its records has taken somewhat longer than
22 anticipated. It is intended however that an affidavit will be sworn and
23 delivered to the Tribunal before the end of next week. We apologise on behalf
24 of our clients for this short further delay".
- 12:19:20 25
- 26 And in fact then the affidavit of discovery sworn by you is provided and it was
27 sworn on the 6th of October 2006, isn't that so?
- 28 A. That's correct, yes.
- 29 Q. 257 And if we look to page 18425 we'll see the affidavit. Paragraph one you say,
12:19:38 30 "I the deponent, director of NCB group Limited, 3 George's Dock International

12:19:45 1 Financial Services Centre, Dublin 1. I am duly authorised by them to make this
2 affidavit on its behalf.

3
4 I refer to the order of the Chairperson of the Tribunal, Judge Alan P. Mahon,
12:19:55 5 is being made herein on the 28th of July 2006 when produced. This order
6 directed that NCB group make discovery on oath and produce to the solicitor to
7 the Tribunal all documents and records in its possession, power or control
8 relating to including electronically stored documentation, any payments made to
9 Mr. Des Richardson and/or Mr. Bertie Ahern in a personal capacity or for the
10 benefit of any third party or corporate entity for the period 1st of January
11 1991 to 31st of December 1994.

12
13 I have caused inquiries to be made and a search to be undertaken within NCB
14 Group Limited. The Order referred to herein does not state with particularity
12:20:18 15 the third parties or corporate entities in relation to which discovery is
16 sought. While diligent and time-consuming inquiries have been made I have not
17 found any documents and records which identify any payments made to Mr. Des
18 Richardson and/or Mr. Bertie Ahern in a personal capacity or for the benefit of
19 any third party or corporate entity for the period 1st January 1991 to 31st
12:21:02 20 December 1994.

21
22 4. Over a period of a number of weeks the aforesaid searches have been made by
23 this deponent and other employees of NCB. A vast number of working hours have
24 been spent on this task. We began by identifying the archival location of the
12:21:21 25 potentially relevant documents and records for the period referred to in the
26 order of the 28th of July 2006. Having identified the relevant archives we
27 located boxes of documents and records for the period 1st of January 1991 to
28 31st of December 1994, these contained significant numbers of lever arch files.
29 In addition, we examined bankers books, bank statements, cheque requisition
12:21:42 30 forms and other materials contained in bank files.

12:21:46 1
2 I have personally examined these documents and records referred to in paragraph
3 four above. As a result I have not found any documents and records relating
4 to, including electronically stored documentation, any payments made by Mr. --
12:22:01 5 sorry to Mr. Des Richardson and/or Mr. Bertie Ahern in a personal capacity or
6 for the benefit of any third party or corporate entity for the period 1st of
7 January 1991 to 31st of December 1994.

8
9 Further, I have caused a list to be obtained from the companies registration
12:22:18 10 office of all companies for which Des Richardson is listed as having been a
11 director. I have not found any documents and records showing any payments
12 during the period 1st of January 1991 to 31st December 1994 to any such
13 company."

14
12:22:38 15 And then you deal with the change of ownership, "NCB group is a company which
16 has changed ownership since 1991, being the commencement date specified in the
17 order herein. Firstly by way of NCB being acquired by Ulster Bank/Nat West
18 group in 1994 and then by Ulster Bank/Nat West group being acquired by Royal
19 Bank of Scotland plc in 2001 and finally by management and staff of NCB
12:22:59 20 acquiring the company from Royal Bank of Scotland in 2003. Furthermore NCB
21 group have changed its off-site documents storage warehousing arrangements
22 around the mid 1990's. In addition the company has changed premises within
23 that time frame. I am unable to state whether there may have been any separate
24 documents answering the description of documents referred to in the
12:23:22 25 aforementioned order. Sworn etc."

26
27 Now, in the body of that affidavit you are swearing, Mr. O'Brien, to the fact
28 that you have considered the documents and records referred to at paragraph
29 four. They were the relevant archives, boxes of documents and records
12:23:46 30 containing significant numbers of lever arch files. In addition you had

- 12:23:50 1 examined bankers boxes, bank statements, cheque requisition forms and other
2 materials contained in bank files.
3
4 Can you say whether or not, in that examination, you considered the
12:24:02 5 documentation with which we opened this morning's session. Were those
6 documents within the bankers boxes, bank statements, cheque requisition forms
7 and other materials.
8 A. They would have been, yes.
9 Q. 258 So you did consider them?
12:24:17 10 A. I did, yes.
11 Q. 259 Right. And why is it then that you did not depose in your affidavit to these
12 documents being the documents which represented the payment to by Mr. Des
13 Richardson via Euro Workforce Limited?
14 A. Because I couldn't identify any connection between the Euro Workforce company
12:24:39 15 and Mr. Richardson or Mr. Ahern. And I had no recollection of the name of the
16 entity and nobody was able to give me the name of the entity.
17 Q. 260 The name I take it, at the end of the day, is always going to be a device,
18 isn't that right, a matter, no matter which way one looked at the analysis of
19 the payment?
12:25:00 20 A. Well it was the payee for the cheque.
21 Q. 261 What you were looking for was confirmation of a known payment to Mr. Des
22 Richardson, isn't that right?
23 A. We knew that we had made a payment to an entity related to Mr. Richardson, but
24 we didn't know what the name of it was, that couldn't be recollected.
12:25:16 25 Q. 262 Yes. You didn't know the name of it, but you knew at this point in time from
26 the correspondence -- sorry, from the public utterances of Mr. Ahern that there
27 had been such a payment made by Mr. O'Connor that the sum was 5,000 Pounds, he
28 said, and the payment was made in December of 1993, isn't that right?
29 A. That's correct, yes.
12:25:43 30 Q. 263 Did that not allow you to focus with some particularity on the amount and the

- 12:25:49 1 period during which you would have to examine the documentation to see whether
2 or not it did or did not represent, whether the documentation generated in that
3 period did or did not represent the payment to Mr. Richardson?
- 4 A. It enabled me to focus on the period and to all payments of that amount in
12:26:10 5 December of 1993. And this particular payment did come to my attention in that
6 review, but I was unable to state with any kind of clarity that it was
7 connected in any way to Mr. Richardson or Mr. Ahern.
- 8 Q. 264 So in swearing the affidavit then no reference was made to any of this
9 documentation, is that so?
- 12:26:31 10 A. That's correct, yes.
- 11 Q. 265 The Tribunal then indicated that it considered that it would be appropriate and
12 helpful to the Tribunal if you would attend for an interview at the offices of
13 the Tribunal and you agreed to do so. And that interview took place on the
14 14th of November of 2006, isn't that right?
- 12:26:55 15 A. That's correct, yes.
- 16 Q. 266 In the course of that interview you were questioned in relation to the
17 investigations that you had carried out in connection with a search for
18 documentation evidencing a payment to Mr. Richardson, isn't that so?
- 19 A. That's correct, yes.
- 12:27:28 20 Q. 267 I think that interview proceeded on the basis that a payment had been made and
21 it was a matter of whether there was documentation to back it up, isn't that
22 right?
- 23 A. That's correct, yes.
- 24 Q. 268 If we could look to page 18437. And this is a transcript of the interview with
12:27:56 25 you, Mr. O'Brien.
- 26 A. That's correct, yes.
- 27 Q. 269 And at question 34 you are asked, "How many cheques per month do you think
28 would have been written out of that account at the time, would it be 50 to 100
29 or less?" And we're talking now about this second account which was to meet
12:28:15 30 expenses incurred by the company.

12:28:16 1 "A: I'd say probably 100

2 Q: Right. And have you looked at the cheque journal for that account?

3 A: I believe I have seen all of the payment records for that account, yes.

4 Q: And in that, are there payments for 6,100 which might be, or is it 6,050 is

12:28:32 5 5,000 and VAT at the time?

6 A: There are.

7 Q: And are there 5,000 Pounds payments as well?

8 A: Yes.

9 Q: And in the year 1993, how many do you think there are?

12:28:42 10 A: Of 5,000 there would be certainly 10. Maybe 1 of 6,050. I don't know.

11 Q: But there are at least one?

12 A: At least one, yes.

13 Q: And have you gone behind those expense accounts to see what invoices back

14 them?

12:28:58 15 A: We have and we have looked at all of them, but we have not been able to

16 ascertain whether Mr. Richardson or Ahern or any of the companies

17 Mr. Richardson is a director of.

18 Q: That you know him to be a director

19 A: If the Tribunal was able to help me in providing any other way or companies

12:29:19 20 Mr. Richardson would have been involved with, that might assist us.

21 Q: Have you checked with all the persons whose invoices you actually have with

22 5,000 Pounds payments in 1993 to see exactly what services they provided to

23 you, NCB?

24 A: All of the services for -- sorry. All of the invoices for 5,000 Pounds I

12:29:40 25 am happy with. Are, you know, commercial contractual type arrangements that we

26 had. I had one payment that if I was asked to speculate, I haven't been able

27 to get an answer to in relation to exactly what it involves. It was paid to a

28 company that is now, was liquidated some years ago and no longer exists, but I

29 haven't been able to trace any connection with Des Richardson.

12:30:08 30 Q: What did that company do for NCB Stockbrokers as far as the accounting

12:30:14 1 records shows? Do you have an invoice from that company?
2 A: I have an invoice from that company which was for a health and safety
3 review.
4 Q: A health and safety review. Have you a recollection yourself of there
12:30:28 5 being a health and safety review at the time, which generated that invoice?
6 A: No, but it was upwards of 13 years ago so --
7 Q: Who would be in charge of health and safety review procedures in the firm
8 at that time?
9 A: At the time we wouldn't have had anybody who was specifically involved in
12:30:47 10 that, in charge of that.
11 Q: So you have no recollection of there being a health and safety review
12 carried out by the company -- carried out, but the company was billed for one
13 and you have the invoice for it?
14 A: Uh-huh.
12:31:03 15 Q: And you paid the amount?
16 A: Yes.
17 Q: And it was paid by cheque?
18 A: Yes.
19 Q: Out of Allied Irish Bank account?
12:31:08 20 A: Yes.
21 Q: And recorded in the company's book as an expense.
22 A: Correct.
23 Q: Did it go -- what category of expense is it shown in?
24 A: As far as I can recall I think it's shown under the heading of maintenance.
12:31:20 25 Q: Maintenance, I see. And that company was never used again by NCB?
26 A: Not to my recollection. I haven't certainly haven't found anything".
27
28 Now, next.
29 "Q: No similar invoice or do you know if there was a similar invoice?
12:31:36 30 A: I haven't seen one.

12:31:37 1 Q: Well do you think there was more than one invoice or not in this company?
2 A: I think there was only one, certainly it wasn't over the period in which
3 you had asked me to look, obviously I haven't looked in any subsequent periods,
4 but I have no recollection of that company."

12:31:56 5
6 Now, throughout this series of questions, Mr. O'Brien, you may take it that the
7 Tribunal had no knowledge of the documentation that we subsequently received on
8 the 24th of November 2006, which shows that in fact the Euro Workforce invoice
9 was the device through which the payment was made. But you had all that
10 documentation and you had focused specifically in relation to that one
11 document, isn't that right?

12 A. Yes, that's correct, yes.

13 Q. 270 And in that focus, I take it, had taken place prior to your swearing the
14 affidavit of discovery, isn't that right?

12:32:35 15 A. It had, yes.

16 Q. 271 Now, in your affidavit of discovery you did not disclose in the affidavit, in
17 the schedule, firstly, you didn't schedule documents which were no longer in
18 your possession, but had originally been in your possession or power, isn't
19 that right?

12:32:55 20 A. So I believe, yes.

21 Q. 272 And the fact of there having been a payment at all by NCB was not revealed in
22 the affidavit of discovery, isn't that right?

23 A. That's correct, yes.

24 Q. 273 Now, the -- in the course of this interview then you were asked specifically in
12:33:14 25 relation to the documentation, which we now know to represent the payment to
26 Euro Workforce, at page 18440. You are asked whether the payment was for 5,000
27 or for 6,050. And you say it was for 6,050. "What's the name of that
28 company?" And your answer is:
29 "A: I would like to need take legal advice as to whether or not I could reveal
12:33:41 30 that because I can't identify it as being a company related to any of the names

12:33:45 1 that are given to me in the order and I can't identify it as a company that
2 Mr. Richardson was a director of. So I am speculating that it might be the
3 payment that was made, but I don't know if it -- I don't know that it's the
4 payment that was made.

12:34:03 5 Q: I mean whatever interests you are protecting from this would be the
6 confidentiality of your client. Well what exactly is it you are protecting.
7 These people are providing a service to you, they are not your clients.

8 A: Correct.

9 Q: Right. They are like a grocer who is sent a bill.

12:34:23 10 A: Uh-huh

11 Q: But you are not happy to give that document without legal advice, is that
12 right?

13 A: Yes.

14 Q: Okay. Do you know of any other relationship with that company or other
15 than it billed you for a service?

12:34:34 16 A: I do not know of any relationship with that company, but you also have to
17 remember that I was not in any way of the top echelon of people in NCB. There
18 could have been arrangements with companies I wouldn't have been aware of and I
19 wouldn't be informed of those and those could be quite confidential
20 arrangements".

21
22 I think we can stop at that point there. Why is it, Mr. O'Brien, even on
23 reflection at this point in time, that you were not willing to disclose to the
24 Tribunal the identity of Euro Workforce?

12:35:15 25 A. Because I had an order from the Tribunal to produce documentation in relation
26 to payments made to entities connected with either Mr. Ahern or Mr. Richardson.
27 And I had no way of connecting that payment with Mr. Ahern or Mr. Richardson.
28 I had a recollection that a payment was made, but I didn't know specifically
29 that that was the exact payment and there was some doubt in my mind as to
12:35:38 30 whether it was the correct one or not. I hadn't been able to find any other

- 12:35:43 1 documentation on it to enable me to eliminate it from my inquiries.
- 2 Q. 274 It was as a result of this disclosure then that there was a subsequent Order
- 3 For Discovery made by the Tribunal and on foot of that discovery, which was
- 4 specifically directed towards the 6,050 Pounds payment that the documentation
- 12:36:09 5 was provided that we saw this morning, isn't that so?
- 6 A. That's correct, yes.
- 7 Q. 275 And you have no doubt and -- now that that is the documentation that related to
- 8 the Richardson payment, isn't that so?
- 9 A. Well having seen other briefs that the Tribunal has provided me, it is clear
- 12:36:27 10 now that that is the payment, yes.
- 11 Q. 276 Well are you saying that until such time as you got the documentation from the
- 12 Tribunal you were still of the view that all of this documentation, which we
- 13 see running from page 178904, that's the invoice, the cheque requisition form
- 14 and all that documentation, that you say that that did not operate to trigger
- 12:36:48 15 your memory prior to receiving documentation from the Tribunal?
- 16 A. I couldn't remember the name of the payee. So, you know, when I produced that
- 17 documentation or when I first became aware of that documentation, I couldn't be
- 18 certain it was the relevant one. You know, I wasn't aware of a health and
- 19 safety review having taken place. I couldn't find any report on one. But at
- 12:37:12 20 the same time, I wouldn't have been surprised if there had been one because at
- 21 various stages in the early 1990's we had examined the possibility of moving
- 22 building on a number of occasions. And it is possible that somebody at a
- 23 higher level than me in the firm might have commissioned a health and safety
- 24 review that I wouldn't have been aware of.
- 12:37:31 25 Q. 277 If they had done so the two people who were likely do have known that, were
- 26 people with whom you were on friendly terms; Mr. McHugh and Mr. O'Connor, both
- 27 of whom who would have been in a position to answer your queries had you put
- 28 them, as to would Euro Workforce had been the company that was used as a means
- 29 of paying Mr. Richardson, isn't that so?
- 12:37:56 30 A. That's right, yes.

- 12:37:56 1 Q. 278 But you didn't contact them?
- 2 A. I contacted Mr. O'Connor and asked him if he could remember if the name was
- 3 Euro Workforce and he said he couldn't remember if that was the name. So I was
- 4 in a bit of a dilemma then because I couldn't identify the company as having
- 12:38:12 5 been related to Mr. Ahern or Mr. Richardson. And having asked Mr. O'Connor if
- 6 he knew, now that I had a payment to a company called Euro Workforce, if he
- 7 could remember if that was it, he said no.
- 8 Q. 279 Well how can that sit, Mr. O'Brien, comfortably with the fact that you do have
- 9 a memory, you say, of discussing the second cheque and the fact that you
- 12:38:34 10 explained to Mr. McHugh that that cheque was being written on foot of the
- 11 invoice, which was a means of making the political donation?
- 12 A. That conversation took place 13 years earlier.
- 13 Q. 280 But you had all of that documentation in front of you in advance of the
- 14 interview with the Tribunal, which allowed you to see that this was the
- 12:38:58 15 instance in which there was a cancellation of a cheque, there was the reissue
- 16 of a cheque, it was all authorised by Mr. McHugh and that is the matter upon
- 17 which you say you have a recollection of discussing with Mr. McHugh the
- 18 circumstances which that invoice was issued. How could you remember that at
- 19 this point in time and not have it triggered by the documentation which was
- 12:39:26 20 before you?
- 21 A. I remember the circumstances of having the discussion, but the name of the
- 22 payee. Like, that level of detail, the date of the cheque and all of that,
- 23 wouldn't have been in my mind.
- 24 Q. 281 I am suggesting --
- 12:39:38 25 A. 13 years had passed.
- 26 Q. 282 I'm not suggesting that it was in your mind. I am suggesting that it was in
- 27 paper in front of you in November of 19 -- in November 2006, the documentation
- 28 which reflected the creation of the invoice, the cancellation of the cheque,
- 29 the reapplication for a second cheque and the fact that that cheque was signed
- 12:40:02 30 and authorised by Mr. McHugh, was all in front of you at the time when you were

12:40:07 1 considering whether or not this was the payment made which was the political
2 donation. I am asking you whether or not none of these items triggered your
3 memory and how that can be compatible with the fact that you do have a memory
4 of those events?

12:40:24 5 A. The sight of that documentation did not trigger a memory of me that "oh, yes it
6 was Euro Workforce, that's the name now I remember." But the circumstances of
7 the payment is something that I do remember and the fact that I would have had
8 a conversation with Chris McHugh at the time about the payment. But the exact
9 details of the payment and the payee is not something -- I mean, there are
12:40:46 10 cheques that I signed last week that I wouldn't remember the payee of.

11 Q. 283 Is there any reason why in your affidavit of discovery you did not indicate
12 that you were aware of the fact that there was a payment, that it had been
13 implemented through the accounts section of NCB, but you did not know what
14 precise documents were used and that you have searched for those documents but
12:41:09 15 you can't find them?

16 A. Well I would have been guided by my solicitors in the preparation of my
17 affidavit and, you know, I had informed them of the circumstances and the
18 documentation that I had found.

19 Q. 284 Would you accept that on the face of your affidavit, certainly there was
12:41:26 20 nothing to indicate that NCB had ever made such payment on foot of an invoice
21 or otherwise, isn't that correct?

22 A. Yes.

23 Q. 285 Thank you. There may be questions from others, Mr. O'Brien.

24

12:41:41 25 CHAIRMAN: Do you wish to ask your client any questions?

26

27 MR. REICHERT: No, Chairman.

28

29 CHAIRMAN: All right. Thank you. All right.

12:42:16 30

12:42:16 1 JUDGE FAHERTY: Yes. I have one question, Mr. O'Brien. You said earlier to
2 Mr. O'Neill that there had to have been a discussion between yourself and
3 Mr. McHugh at some point regarding the method of payment.
4 A. Yes.

12:42:32 5
6 JUDGE FAHERTY: Isn't that correct?
7 A. Yes.
8
9 JUDGE FAHERTY: And I understood you to say that originally you felt, you or
10 Mr. McHugh, that the cheque was going to go to St. Luke's or Fianna Fail.
11 A. Yes.
12
13 JUDGE FAHERTY: Then the invoice for Euro Workforce --
14 A. Yes.

12:42:48 15
16 JUDGE FAHERTY: -- arrived in, is that correct?
17 A. That's correct, yes.
18
19 JUDGE FAHERTY: And what was the nature of your discussions, you say, between
12:42:55 20 yourself and Mr. McHugh about the nature of the method of payment?
21 A. The nature of the discussion was look, it would appear this is how this payment
22 has been effected. That I would have expected that we would have got some
23 paper from either St. Luke's or from Fianna Fail. I don't know why we're
24 getting this now. It doesn't fit very well with me. And I would have also
12:43:19 25 pointed out that the effect, collateral effect, so to speak, of the payment
26 mechanism was that it was now going to cost the company 6,000 Pounds rather
27 than 5,000 Pounds.
28
29 JUDGE FAHERTY: And are you saying that's the discussion that you had with
12:43:34 30 Mr. McHugh is it?

12:43:35 1 A. That's the discussion I had with Mr. McHugh, yes.
2
3 JUDGE FAHERTY: And did you have any further discussion as to this collateral
4 effect?
12:43:46 5 A. I think Mr. O'Connor would have been made aware as well of the fact that it was
6 going to cost 6,000 rather than 5,000, yes.
7
8 JUDGE FAHERTY: And that's a recollection you have, you've always had about
9 the conversation you had with Mr. McHugh, is that correct?
12:44:04 10 A. It is, yes.
11
12 JUDGE FAHERTY: Yes. And Mr. O'Neill was asking you, and I think in your
13 private interview with the Tribunal, for the time period that was in issue here
14 or the time period, either as I understand it and I don't have the exact
12:44:24 15 reference for the private interview now, but it was pointed out to you at that
16 stage that there was one, one invoice that could be 5,000 plus VAT, isn't that
17 correct?
18 A. That's correct, yes.
19
12:44:40 20 JUDGE FAHERTY: And given that you had the recollection of discussing with
21 Mr. McHugh the fact that VAT would have had to go on the 5,000 --
22 A. Yes.
23
24 JUDGE FAHERTY: -- why didn't that allow you at that juncture or indeed
12:44:55 25 earlier, prior to the interview, to say this could have been, we have this
26 invoice, we have this record, this could possibly be it although I'm not sure?
27 A. Well in my searches I was conscious of the fact that VAT could have been an
28 amount that could have been added on. I was looking for that. In my private
29 interview I felt that I couldn't reveal the name on the invoice, because I
12:45:20 30 couldn't attach it in any way to Mr. Ahern or Mr. Richardson. And I wasn't

12:45:25 1 sure that it was the right one. It was just an invoice that I couldn't find
2 any other documentation to support its validity beforehand. I think, you know,
3 in the meeting I was hoping to get some assistance from the Tribunal that if
4 they were aware of any names of entities that Mr. Richardson had been involved
12:45:44 5 in, if they could help me by providing that information so that I could connect
6 it up.

7
8 JUDGE FAHERTY: But you will appreciate that the Tribunal wasn't privy to any
9 dealings back in 1993 or 1994.

12:45:57 10 A. I appreciate that, yes.

11
12 JUDGE FAHERTY: Yes.

13 A. But I --

14
12:46:01 15 JUDGE FAHERTY: But you didn't -- you didn't think to avert, avert in the
16 affidavit to the fact that there was a payment without naming the company?
17 Which was a 5,000 plus a VAT payment within the time period specified?

18 A. I didn't think of averting to that. I'm not an expert on preparing affidavits.
19 I am not an expert on this type of investigation and I was being guided by my
12:46:30 20 solicitors in terms of what needs to go into the affidavit.

21
22 JUDGE FAHERTY: Thank you.

23
24 CHAIRMAN: All right. Thank you very much for attending, Mr. O'Brien.

12:46:40 25 A. Thank you, Chairman.

26
27 **THE WITNESS THEN WITHDREW.**

28
29 CHAIRMAN: That concludes today's hearing. We are sitting tomorrow at half
12:46:49 30 past ten.

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MR. O'NEILL: Yes, half past ten.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

THURSDAY, 6TH DECEMBER 2007, AT 10.30 A.M.