

PART 5

EVASION OF REVENUE OBLIGATIONS: THE SALE OF CMI, SCOTTISH PROVIDENT INTERNATIONAL AND OLD MUTUAL INTERNATIONAL POLICIES

THE SALE OF CMI, SCOTTISH PROVIDENT INTERNATIONAL AND OLD MUTUAL INTERNATIONAL POLICIES

THE BANK, THE COMPANY AND THE LIFE ASSURANCE COMPANIES

The Financial Advice and Services Division

On 1 May 1989, Nigel D’Arcy commenced employment with the Bank, having been recruited by the then Chief Executive, Jim Lacey, to establish the Financial Advice and Services Division (“FASD”) of the Bank to provide a range of independent financial services, primarily in the insurance and investment-related sector, to Bank customers and others. Prior to the establishment of the FASD, such products were sold to Bank customers through managers’ insurance agencies. The Bank acquired the interest in the managers’ insurance agencies with effect from 1 January 1990.

The role of the FASD was to generate income for the Bank from:

- The sale of high value insurance products used for tax planning, business planning and personal financial planning.
- The development through the Bank’s branch network of sales of high volume insurance products such as endowment policies, regular premium savings and protection plans.

Management and Personnel of the FASD

Throughout the period from 1 May 1989 Mr D’Arcy held the position of Head of FASD.

The Bank employed financial services managers whose responsibilities were to obtain referrals for high value insurance products from the Bank’s retail branches and to deal with direct enquiries from the public with respect to such products. The financial services managers reported directly to Mr D’Arcy.

Each financial services manager dealt with a specified group of branches and had a specific sales target of initial commission entitlements on insurance products sold. The remuneration of the financial services managers was by way of basic salary and a performance-related bonus based on the initial commission entitlements earned for the Division by each of them. The financial services managers therefore had a direct and individual potential financial benefit from sales effected by them or attributed to them.

The first three financial services managers commenced employment with the Bank on 1 September 1989 and a further six persons held positions as financial services

managers in the period covered by the investigation. The names of the financial services managers and the periods throughout which they filled that role are:

Beverley Cooper-Flynn	1 September 1989 to 5 June 1997
Michael Fitzgerald	1 September 1989 to 31 July 1997
Alistair Stewart	1 September 1989 to 25 June 1994
Charlie McCarthy	4 December 1989 to 15 June 1998*
Patricia Roche	1 October 1991 to 19 September 1994
Bob Wynne	15 August 1994 to 15 June 1998*
Frank Lynch	15 March 1995 to 15 June 1998*
Gerry Stewart	20 June 1997 to 15 June 1998*
John Bailey	25 August 1997 to 15 June 1998*

*Employed as financial services manager at the date of the Inspectors' appointment.

Both Ms Cooper-Flynn and Ms Roche were granted leave of absence from the dates noted above and were still employed by the Bank at 15 June 1998.

Patrick Cooney was recruited as investment analyst on 4 December 1989 and was appointed investment manager on 1 January 1991, a position he held until 12 July 1996.

Role of National Irish Bank Financial Services Limited

In addition to establishing the FASD, the Bank used National Irish Bank Financial Services Limited ("the Company", "NIBFSL"), a wholly owned subsidiary of the Bank, to account for the income and expenses of the FASD relating to the sale of life assurance and investment type products. The Company, but not the Bank, was authorised as an insurance intermediary under the Insurance Act, 1989, in its capacity as a broker.

The board of the Company, from November 1989 and throughout the remainder of the period the subject of the investigation, comprised senior executives of the Bank and the secretary for the time being of the Bank was the secretary of the Company. However the directors of the Company, *qua* directors, did not consider the affairs of the Company other than in the context of formal approval of the annual financial statements of the Company. None of those engaged in the business of the FASD were employees of the Company.

Relationship of the Bank and the Company with CMI

On 6 March 1990 Mr Cooney and Alistair Stewart of the FASD attended a presentation made in Dublin to a number of banks and investment houses by representatives of CMI Insurance Company Limited and other companies within the CMI Group of Companies ("CMI"). On 16 March 1990 CMI wrote to Mr D'Arcy outlining possible developments between CMI and the Bank "*with a view to providing offshore contracts for your Irish clients*".

The FASD commenced to do business with CMI shortly after receipt of this letter. The nature of the relationship of the Bank and the Company with CMI is evidenced by copy documentation provided to us by the Bank and by CMI which indicates the following:

- On 28 June 1990 Mr D'Arcy, purporting to act on behalf of NIBFSL, applied for the appointment of the Company by CMI Financial Management Services Limited as an intermediary. Mr D'Arcy was not at that time either an employee or a director of the Company.
- On 24 July 1990 Linda Hughes, an administrative assistant in the FASD, as sole signatory, made application for indemnity terms to CMI Insurance Company Limited on behalf of "National Irish Bank Financial Advice & Service Division". The application form stated that, in the case of a limited company, the application must be signed by two directors.
- On 19 May 1993, Mr D'Arcy as Head of Financial Services signed a Terms of Business and Scales of Commission Agreement for a Master Distributor with the CMI Group of Companies and purported to do so on behalf of NIB.
- On 10 September 1993 Mr D'Arcy as Head of Financial Services signed a Terms of Business and Scales of Commission Agreement for an Introducer with the CMI Group of Companies and purported to do so on behalf of NIB.
- On 9 June 1994 Mr D'Arcy as Head of Financial Services completed an application for indemnity terms with the CMI Group of Companies, purporting to do so on behalf of the Company. In this instance the application for indemnity terms was also signed by Bank executives Frank Brennan and Michael Keane, then General Manager – Administration and General Manager – Banking respectively.
- On 26 January 1995, CMI Financial Management Services Limited wrote to Mr D'Arcy referring to the Terms of Business Agreement signed by him on behalf of NIB on 10 September 1993:

Following your recent clarification of name, the Terms of Business Agreement is hereby amended to show the correct name of National Irish Bank Financial Services Limited.

The agreements of 19 May 1993 and 10 September 1993 each stated the role of the Bank in the following terms:

For the avoidance of doubt the introduction of Business in accordance with these Terms of Business does not constitute the Master Distributor (agreement dated 19 May 1993)/Introducer (agreement dated 10 September 1993) a partner employee or agent of the Companies and the Master Distributor/Introducer remains at all times the agent of his client in respect of the Business.

It is evident from the above that while there was confusion as to the identity of the party contracting with CMI, the role of the Bank or of the Company as applicable was that of an introducer of business to CMI.

Relationship of the Bank and the Company with Scottish Provident International

In early 1994, Mr Lacey instructed that, for prudential reasons, the monies deposited by CMI with the Bank (discussed further below) should not exceed a ceiling of IR£20 million. Discussions took place with Scottish Provident International Life Assurance Limited, ("Scottish Provident International"), a company mentioned by Mr Lacey as a possible alternative to CMI, which company had a Personal Investment Portfolio product similar to the CMI Personal Portfolio policy. These discussions led to the Bank entering into an arrangement with Scottish Provident International similar to the arrangement it had with CMI.

Extract from Nigel D'Arcy memorandum to Kevin Curran, Regional Manager North West, dated 25 March 1994:

Our business with CMI is substantial and, as a matter of prudence, we have set up an arrangement (virtually identical to the CMI arrangement, vis-à-vis deposits etc) with Scottish Provident International to split new business. The CMI and SPI arrangements will run in tandem (one does not replace the other).

An agreement dated 31 March 1994 between Scottish Provident International and the Company was signed on behalf of Scottish Provident International on 5 April 1994 and was signed on behalf of the Company by Mr D'Arcy on 22 April 1994. Mr D'Arcy was not at the time either an employee or director of the Company.

Relationship of the Bank and the Company with Old Mutual International

Mr D'Arcy, purporting to act for and on behalf of the Company signed a Terms of Business Agreement with Old Mutual International (Guernsey) Limited ("Old Mutual International") on 25 September 1996.

Only one policy was effected with Old Mutual International through NIB.

Authorisation of CMI, Scottish Provident International and Old Mutual International to carry on business in the State

No insurance undertaking may carry on business in the State unless it is the holder of an authorisation from the Minister for Enterprise, Trade and Employment. In the case of life assurance business, this regulation has been in force since at least 1984 (see Article 4 of the European Communities (Life Assurance) Regulations, 1984 (S.I. No. 57 of 1984)). This obligation is now imposed by Article 6 of the European Communities (Life Assurance) Framework Regulations, 1994 (S.I. No. 360 of 1994). Neither CMI Insurance Company Limited, Scottish Provident International nor Old Mutual International was authorised to carry on life assurance business in the State at any time in the period up to 15 June 1998.

THE LIFE ASSURANCE PRODUCTS

General

The Scottish Provident International policy shared the key features of, and was promoted in the same manner as, the CMI Personal Portfolio product. Therefore, while the focus hereunder is on CMI products, references to the marketing and sale of CMI products are to be taken as references to the Scottish Provident International product also, and the references to CMI in the Inspectors' conclusions at pages 115 and 116 are likewise to be taken as referring to Scottish Provident International also.

Nature of CMI Products sold by FASD

The FASD introduced life insurance business to CMI on behalf of its clients in the period from March 1990 to 29 January 1998, the date from which the Bank withdrew the CMI policies from sale.

The principal life insurance policies for which introductions were made to CMI by the FASD were as follows:

- Emerald International Portfolio
- CMI Premier Bond
- CMI Personal Portfolio
- CMI Passport – Wealthbuilder Plan

Emerald International Portfolio

The Bank formally launched the Emerald International Portfolio, a broker bond based on the CMI International Portfolio Bond underwritten by CMI, in July 1990, a number of policies having been “sold” by the FASD prior to that time. The Emerald International Portfolio was a fund of funds geared to medium to long term capital growth and was dependent upon the performance of world equity markets.

From the outset, publicity for the product noted the advantages, so far as concerned probate on the death of the policyholder, of having the policy assigned to a trust. The principal advantages of the trust were that the policyholder could during his lifetime enjoy the benefits of the policy and effect partial or complete surrenders of the policy. The trust allowed the policyholder(s) as settlor(s) of the trust to retain the beneficial ownership of the policy while vesting the legal ownership of the policy in the trustees of the trust. Accordingly, on the death of the policyholder (or in the case of joint life policies, on the death of the last policyholder to die), there is no transfer of legal ownership and the trustees can therefore hold the trust fund on trust for the beneficiaries nominated by the settlor without the need for probate.

Illustrative evidence includes:

Extract from sales brochure issued by FASD:

TRUST DEED ADVANTAGES

Investing in the Emerald International Portfolio has the added advantage that through a trust deed mechanism we can ensure that your beneficiaries will receive the proceeds of your investment immediately on death with no probate requirement.

Extract from Nigel D'Arcy memorandum to senior management of the Bank, dated 11 July 1990, attaching copy of note sent to all branch managers on 4 July 1990:

TRUST DEED ADVANTAGES – EXTREMELY IMPORTANT

*Investing in the Emerald International Portfolio has the added advantage that through a trust deed mechanism, intended beneficiaries will receive the proceeds of the investment **immediately on death** with no foreign probate requirement. This is vitally important since many overseas deposit accounts cause untold probate delays and problems.*

Extracts from a report prepared by Alistair Stewart for customers at the time of their investment in the Emerald International Portfolio:

[Customers have a] sum of money currently on sterling deposit to be invested for long term growth and security. Confidentiality and the continuation of the investment in the event of the death of [the customers] is of vital importance.

...

It would be our intention to assume that, in making these investments that confidentiality and the continuance of the investment are assured i.e. that whatever circumstances happen in the future, this portfolio will carry on and not have to go through any probate process. This I believe together with the investment strategy as outlined, will insure the growth and security of [the customers'] investment.

It is suggested in Mr D'Arcy's memorandum of 11 July 1990 that the advantage of creating a trust was that it prevented the delay that could occur if probate had to be obtained before the beneficiaries could access the funds. There is no doubt this was one of the advantages but in the opinion of the Inspectors an equally if not the more important one from the investor's point of view, and this would have been known to Mr D'Arcy, was that the absence of the need for probate meant that the funds could be kept concealed from the Revenue Commissioners. This is the clear inference to be drawn from the following statement in a number of letters sent by Ms Cooper-Flynn to customers in 1991 in regard to the Emerald Prosperity Fund. In referring to the fact that the money could be paid out to the beneficiaries without going through probate, she states:

This facility removes any risk involved in distributing [the customer's] money on death.

With the downturn of world equity markets in early 1992, many of the Bank's clients were concerned at the volatility of the Emerald International Portfolio and wished to have their monies otherwise invested. As the funds invested in the Emerald International Portfolio had failed to attain what was regarded by the Bank as "critical mass", the fund was exposed to sudden unit price fluctuations upon any large encashment of units in the fund. Accordingly, the FASD decided to close the Emerald International Portfolio funds and to recommend to holders of units in these funds that they switch their investments to other CMI managed funds.

CMI Personal Portfolio

The CMI Personal Portfolio is a whole of life assurance policy underwritten by CMI in the Isle of Man. Although the contract provides the minimum life cover so as to be considered a contract of life assurance, its primary purpose is as an investment vehicle. The choice of investment content within the CMI Personal Portfolio is under the control of the policyholder or that of his appointed advisor. A distinct and identifiable portfolio is created for each policyholder. The FASD was invariably appointed investment advisor to the policyholder and CMI acted upon the instructions of FASD personnel in relation to the initial investment of CMI Personal Portfolio funds and in relation to any change in the manner in which the funds were to be subsequently invested.

The CMI Personal Portfolio was part of the normal product range offered by CMI and was made available for sale through the FASD in 1991, with the first policy being effected in the first half of that year.

There was no formal launch by the FASD of the CMI Personal Portfolio, or of any CMI single premium product other than the Emerald International Portfolio. The CMI Personal Portfolio was introduced to branch managers of the Bank in 1992 through presentations made by FASD financial services managers, often accompanied by Richard Marshall, CMI area manager for Ireland.

When the CMI Personal Portfolio policies were first sold by the FASD, the funds were typically invested outside the Bank, in CMI managed funds and in other

investments. From 1992, the majority of funds invested in CMI Personal Portfolio policies were reinvested on deposit with the Bank and this was known to senior management of the Bank.

A significant portion of the income of the Company in the year ended 30 September 1992 consisted of commissions earned on business introduced to CMI. The greater part of the income of the Company in the years ended 30 September 1993 and 30 September 1994 consisted of such commissions.

Investor Targeting and Assurances of Confidentiality

The Inspectors are satisfied that at least from the second half of 1992 the CMI Personal Portfolio policy was mainly targeted at persons who had funds undisclosed to the Revenue Commissioners and was promoted in a manner that made it attractive to such persons.

The Product Features Sheet used by some of the FASD financial services managers was in the following form:

CMI PERSONAL PORTFOLIO

Advantages

1. *Confidentiality (sic)/Security*

Deposit is transferred out of existing account and re-invested in the names (sic) of a holding company. Therefore clients names does (sic) not appear on any account.

2. *No Probate requirements*

Investment is written in trust i.e. client can decide on day one who the beneficiaries will be in the event of his death. All the beneficiaries need to supply is a death certificate and the investment will be released.

3. *Cautious Investment*

The client can have the funds invested in the exact same deposit account as he is in presently and at the same rate or he can choose any other sterling deposit account anywhere in the world.

4. *Tax Free*

All returns are paid gross.

5. *Accessibility*

Client can draw an income if he wishes.

6. *Quarterly Valuations provided*
7. *The portfolio can also invest in shares, unit funds, bonds and deposit accounts.*

The advantages at the top of those listed – “Confidentiality/Security” and “No Probate requirements”, would clearly have been of particular interest to persons with undisclosed funds and they were reiterated regularly in reports prepared for prospective customers by some of the FASD financial services managers.

The full text of the Product Features Sheet is reproduced at Appendix 10.

The advantage of “no probate requirements” is spelled out as follows in one of Alistair Stewart’s reports dealing with the Personal Portfolio product:

... thus avoiding the possibility of such monies being included in any Inheritance Tax calculations.

It could hardly have been stated more clearly that the advantage was the possibility of evading tax.

The advantage of “no probate requirements” is also stressed in the following extracts from a report prepared for a prospective investor by Patricia Roche:

BANK DEPOSIT ACCOUNT

- (C). *In the event of the death of any of the named person (sic) to an account a “Grant of Probate” would be required. This automatically notifies the Capital Taxes Office of the existence of certain assets. ...*

As confidentiality and continuity of your capital is of paramount importance to you, I would suggest that you consider changing your existing approach to your deposit account. Instead of holding the deposit account directly in your own names you should transfer the monies into a Trust, which you own and of which you would be beneficiaries. ...

An important feature of the portfolio is the trust facility, which ensures that a “Grant of Probate” is not required in the event of death. ...

The full text of this report is set out at Appendix 11.

In an earlier letter from Ms Roche to a customer, written in May 1992, comparing a Scottish Provident Investment Bond with an investment in Post Office Savings Certificates, the advantage to be gained from avoiding probate is again shown to be that complete confidentiality is assured. It is stated in the letter that in the case of investment in Post Office Savings Certificates “*confidentiality is not complete*” because “*in the event of the death of the Bond holder where Bonds to the total value of £5,000 or more are held, either a Certificate of Clearance from the Capital Taxes Office or letters of administration or a Grant of Probate are required*”.

Apart from what is to be found in the Bank's documentation, the Inspectors are satisfied from the evidence of investors and some of the FASD financial services managers that, as part of the promotion of the CMI Personal Portfolio, a guarantee was given that the investment was confidential and that the Revenue Commissioners would never get to hear of it. The latter part of the guarantee may not always have been stated expressly, but that it was implied was quite clear.

The Investment Checklist

Even before the CMI Personal Portfolio began to be promoted as a means of tax evasion, whether or not funds for investment in single premium policies had been declared to the Revenue Commissioners was a matter of interest to the FASD.

At the time of the introduction by the FASD of the Emerald International Portfolio there was in existence an investment checklist introduced by Patrick Cooney on 28 February 1990. Mr Cooney requested that this checklist be completed by the FASD financial services managers in respect of all single premium investment recommendations and returned to Mr Cooney. The completion of the investment checklist, *inter alia*, required the financial services managers to reply to the following question:

Is the money declared?

Yes/No.

Copies of investment checklists for four parties who invested in the Emerald International Portfolio each record "no" as answer to the question "*Is the money declared?*" One of the investment checklists includes the notation "*very hot*", and another investment checklist notes that the person is "*Ripe for the New Fund*".

Questioned as to the significance of this question, Mr Cooney at interview with the Inspectors stated:

Is the money declared and that would have meant money declared, is it declared in their tax returns. That could be an investment like post office, unit linked funds, such investment did not have to be declared in a person's tax returns. That would be what that is there.

Mr Cooney was questioned as follows on the recorded response referred to above:

Inspector: What does "very hot" mean?

Mr Cooney: That would mean a very hot prospect. It would mean that this is a client who is ready to go.

Inspector: It wouldn't mean "very hot" from a revenue perspective?

Mr Cooney: No, it is very easy in hindsight to look at these things when we looked back at our division.

Coincident with the launch of the Emerald International Portfolio, Mr Cooney in a letter dated 30 July 1990 which accompanied the monthly investment bulletin to the FASD financial services managers stated:

Finally, we have the people who have money invested offshore already or whose money is "Hot". In this scenario, we should in almost all cases, direct the monies into our New Bond, "The Emerald International Portfolio"...

Mr Cooney was asked to explain the term "hot" in the context of this letter:

Inspector: Could I just ask then in relation to the second last paragraph where you say "finally, we have the people who have money invested off-shore already but whose money is hot". What would you have meant by that?

Mr Cooney: Hot prospects.

The model Investment Checklist with accompanying note from Mr Cooney, together with five completed examples of the Checklist, are reproduced at Appendix 12.

Mr Cooney's letter of 30 July 1990 is reproduced at Appendix 13.

Scottish Provident International and Confidentiality

In discussions with representatives of Scottish Provident International the issue of confidentiality was also raised.

Illustrative evidence:

Extract from minutes of meeting between Nigel D'Arcy and representatives of Scottish Provident International on 1 March 1994:

ND'A confirmed the following points regarding the bank deposit business:

- *Confidentiality is a key selling point along with flexibility.*

Extract from note dated 27 January 1995 from a representative of Scottish Provident International to the FASD:

Following my meeting with Charlie [McCarthy] and Michael [Fitzgerald], they have both raised concerns over the use of Telegraphic Transfers. As you know there is some question mark over the visibility of TT's.

If you receive two pieces of business from the branches, both accompanied by drafts, but one case is grey money and the other is clean declared money. The drafts are both written out to NIB and have to be cleared in Dublin. You will then raise TT's to go to the Isle of Man.

The question both Charlie and Michael have is: Which account will the drafts go in to and from which accounts will the TT's come from? The point they are making is that if both clean and grey money are mixed together and there was an investigation by the Revenue, the clean money could actually expose the grey money.

Extract from letter dated 23 October 2000 from the same representative of Scottish Provident International to the Inspectors:

Grey money in the context of my discussions would have referred to funds or investments not entering or having entered a tax system. This would not imply that the funds or investment would not enter the tax system, although there may be occasions when this was not necessary at that stage, for example a foreign national temporarily residence (sic) in Ireland in receipt of foreign emoluments etc. We would not have received information regarding clients, or potential clients, funds (sic) as this would have been between the advisor (NIBFS) and the client.

Obligation to make Returns to the Revenue Commissioners

The assurances of confidentiality given with respect to the CMI Personal Portfolio policies effected on or after 20 May 1993 did not take account of the obligation of the Bank or the Company to make a return of such sales to the Inspector of Taxes. It appears that none of the FASD financial services managers had been instructed by FASD management of those provisions of the Finance Act, 1993 which oblige any Irish resident person acting as an intermediary in connection with the issuing of a foreign life assurance policy on or after 20 May 1993 to deliver a return specifying the following details of each resident in respect of whom it has acted:

- The full name and permanent address of the resident.
- The resident's tax reference number.
- The full name and address of the relevant person with whom the foreign policy was entered into.
- The date on which the policy was entered into and the amount of the premium payments made under the policy.

These provisions were originally introduced by Section 24 of the Finance Act, 1993, which inserted Section 20A in the Capital Gains Tax Act, 1975. This latter Section subsequently became Section 594 of the Taxes Consolidation Act, 1997 which applies the provisions of Section 895 of the Taxes Consolidation Act, 1997 with relevant amendments.

The return must be submitted by the intermediary company in respect of each chargeable period in which it has acted as an intermediary, within nine months after the end of the relevant accounting period of the company.

The Bank did not include details of the sale of CMI, Scottish Provident International or Old Mutual International life assurance policies in any such return made at any time prior to the news media allegations in January 1998.

THE PURPOSES FOR WHICH THE CMI PERSONAL PORTFOLIO WAS BEING USED

Mr D’Arcy’s Evidence

Mr D’Arcy, in evidence which the Inspectors accept, confirmed to them that he was aware that the CMI Personal Portfolio was being used for a purpose for which it was not intended:

Inspector: Now, in the course of our investigation we have received evidence that the purposes behind the sale of the CMI policy included benefits for the bank as follows; “(a) The retention of deposits, the regularising of bogus non-resident deposits, the earning of commission for the bank, the securing of new deposits for the bank, finding a safe haven for Revenue-sensitive funds.”

Now, would you say that that is a fair summary of how CMI was seen by branch managers, senior management within the bank and by people in the FASD division?

Mr D’Arcy: ... yes, that would be fair, if you are not time-specific.

Mr D’Arcy’s response, acknowledging the different purposes behind the sale of the CMI policies, was confirmed by evidence from other sources.

Each of the purposes, together with evidence relevant to each, will be dealt with separately.

“Finding a safe haven for Revenue-sensitive funds”

Evidence of FASD Personnel

FASD personnel have told Inspectors that they did not consider it was incumbent on them to refuse to do business with persons whose monies had not been declared to the Revenue Commissioners, and they considered CMI was a suitable investment for people with such monies.

Illustrative interview evidence, which the Inspectors accept:

Patricia Roche

Ms Roche: Generally speaking, at the sales meetings – I use the phrase “Revenue sensitive” when I am talking to you – but most of the time we would just have discussed hot money and that was a

term that was freely used at sales meetings. That would not have been unique to me.

Inspector: If the expression, "hot money" had been used at the sales meetings, why would you have related that to the Revenue?

Why would you not have regarded it as a hot prospect?

Ms Roche: It might have been a hot prospect as well, but I would have understood, and I don't think I am being presumptuous when I say that we would all have understood, that hot money was in respect of moneys that people had not declared or that they were concerned about the Revenue becoming aware of.

And later

Ms Roche: The way we might have talked about this product is that the beauty of it is that an individual can still have his deposit and it is now confidential, they don't have to worry about the Revenue discovering it, they are avoiding the DIRT on it and in the event of death there is no probate. We were all talking about people living here, it was not a case that these were all non-residents.

Inspector: ... the advantage effectively, that would have been explained to you before you went out on the road to sell the product would be, effectively, that once the investment was made, the Revenue would never get to hear about it?

Ms Roche: Yes. It may not have been articulated in exactly those terms but that it was the perfect home for hot money, that type of term would have been used.

And later

Ms Roche: My own peace of conscience of the whole thing, because I recognised from the beginning that it wasn't kosher, was that it wasn't really a matter for me to concern myself with the tax affairs of individuals, that it was a legitimate investment product in itself and it was up to the individuals to act as their own moral conscience and return it or not return it.

Patrick Cooney

Inspector: ... would you have become aware of the fact that some of the moneys invested in CMI was money that hadn't been declared to the Revenue?

Mr Cooney: No, that wasn't my job.

Inspector: *And did you regard it as anybody else's job?*

Mr Cooney: *No. No, it wasn't anybody else's job.*

Beverley Cooper-Flynn

Inspector: *In relation to CMI Personal Portfolio policies ... were you aware of the source of funds?*

Ms Cooper-Flynn: *Not generally but, at times, it did become apparent. But not generally. Source of funds really wasn't an issue for me. I was an investment advisor.*

Nigel D'Arcy

Inspector: *So in other words when you speak about the culture of that time by that you mean accepting undeclared funds for investment?*

Mr D'Arcy: *I would think that whether they were going into deposits or anything else, I would say, I would say yes.*

Inspector: *Where as a result of your making enquiry or otherwise you became aware that funds for investment in CMI Personal Portfolio policies or other single premium policies were undeclared to the Revenue Commissioners did this knowledge have any effect on your decision to allow FASD sales consultants to sell or not to sell a policy to the particular person or did it have any effect on the type of policy that they would recommend to the customer?*

Nigel D'Arcy: *It generally would not have had an effect.*

Charlie McCarthy

Inspector: *The selling point was that this was totally confidential ... and at the end of the day there were no probate requirements ... Now if you put the two of those together, right, would you think that that product would be of interest to somebody who had money that was undeclared to the Revenue?*

Mr McCarthy: *Probably.*

And later

Inspector: *... is it right, Charlie, to say that you didn't regard it as your business ... to find out what the source of funds were (sic) as to whether it was resident, non-resident, fictitious, bogus or hot ...*

Mr McCarthy: *Yes.*

Alistair Stewart

Inspector: If, say, I have the money on deposit with the Northern Bank in Belfast, would you ask me why it was in Belfast?

Mr Stewart: No, that wasn't part of my brief. We were there to extend investment advice. If you were to start asking clients those questions I don't suppose they would hang around.

And later

Inspector: [Would you say] something like: "if the money is not declared to Revenue, CMI would be a good haven for it". Is that correct?

Mr Stewart: Yes ... It was an option but not the only one.

Bob Wynne

Inspector: [Did you] concern yourself in relation to what the source of funds were (sic)?

Mr Wynne: ... no I didn't.

Evidence of Bank Managers

Some branch managers also were of the view that CMI was a suitable investment for people with undeclared funds. Illustrative evidence from branch managers, which the Inspectors accept, includes:

Inspector: So at the time, at the meeting then, Mr [manager name], ... did you come away with a view that this product, CMI, may have been attractive to people who had not declared their income to the Revenue Commissioners?

Branch Manager: Yes.

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Inspector: Did you target people who had money in Northern Ireland or elsewhere, outside the jurisdiction, as potential customers?

Branch Manager: I understood that they would be suitable for CMI.

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It [the CMI product] was marketed at people who had sensitive money ...

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Inspector: So the big benefit, the real big benefit of CMI?

Branch Manager: No name.

Inspector: The Revenue never get to hear about it?

Branch Manager: Yes, of course.

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Inspector: After this briefing with the people from CMI and the FASD the understanding was that if people invested in CMI the Revenue would not get to hear about it?

Branch Manager: I would have to say that that is what I understood.

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While the CMI Personal Portfolio policy was targeted principally at customers of the Bank, many of whom held bogus non-resident accounts or fictitious or incorrectly named accounts in the Bank, certain persons who were not customers of the Bank but were known to have funds which were not disclosed to the Revenue Commissioners were also approached with a view to investment in CMI Personal Portfolio policies.

Customers – Revenue-related matters

The Inspectors interviewed 135 persons who had invested in CMI policies and 4 who had invested in Scottish Provident International policies. Many interviewees indicated that the funds invested had not been declared to the Revenue Commissioners and were on deposit with the Bank in a bogus non-resident account, a fictitiously named account from which DIRT was being deducted, or a fictitiously named bogus non-resident account. Their evidence was to the effect that the CMI policies were promoted by the Bank as an investment which was wholly confidential and would never become known to the Revenue Commissioners, and also that, if the policy was assigned to trustees, the beneficiaries named by the investor would, on the latter's death, be able to have the funds released to them on the production of a death certificate, thereby avoiding the necessity of probate having to be obtained.

Reports of the Revenue Commissioners

That a substantial proportion of the monies invested in the Personal Portfolio had not been declared to the Revenue Commissioners is made clear by the annual reports of the Revenue Commissioners, the most recent of which covers the year ended 31

December 2003. The Report sets out the position in its “*Clerical Medical Insurance – National Irish Bank Scheme*” investigation as follows:

<i>Cases originally targeted for investigation</i>	452
<i>Investigations concluded by end 2003</i>	395
<i>Cases settled</i>	285
<i>Total collected (tax, interest and penalties)</i>	€42.5 million
<i>Cases finalised with no additional liability arising</i>	110

The remaining 57 cases are the subject of ongoing investigations, in respect of which €4.78 million has been paid on account.

“Regularising of bogus non-resident deposits”

Illustrative documentary evidence includes:

Extracts from an attachment to a memorandum of 17 August 1994 from Geoff Bell, Head of Management Services, to Frank Brennan, General Manager, copied to Michael Keane, Paul Harte, Patrick Byrne and Nigel D’Arcy:

Background

Scheme launched several years ago by Financial Advice and Services Division (FASD) whereby funds are invested for Irish residents by insurance company based in the Isle of Man (Clerical Medical International – CMI) in deposits, securities or stocks and shares in accordance with individual customer’s requirements. Funds are introduced by FASD and client confidentiality is of the utmost importance. As part of the scheme CMI reinvest the Irish pound investments in the originating NIB branch. ...

OPERATION OF CMI DEPOSITS AT PRESENT

BRANCH

Customer decides to invest in CMI following advice from FASD. Funds may be an existing branch deposit or other but are usually of sensitive nature. Confidentiality a prerequisite in investment.

Extracts from a report produced by NAB Group Audit entitled “Development, Launch, Marketing and Selling of the CMI Personal Portfolio Product” dated 22 April 1998 (“the Washusen Report”):

There is evidence to suggest that certain senior managers at the time were aware of NIB accounts containing funds which were ‘sensitive’ ... and that the CMIPP product was being used by some branch managers to disguise the ownership or status of the money contained therein.

An attachment to the Washusen Report addresses the term “*sensitive*” as follows:

The term ‘sensitive’ has been frequently used in interviews and appears in some documentation. Those interviewed have expanded on this term with phrases such as ‘being of doubtful provenance, probably for tax related reasons’.

Illustrative evidence, which the Inspectors accept, received at interviews of senior Bank personnel, includes:

Frank Brennan

Inspector: ... doesn’t that indicate that as far back as ... 17 of August 1994, that you must have been aware that sensitive funds were being channelled into CMI?

Mr Brennan: ... yes, I would have read that at the time, presumably, yes.

Nigel D’Arcy

Mr D’Arcy: It [CMI Personal Portfolio] was just another product on a panel but it was seized upon, it was seized upon. I think it was probably, I did discover quite, as I say, in 1992, that it was being used perhaps in a way which wasn’t intended and ...

Inspector: - and what way was that?

Mr D’Arcy: Well, I mean I think it’s quite clear, it’s being used for, you know, with sensitive funds or deposit accounts ... which were not accurately classified.

And later

Mr D’Arcy: ... it was quite obvious that, that there were a lot of non-resident accounts that were not genuine non-resident accounts and shouldn’t have been classified as such in the first place and obviously there is a linkage between that and CMI product.

Similar evidence, which the Inspectors accept, was received from branch managers:

It [the CMI product] was marketed at people who had sensitive money to put it nicely, ... People with hot money to put it bluntly.

oooOooo

There was an understanding, as I had it anyway and I think it was widespread, that any accounts ... that you couldn’t stand over from the point of view of names or residential status to have them regularised [by introducing them to the FASD for investment in CMI].

oooOooo

I would have told [financial services manager] the status of it [the account] at the time ... And that we were endeavouring to have it changed.

oooOooo

Inspector: Did you have in your branch ... a number of accounts that you would have regarded as sensitive, being defined as monies that were not declared to the Revenue?

Branch Manager: I would have suspected, yes.

Inspector: And did you then target those accounts as possible candidates or customers of CMI?

Branch Manager: Yes.

oooOooo

Well I may have asked him to regularise the account, he may not have been happy to do that and then I may have asked him to speak with our Financial Services Division to see was there anything else that could be done for him.

oooOooo

It was one way of regularising these accounts that needed to be regularised ...

oooOooo

It was implied that it was something which might facilitate people who had non-resident money.

oooOooo

Inspector: What would happen if you became aware of the fact that there was ... a bogus non-resident account ...?

Branch Manager: ... they would be the people that I would be considering for CMI.

Inspector: And why would you have regarded CMI as regularising the position? Is that something you conceived of yourself or is that something that somebody else told you?

Branch Manager: Well, that's how the product was introduced to us.

oooOooo

I cannot remember it being targeted specifically at non-resident deposits but it looks very much to me as if it was geared towards that type of thing.

oooOooo

There was no question now about him [customer] being resident. We had his money, we had to do something about it and I would have referred him to FASD.

Inspector: Finally, what was the reason you introduced all of these customers to FASD?

Branch Manager: They were non-resident accounts that we wanted out of the branch.

oooOooo

The beauty ... was this product was available to people who had always [had] ... sensitive funds or funds that may not have been declared to the Revenue. This was the last chance of tidying up any such accounts, it would take the customer's name out of the equation.

oooOooo

Inspector: Why were these accounts swept into CMI?

Branch Manager: To tidy them up ... This was a way of removing them from the normal deposits that were held at the branch.

oooOooo

Inspector: And can you recollect what the FASD people said to you about the product?

Branch Manager: My recollection is that it was a Bond, an investment portfolio that was offshore and on my understanding was that essentially it legitimised any so-called bogus non-resident accounts that may exist.

oooOooo

... there is no doubt in my mind ... it [the CMI product] was there to tidy up the bogus non-resident accounts

oooOooo

The use of CMI policies to regularise bogus non-resident accounts was also discussed with FASD financial services managers; interview evidence included the following, which the Inspectors accept:

Charlie McCarthy

Inspector: If the bank had a bogus non-resident account and senior management was insisting that the bank manager get rid of it. In those circumstances, wouldn't the bank have been at risk of losing the deposit?

Mr McCarthy: Yes

Inspector: ... wouldn't that be one of the circumstances in which CMI would enable the bank to keep the deposit?

Mr McCarthy: Maybe so, yes.

Patricia Roche

Inspector: Were you aware that some branch managers were trying to disguise the ownership of money by using the CMI personal portfolio product?

Ms Roche: ... it would have been my understanding, because of conversations leading up to the investment taking place, perhaps, that that was essentially the purpose of the investment.

“Retention of deposits”

Illustrative documentary evidence:

Extract from Nigel D'Arcy memorandum to Kevin Curran, Regional Manager North West, dated 25 March 1994:

As you are aware, our relationship with CMI has been extremely successful on two counts:

Protecting deposits which would otherwise be lost to NIB (as well as attracting new deposits into the network)

... ..

Extract from Nigel D'Arcy letter to Inspectors, received 10 July 1998:

The Bank's original rationale for the Financial Services Division was to provide a range of independent financial services as opposed to own manufactured products, primarily in the insurance and investment related

sector, and also to keep monies within NIB control where they were in danger of being lost, particularly deposits.

Branch responses relating to fictitiously named accounts:

The declarations to Paul Harte from branch personnel referred to at page 68 in Part 3 of the report, dealing with fictitious and incorrectly named accounts, contain notations such as “*To call and arrange transfer to CMI*”. It is a reasonable inference that this was a way to retain deposits within the Bank.

Illustrative interview evidence from senior Bank personnel and FASD financial services managers, which the Inspectors accept:

Kevin Curran

It had been indicated by Head Office that CMI had agreed with the bank to replace any funds lodged with them on foot of insurance policies or bonds with the bank and that the bank would allocate those funds to the branches where the relationship existed.

... only when funds were likely to leave the bank, would the manager refer the person to an FASD person.

Patricia Roche

... it goes so far as to say that were it (sic) to offer other investments, I would have been in the seriously bad books of all the branch managers because they would have lost the deposit. The only thing there was to do was to put moneys on deposit.

What would generally happen is I would know that what is to happen is that this money is to come back on deposit.

Branch managers were also questioned on the retention of deposits; their evidence, which the Inspectors accept, included the following:

... if a deposit was under threat because of the poor return or the range of products that we had in-house, we were definitely -- to my knowledge, to my recollection, we were instructed as a last resort; in other words, don't lose that deposit without at least letting the FASD people see what they can do.

oooOooo

... the other part of the CMI would be, as we were told, was that the deposit, while it might change to a number on the account, would remain in the bank.

Inspector: Did it surprise you that when an individual was investing his money in CMI the form the investment would take would always be a deposit in the branch of NIB out of which the money came?

Branch Manager: We were told at the time that this was the arrangement that had been set up with CMI.

oooOooo

... we didn't want to lose the resources.

oooOooo

... I never thought deeply about the issue other than that it allowed us to retain our deposits.

Other documentary evidence, retention of deposits and related issues

Other evidence of the importance of the retention of deposits, and issues related thereto, is provided by Bank documents, including the following:

Extract from memorandum of 4 March 1993 from Nigel D'Arcy to all Financial Services Managers, Patrick Cooney, Grace Gaskin and J Lacey (for information):

The outlook for the Division is now extremely positive, despite the severe operating climate. This is (or will be) due to the following initiatives:

- 1. The "CMI" campaign. The results coming in from this initiative are exceptional and also very desirable in terms of being extremely high value. The Master Agency initiative will also bear excellent results over the next few months. The addition of an offshore Irish Pound asset class to the CMI currency portfolio is also a very significant development. An excellent feature of the CMI initiative is that most of the underlying assets are placed back on deposit with us.*

Extract from memorandum titled "Procedures for CMI Personal Portfolio Deposits returning to NIB Branches" from Eithne Martin of FASD to all branch managers on 19 November 1993:

The rate applied to this deposit is usually at the sole discretion of the Branch Manager and is applied when the money is returned to Branch from CMI.

In certain cases a special rate has been agreed between Branch Managers and clients.

Extract from facsimile transmission dated 17 February 1994 from Rick May of CMI to Nigel D'Arcy, copied to J Lacey, M Keane and D Boner:

... I am writing, as requested, to confirm CMI's position as to the money currently held through Personal Portfolio Bonds originally introduced by National Irish Bank that are invested in deposit accounts with the National Irish Bank.

Whilst the contract is between CMI and the policyholder, National Irish Bank is the Introducer of the business and is involved in the original recommendation to invest the policy monies into National Irish Bank deposit accounts. CMI is not involved with these contracts in any active fund management of the policy monies and therefore CMI would not actually change the investment decision without the agreement of the National Irish Bank except at the expressed instructions of the individual policyholder or, of course, in exceptional circumstances where CMI believed that the policyholders assets were at risk.

Extract from memorandum dated 3 August 1994 from JF Brennan – General Manager to Geoff Bell, Head of Management Services:

In fairness to Nigel [D'Arcy], he was under pressure from Retail not to strip the individual branches of deposits and this led to a situation where funds destined for CMI came back, in part, to the remitting branch but instead of being in a customer's name they were now held under CMI with a reference number for identification. As I understand it also, there was, at times, negotiation on the term and rate given on the CMI deposit. The branch manager had a role in this negotiation which led me to the conclusion that they clearly identified the deposit with a particular customer even though the account title was CMI with a unique number.

Extract from inter office memorandum dated 7 November 1994 from P Harte to JF Brennan, MJ Keane and N D'Arcy:

FASD needs to actively manage investments in CMI. FASD are formally appointed Investment Managers and they must not allow undue influence from branches. FASD must make the investment decisions; if this does not happen there is a possibility that the tax structures will be interfered with and that FASD could be sued for any investment losses which might occur.

Extract from memorandum dated 11 November 1994 from Nigel D'Arcy to JF Brennan, MJ Keane and P Harte, in response to inter office memo of 7 November 1994:

As stated correctly in the memo FASD are (sic) formally appointed Investment Managers/Advisors on the CMI Personal Portfolio product. The important point to note is that FASD instruct (sic) CMI to carry out certain investment instructions, invest in deposits, individual equities or unit trusts. CMI then make contact with the relevant Financial Institution or Investment House and invest the funds accordingly.

As indicated ... above, our role is Investment Adviser and CMI's role is to carry out and execute investment instructions.

Extract from memorandum dated 16 April 1996 from Nigel D'Arcy to Michael Keane following takeover by Halifax Building Society of CMI:

*I will be meeting CM next week and will ask for a **letter** from them confirming that there will be no "funny games" with the CM deposits in NIB. I already have an older letter on this and basically there is no question of there ever being a problem on this front: as advisors, we (FASD) decide where deposits within the CM Personal Portfolio are to be placed.*

We are prudential in terms of the level of CM deposits with NIB – these are always within the region of £20m. to £21.5m.

Other evidence

Bank documents and the report of the authorised officer appointed by the Minister for Enterprise, Trade and Employment highlight the proportion of funds re-deposited with the Bank:

- The Washusen Report (a Report produced by NAB Group Audit in April 1998) discloses that 216 Personal Portfolios were sold by the FASD and the report of the authorised officer records that in the case of 194 Personal Portfolios the monies were placed back on deposit with the Bank. The explanation for this is that the investors, contemporaneously with making their investment, and frequently without being aware of it, appointed the FASD as their investment advisor, and the FASD then instructed CMI to place the funds back on deposit with the Bank.
- A letter from the Bank to the office of the Chief Inspector of Taxes dated 12 February 1998 states:

Of the £34M originally invested in the CMI Personal Portfolio, approximately £29M was received by National Irish Bank as deposits from CMI. ... Currently the funds deposited by CMI stand at circa. £ Irish 22.6M and £ sterling 2.5M.

"Securing new deposits for the Bank"

Illustrative interview evidence, which the Inspectors accept:

Branch managers spoke of gaining deposits through promotion of CMI policies:

So from the branch manager's point of view, you either gained a deposit on your deposit base or you retained the deposit on your deposit base.

oooOooo

Inspector: So why was it ... that you decided to introduce him to the Financial Services Division?

Branch Manager: ... in the context of the twofold gain which the branch would enjoy, both in terms of achieving an objective on referral

commission and, notional as it might be, and growing the branch deposit book.

Financial services manager Patricia Roche stated:

... certainly in a small number of cases the branch manager may have had somebody who was [a person who did not have money on deposit at the branch] or was not necessarily a customer of the bank.

Illustrative documentary evidence:

Extract from Nigel D'Arcy memorandum to Kevin Curran, Regional Manager North West, dated 25 March 1994:

As you are aware, our relationship with CMI has been extremely successful on two counts:

... ..

Protecting deposits which would otherwise be lost to NIB (as well as attracting new deposits into the network) ...

“Earning commission for the Bank”

Bank personnel at interview indicated to the Inspectors how the sale of CMI products assisted them meet their commission targets.

Illustrative interview evidence, which the Inspectors accept, includes:

Inspector: So why was it ... that you decided to introduce him to the Financial Services Division?

Branch Manager: ... in the context of the twofold gain which the branch would enjoy, both in terms of achieving an objective on referral commission and, notional as it might be, and growing the branch deposit book.

oooOooo

Charlie McCarthy

Inspector: ... when you say targets, was that targets for the branch in relation to referrals?

Mr McCarthy: No. It was commission target.

Inspector: For the branch?

Mr McCarthy: Yeah.

Inspector: For the branch, and one way to get that target would be to refer work because effectively then you'd get the credit and the branch would get the credit?

Mr McCarthy: Precisely.

Inspector: Then would it be fair to say that the deposit was protected and commission was earned?

Mr McCarthy: Yeah, you could say that.

Other illustrative evidence includes:

Extract from Nigel D'Arcy memorandum to Kevin Curran, Regional Manager North West, dated 25 March 1994:

As you are aware, our relationship with CMI has been extremely successful on two counts:

... ..

Providing substantial "other income", which is a priority for all of us.

THE ROLE OF THE BANK

General

The Bank's role may be summarised as identification of customers and others with undeclared funds, funds in bogus non-resident accounts, or funds offshore, and then promoting the sale of the CMI policies to these persons.

Identifying customers with undeclared funds, funds in bogus non-resident accounts, or funds offshore.

Illustrative interview evidence, which the Inspectors accept, includes:

Nigel D'Arcy

Inspector: Did you know that potentially people within the bank were targeting Revenue-sensitive monies for investment in CMI?

Mr D'Arcy: Yes.

Patricia Roche

What would have more than likely happened is I would have been told [by the branch manager] Mr [customer name] has a deposit, it's revenue sensitive, or a term of that nature may have been used to suggest he had a deposit which

suggests he wanted it moved from its existing place into something else and still keep as a deposit.

Branch manager interview

... and he [Kevin Curran] suggested to me that perhaps we should have FASD look at the case [of a fictitiously-named bogus non-resident savings account with a balance of £210,000]. At that point I contacted the rep concerned and subsequent to that a meeting took place. That's how it ended up at CMI ... That's generally what used to happen.

Promoting the sale of the CMI policies – by Guaranteeing Confidentiality from the Revenue Commissioners

Illustrative interview evidence from FASD personnel, which the Inspectors accept, includes:

Nigel D'Arcy

Inspector: Now, we have also received evidence that the bank and personnel within the FASD Division of the bank ... promoted the sale of the CMI policies by guaranteeing confidentiality with the Revenue Do you believe that the bank, including people within the FASD Division, was targeting hot money in this fashion?

Mr D'Arcy: ... at the outset I, I don't know but it certainly became the case.

Charlie McCarthy

The unique selling point I suppose would be the confidentiality ... They could be concerned about the Revenue ...

Patricia Roche

If I were asked the question, then yes, I probably would have said that it was completely confidential and that it was now in a numbered account at the branch.

Bob Wynne

Inspector: So if somebody asked you would the Revenue get to hear about this investment, what would your answer have been?

Mr Wynne: They will if you disclose it to them but the onus is on you, that the product itself is confidential.

Mr Wynne commenced employment with the FASD on 15 August 1994, after the enactment of Section 24 of the Finance Act, 1993 which required that details of all

sales of foreign life assurance policies be notified to the Revenue Commissioners by the Bank as intermediary. Because of this the statement that the CMI Personal Portfolio was confidential was incorrect and it appears that Mr Wynne had not been instructed by FASD management on the provisions of the Act.

Evidence on confidentiality from branch managers, which the Inspectors accept, includes:

Branch Manager: ... it's a similar type of confidentiality as to any other bank product. I suppose that he could have kept it [the CMI product] separate any other (sic), from his family or whatever as well.

Inspector: Or from the Revenue?

Branch Manager: Or from the Revenue, yes.

oooOooo

Confidentiality was a big issue.

oooOooo

Inspector: So why was it these customers would be interested in CMI?

Branch Manager: Total confidentiality ... No one would know about it.

oooOooo

Inspector: It was to facilitate the concealment of client funds from the Revenue, that was the attraction of CMI?

Branch Manager: That was my understanding from day one.

Promoting the sale of the CMI policies – by representing that, where a trust was created, the funds, on the death of the investor, would be passed to the beneficiaries on the production of a death certificate, thus obviating the need for probate.

Illustrative evidence, which the Inspectors accept – FASD Personnel:

Nigel D'Arcy

Inspector: Now, we have also received evidence that the bank and personnel within the FASD Division of the bank ... promoted the sale of the CMI policies ... by representing that where a trust was created the funds on the death of the investor would be passed to the beneficiaries on the production of a death certificate thus obviating the need for probate and by representing that the investment was free from tax. Do you

believe that the bank, including people within the FASD Division, was targeting hot money in this fashion?

Mr D'Arcy: ... at the outset I, I don't know but it certainly became the case.

Extract from internal memorandum dated 28 September 1994 prepared by the legal department of CMI concerning the Personal Portfolio policy of a deceased customer of the Bank, which memorandum was copied to Nigel D'Arcy:

Perhaps the most important point that needs to be remembered here and which I would ask you to consider very carefully is the fact that CMI has been put on notice by both the Bank and the family that the policy proceeds represent undeclared funds. As I understand it, this means that this is money that has not been and is not intended to be declared to the Irish Revenue. One of the objections to the Personal Representatives dealing with this policy is that the value of the policy (or the proceeds) will form part of the estate and that of course will be valued for Inland Revenue purposes. I assume that this will cause a tax liability. The intention in asking CMI to pay the money to the "nominated beneficiaries" and to take this somewhat unorthodox route is to ensure that the policy proceeds remain undeclared monies and that the Irish Revenue are not informed. It seems to me that this may amount to an attempt to defraud the Irish Revenue. Therefore, in CMI agreeing to pay the "nominated beneficiaries" in the manner suggested and in taking the indemnity from the Bank, CMI facilitates this process.

Mr D'Arcy executed a Deed of Indemnity on behalf of NIB wherein he represented and warranted that the Bank had acted and continued to act as trustee in relation to the deceased customer's CMI Personal Portfolio policy and was entitled to receive the proceeds of the policy as trustee for the benefit of the beneficiaries. Mr D'Arcy was not empowered by the Bank to execute such a Deed of Indemnity.

Charlie McCarthy

The advantage was the trust document and the letter of wishes that in the event of a death, that the monies wouldn't go into the estate, they'd be payable to the beneficiaries on the production of a death certificate

Illustrative evidence, which the Inspectors accept - branch managers

Branch Manager: I suppose the selling factor in the CMI was the trust element, if a person died it was not necessary to effect probate.

Inspector: And what was the effect of that?

Branch Manager: The Revenue wouldn't know about it.

oooOooo

Inspector: Is it your understanding that in the event of the demise of the husband or wife the money would pass and Revenue would not become aware of it?

Branch Manager: That is what we were told.

oooOooo

Inspector: So is it fair to say that ... you would have told customers in relation to CMI, it was totally confidential both in life and in death?

Branch Manager: That's right, yes.

oooOooo

Well in hindsight the advantage was that the money could pass on to the next generation outside of the person's estate.

oooOooo

Obviously if the money was not declared to the Revenue or anyone else and it was not included in the Will it was an advantage to be able to keep it undeclared in the event of death.

REASONS FOR SUCCESS OF PRODUCT

Summary

In the opinion of the Inspectors, the reason for the success of the CMI campaign was that it suited all the parties involved with it:

- The branch managers got rid of their bogus non-resident and fictitiously named accounts, but retained the deposits.
- Promotion of the policy offered the prospect of gaining additional deposits of "sensitive" funds.
- The Bank earned commission.
- The FASD financial services managers earned substantial bonuses.
- The customers believed they were getting an investment which would be confidential from the Revenue Commissioners.

Typical Investment

The manner in which funds in the CMI Personal Portfolios were invested indicates very strongly that most of the investors were not concerned with the return on their

investment but were interested in ensuring that it would be concealed from the Revenue Commissioners. The following transaction was typical:

- A customer has a deposit of IR£100,000 in a branch of the Bank in a bogus non-resident account.
- He is persuaded that it will be safer to have his money in CMI – confidentiality from the Revenue Commissioners is absolutely guaranteed, and also no probate requirements arise if a trust is created.
- On taking out the policy, the investor pays an immediate charge of 1% of the capital invested and over the first five years a further 8% at a rate of 1.6% annually.
- IR£97,000 of his investment is returned to the Bank on deposit at the same rate of interest as before, the balance of IR£3,000 being retained in a separate account and applied to meet initial charges.
- In addition to the 8% charge, the investor is charged Stg£300 per annum (later, Stg£480 per annum) for being furnished with a quarterly account and, if he has created a trust, a further annual fee of Stg£125 (later Stg£175), plus VAT, for the maintenance of the trust.

While the above investment was typical, the Inspectors think it right that they should state that not all the monies invested in the CMI Personal Portfolio product were necessarily funds undisclosed to the Revenue Commissioners.

INSPECTORS' CONCLUSIONS

The Inspectors find:

1. Monies which were undisclosed to the Revenue Commissioners, including funds held in bogus non-resident accounts and fictitious and incorrectly named accounts, were targeted by Bank personnel for investment in CMI policies.
2. Bank personnel promoted CMI policies as a secure investment for funds which had not been declared to the Revenue Commissioners, thereby engaging in a practice which served to facilitate the evasion of Revenue obligations by third parties.
3. Prospective investors were given an assurance by Bank personnel that their investment would be confidential from the Revenue Commissioners and, if made the subject of a trust, would pass to their beneficiaries without probate having to be obtained, thus making it possible for the funds invested to be kept hidden from the Revenue Commissioners even after the investor's death.
4. The role of the branch personnel of the Bank was to identify likely investors, and the role of the FASD personnel was to introduce customers to CMI and induce them to take out policies with CMI.

5. The purposes for the Bank behind the execution of such policies were:

- (i) The earning of commission.
- (ii) The retention of deposits.
- (iii) The gaining of new deposits.