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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION RICCO

Reference: Operation E14/2586

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 8 JUNE 2016

AT 2.15PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

MR MOSES: Commissioner, just on Ms Kirchner, the General Manager. We have made inquiries and if necessary she's available to arrive at the Commission at approximately 3.00pm today. As I understand it, there are two parties that wish to question Ms Kirchner, one being Counsel for Ms Cullinane, the former Deputy General Manager, and Counsel for Mr Fitzgerald, the former General Manager. The concern that we have because of the – as it were the topics that we've been informed of in terms of the questioning of Ms Kirchner, starting with Mr Fitzgerald's Counsel it relates to the conversation that took place between Ms Kirchner and Mr Fitzgerald in respect of what is said to have been Ms Cullinane's superannuation arrangement which is detailed in her statement. Mr Fitzgerald has given no evidence about that.

THE COMMISSIONER: No.

MR MOSES: So I'm not sure what the utility of that questioning would be. Are we going to call him back if he's going to be putting something that is - - -

20 THE COMMISSIONER: Contrary to what's in the statement.

MR MOSES: And which hasn't led from his own client. As for Ms Cullinane's Counsel, she has identified a number of topics to cross-examine the General Manager on. With the greatest respect and it's up to my friend if she wants to outline what they are, but none of them are relevant to the issues that need to be determined by the Commission in relation to the conduct either of Ms Cullinane or others in relation to the matter and one issue that is being raised relates to the Council's investigators SINC Solutions, wanting to ask questions about that and I don't understand what possible relevance that has got to do with what this Commission is examining as to the corrupt conduct or misconduct that has taken place here. All the other questions were matters that are contained either in Ms Kirchner's statement or haven't been the subject of any evidence, positive evidence from Ms Cullinane. So what I'm concerned about is - - -

THE COMMISSIONER: Yes.

40 MR MOSES: - - - if she is to be called and questioned then depending on what my friend does I will demand that Ms Cullinane come back because yesterday she was meant to be here and then my friend – through whatever may have happened she wasn't here but this may lead to another round-robin of questioning so I'm not sure what the utility of it is.

THE COMMISSIONER: Well, I'll be doing everything to avoid that, Mr Moses.

MR MOSES: Yes.

THE COMMISSIONER: Mr Thangaraj, do you require Ms Kirchner?

MR THANGARAJ: We don't.

THE COMMISSIONER: You don't. So this statement that's being referred to that's a recent statement is it?

MR THANGARAJ: Sorry, the second statement.

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THE COMMISSIONER: The second statement.

MR THANGARAJ: There was one further issue that we wanted dealt with. That's been dealt with.

THE COMMISSIONER: so - - -

MR THANGARAJ: So that's why we don't have any questions.

20

THE COMMISSIONER: So otherwise the second statement could become an exhibit in the inquiry?

MR THANGARAJ: Well, I'll tender both statements at some, at some point.

THE COMMISSIONER: All right. But you don't require her for questioning?

MR THANGARAJ: No.

30

THE COMMISSIONER: All right. Well, then, Mr Latham, and I suppose Ms Gerace can take this on board. As you know the standard directions require some positive case to be put. I'm just wondering what is it that you want to ask Ms Kirchner that might contribute to your client's case.

MR LATHAM: Look, it's not hugely important. There's an account of one conversation with our client. We've only just read it at lunch. It may be that with discussions between our respective solicitors that we could even reach an agreement as to a generic description of what was said. The differences aren't enormous. That may be an easier course than to have her recalled for that matter.

40

THE COMMISSIONER: All right. Well, see if you can – that's the only matter that you wish to raise?

MR LATHAM: Yes.

THE COMMISSIONER: All right. Well, you might want to do that between now and 3.30.

MR LATHAM: Certainly.

THE COMMISSIONER: And, Ms Gerace, what – so what is your particular need to question Ms Kirchner?

10 MS GERACE: Commissioner, as I indicated to Mr Moses when I raised the issues and as I discussed at lunch, there are number of discrete issues. As I also told Mr Moses they did not emanate from so much as evidence that Ms Cullinane has given but from questioning of Ms Cullinane and also the evidence of Lara Kirchner herself and they were these discrete which I anticipate will be very, very quick, the first one being the use of the creditor system for the payment of moneys to employees, the first issue.

THE COMMISSIONER: Sorry, sorry. When you say that's an issue, that's an issue - - -

20 MS GERACE: Her knowledge of the use of the creditor system to pay moneys to employees.

THE COMMISSIONER: But can I just ask what – I don't understand that to be now in dispute, that the creditor system was used to pay - - -

MS GERACE: No, that's not - - -

THE COMMISSIONER: - - - various benefits to employees.

30 MS GERACE: Yes.

THE COMMISSIONER: What relevance is it to your client whether Ms Kirchner knew of that or not?

40 MS GERACE: Well, because the relevance emanates from this, the criticism that was raised in questioning of several employees this was a highly irregular process that moneys were paid through creditors. Leaving aside the tax or other implications what we say is that we expect that the General Manager can give evidence of her knowledge of practices that may have been changed but that existed about the payment of moneys through the creditors to employees, things like allowances and other moneys being paid through creditors as opposed through the payroll and merely to highlight that there was nothing particularly unusual or to perhaps just put some of the questions in perspective. It's a very small point, Commissioner.

THE COMMISSIONER: All right. So what are the other issues?

MS GERACE: The second point arises from the retaining of SINC Solutions both to advise Council after Ms Kirchner's appointment. That has two, the significance in two respects. The first being, one, that Council had the benefit of internal auditors, external auditors and a third source of advisory in relation to processes and systems and that the fraud continued to occur. So it's to put into perspective criticism might be levelled at Ms Cullinane and her culpability. I don't know what approach Counsel's going to take in relation to her culpability for the offending of others. There's no doubt there's some, I imagine from the questions there will be some  
10 criticism in the submissions. But the point of seeking to explore the breadth of SINC Solutions' appointment firstly, is to show that notwithstanding internal auditing, external auditing and the appointment of a body to assist, corruption continued to occur. And that is to - - -

THE COMMISSIONER: But I'm mean I'm just having trouble understanding why Ms Kirchner's view in relation to that frankly matters, because that's an inference that this Commission can draw, and I understand that in effect no one can gainsay that that was the, that is the inevitable  
20 inference that notwithstanding all of these checks and balances so called, the corruption continued. I mean how does Ms Kirchner add to that?

MS GERACE: Well, she can give evidence of the breadth of SINC Solutions' appointment and the tasks undertaken by them.

THE COMMISSIONER: But I thought SINC Solutions was only appointed after the irregularities came to light?

MS GERACE: No, that's not as I – I don't think that is in fact the case as I understand from – I'll just grab Ms Kirchner's statement and perhaps my  
30 learned friend will confirm that we short circuit it since it's his client, my understanding is that - - -

MR MOSES: Commissioner, there's no secret about this. In paragraph 18 of Ms Kirchner's statement SINC Solutions were commissioned to undertake a series of training programs in relation to policy and procedures including matters relating to fraud corruption and prevention. And again in paragraph 20 there was a self-assessment taken out prior to the Office of Local Government in relation to the Council. But again this goes to it  
40 would appear, my friend's suggestion that there was a third arm to what the Council was doing, internal and external in SINC Solutions and they did pick up the criminal activity of somebody who was reporting to Ms Cullinane, well okay, we know that.

THE COMMISSIONER: Yes.

MR MOSES: Big deal.

THE COMMISSIONER: Well - - -

MS GERACE: With greatest respect, it is a big deal for Ms Cullinane to the extent that submissions might come her way seeking to sheet all responsibility to her - - -

THE COMMISSIONER: Well I don't think anyone is going to sheet it all home to her. I mean the fact is that as I understand it, I mean - Ms Gerace, can I just - - -

10 MS GERACE: Commissioner, can I just develop that point - - -

THE COMMISSIONER: Look can I just say this. As you well know, I mean this Commission is in the business of making appropriate corrupt conduct findings if we get to the requisite level of proof. There might be a degree of negligence here but that's not our remit. I mean, it's just not. I mean to the extent that people can be criticised for things failing on their watch well so be it. But I don't understand anybody to suggest, now Counsel Assisting might want to correct me, but I don't understand anybody to suggest that the mere fact that these corrupt practices continued under the  
20 watch of Ms Cullinane and for that matter, Mr Fitzgerald, justifies any kind of finding of corrupt conduct against either of them. So I'm just wondering what the point is?

MS GERACE: Well it's always, Commissioner, it's always difficult in advance of those submissions to understand precisely the extent to which matters will be taken against Ms Cullinane. But in relation to SINC Solutions the added point of that is both that SINC Solutions were on the document, Ms Kirchner's document, both appointed to give advice in relation to the processes and then asked to investigate failings or other  
30 things that might've occurred in relation to those processes and that goes to the appropriateness or otherwise of SINC Solutions undertaking the investigations. Firstly, when they were involved in the setting up of those processes.

THE COMMISSIONER: But why should it matter whether it was appropriate that SINC Solutions did that or not? It's just beyond the remit of this inquiry. Anyway what were the other issues that you wanted to canvass?

40 MS GERACE: Well I think the issue, I suspect my learned friend will be able to deal with an admission an agreed fact that creditors, the creditors were used to make payments, monetary payments to employees firstly.

THE COMMISSIONER: Well we've already got that one.

MS GERACE: Yes.

THE COMMISSIONER: And the SINC Solutions is the second one. Are there any other issues you wanted to canvass with Ms Kirchner?

MS GERACE: There was one other. The other matter arises from the appointment of SINC Solutions and the nature of the relationships between the parties. I've already indicated that to my learned friend, Counsel Assisting. If that's not a matter that is of interest to the Commission or relevant to this issue of the appointment of SINC Solutions to both set up the processes and then to investigate other processes that they were involved in setting up, I can't advance that any further without putting matters on the record that I've not explored with the witness. But I've already told my learned friend what that issue is, Counsel Assisting, and I'll be guided by whether that is a matter that the Commission wishes to have explored.

THE COMMISSIONER: Sorry? I'm completely in the dark. Do you know what it is, Mr Thangaraj?

MR THANGARAJ: Yes, I do. I think it really depends on what counsel wants to make of SINC, that is, the Council wants to make, if anything, of SINC Solutions and any work that they've done and any reliance that they seek. I can understand what Ms Gerace's saying, because there has been a suggestion through some of the SINC Solutions material that there was some relevance to what they've done for this Commission. If there isn't, then the questioning becomes irrelevant. But if counsel wants to rely on something SINC Solutions has done or not done, found or not found, then it may be that Ms Gerace - - -

MR MOSES: We don't. We don't.

THE COMMISSIONER: All right. Well, that solves that.

MR MOSES: What we rely on is what this Commission - - -

THE COMMISSIONER: Yes.

MR MOSES: - - - has found and this Commission's work.

THE COMMISSIONER: Yes.

MR THANGARAJ: Yeah.

MR MOSES: Because it's this Commission that uncovered the corruption that was going on at the Council. So that's our position.

THE COMMISSIONER: All right. Well, that seems to resolve that problem, then.

MS GERACE: Well, can I just clarify this, then, Commissioner, while we're arguing. Although I just wanted to note, I probably could have dealt with the questions for Ms Kirchner at the same time. But in questions put to various witnesses, counsel, Mr Moses for Council, put various propositions about documents found in certain places to witnesses, which obviously came as a result of investigators. There's no evidence from those investigators and yet it's put positive. So am I to understand that counsel will make no submissions about what investigators said they found or did not find themselves?

10

THE COMMISSIONER: No, but I understood all of that material. Well, to the extent that it was put. I think the most obvious one was Mr Thompson's recent examination. I think to the extent that documents have been found in people's offices, and I think it might apply to Mr Fitzgerald as well, I mean, I don't understand there to be any relevance beyond the fact that these were documents that could potentially impact upon the corrupt conduct that is being alleged against Mr Goodman and others, and they were documents that weren't recovered earlier because they weren't in what would have expected to have been Council official records and files. And that's the only relevance that I can ascertain from it. I don't think, well, Mr Moses can correct me if I'm wrong, but I don't understand Mr Moses to be using that material in some way to say that the appointment of SINC Solutions was the only method by which we could have found those documents. But, I mean, I still don't understand - - -

20

MR MOSES: Commissioner, can I just be very clear about this?

THE COMMISSIONER: Yes. I - - -

MR MOSES: And you're right, but my friend seems to be suggesting that a number of propositions were put to witnesses as to documents being found in certain places. Let's be very clear, it's only the evidence of the witnesses in relation to their answers to my questions that will be relied upon. The fact that I put a question from the bar table, that's not evidence. And we haven't called anybody to say anything about where those documents were found. So I'll rely upon the evidence of the witnesses who were called. But in any event, that's got nothing to do with the general manager in terms of the questioning of the general manager from a positive case point of view. It doesn't make sense.

40

MS GERACE: Well - - -

THE COMMISSIONER: Well, I'm just coming back to that, Ms Gerace, because I still don't understand how it impacts on your client and what positive case you want to put in relation to your client.

MS GERACE: All right. Well - - -

THE COMMISSIONER: It's not a kind of, you know, wide-ranging free-for-all. It's a question of how does it impact on your client's positive case.

MS GERACE: Commissioner, no doubt I think the Commission would accept that the manner in which I've conducted the matter so far has not been free-ranging but focused on my client's issues and her responsibilities. The point is plain and short. And there is one other issue that I'll take, which is separate, and that is this. To the extent that the steps taken by Council to investigate the processes put in place, used SINC Solutions, we say that there was a difficulty for Council in undertaking that course because of the relationship between the general manager and the principal of SINC Solutions, to the extent that SINC Solutions were appointed to investigate after the corruption was discovered by this Commission. To the extent that Council then retained SINC Solutions to investigate difficulties within the Council or how it may have arisen, we say that there's a direct problem where the person being appointed has a close relationship with the general manager.

THE COMMISSIONER: Yes, but what positive proposition do you want to put from that?

MS GERACE: Well, I - - -

THE COMMISSIONER: Do you want to suggest that there has been some failing in the investigation by SINC Solutions as a result of that close relationship? I just don't know what positive proposition you want to put.

MS GERACE:.. Commissioner, to be fair and to be completely frank I'm unable to put that at this stage. I don't have – I don't – I do not - - -

THE COMMISSIONER: Well, then it's not part of your positive case then, Ms Gerace, and I don't know how Ms – I don't know how the Deputy General Manager really, you know, has a stake in that one way or the other because this all happened as I understand it long after the Commission started investigating and sometime after she was suspended.

MS GERACE: Well - - -

THE COMMISSIONER: These recent developments certainly have occurred since.

MS GERACE: Well, certainly these recent developments. Look, Commissioner, I can't put it any more highly. I thought it was a matter that might be relevant to the approach being taken by Council in terms of the content of the General Manager's statement about the steps that have been taken by her and the appropriateness or otherwise of the investigations as I understand Ms Kirchner's statements brought forward to this Commission

in answer to the problems that have been identified as to the steps being taken and the - - -

THE COMMISSIONER: Yes.

MS GERACE: - - - adequacy of their response.

10 THE COMMISSIONER: Well, that's all true but you see the content of that statement and particularly those parts of the statement largely go towards the corruption prevention focus of this inquiry, that is, what's Council going to do about it to ensure that this doesn't happen again. But I don't understand that to be – to necessarily impact upon any individual person who has given evidence in this inquiry, least of all your client.

20 MS GERACE: The other points that arise, and I'll move on from this, Commissioner. I hear your views on the issue. Are these, there are a number of factual discrepancies that are dealt with by the General Manager including issues about what draft management letter she received that contradict evidence given by the auditor and some other minor factual issues. They were the other issues I was going to explore. I mean she said she didn't – she wasn't aware of getting any other management letters to her from the auditor other than an issue she refers to in 2012. The auditor appears to have given other evidence. The letters are addressed – the final letters that were issued were in fact drafted to – addressed to the General Manager. And it really was to just clarify those matters.

30 THE COMMISSIONER: Well, again, you know, look, there may be some factual discrepancies but I don't understand that that has any relevance to your client's case.

MS GERACE: Well - - -

THE COMMISSIONER: That might reflect on Ms Kirchner but I don't see how it advances your client's case.

MS GERACE: Thank you, Commissioner.

40 THE COMMISSIONER: I'm just trying to make sure that we don't unduly prolong the inquiry but at this stage, Mr Moses, did you say she could be here at 3.30?

MR MOSES: 3.00. But can I just make it clear - - -

THE COMMISSIONER: 3.00.

MR MOSES: - - - Commissioner, there's two points if I could. There are no discrepancies between Mr Mottau's evidence and Ms Kirchner, number one. Secondly, my learned friend's references to SINC Solutions, with all

due respect those submissions should not have been made. She knows what the practice note is. She had no positive case to put and this is not a free for all in relation to questioning. Her client has got her own difficulties in respect of the matter and trying to in effect put propositions that have got nothing to do with a positive case that she wants to put she should not be permitted to do it. Our client has gone to the extensive trouble of preparing a very detailed statement in relation to the matter and none of the things that my friend raises has got anything to do with the inquiry with all due respect.

10 THE COMMISSIONER: All right. Well - - -

MR MOSES: And she should not be granted leave because - - -

THE COMMISSIONER: All right. Well - - -

MR MOSES: - - - it falls outside the practice note. She couldn't even articulate a positive case and you asked her four times.

20 THE COMMISSIONER: Look at this stage, at this stage, subject to of course to what Mr Latham wishes to resolve, I think we should proceed with Mr Foo. Is he going to be short, Mr Thangaraj?

MR THANGARAJ: Very short.

30 THE COMMISSIONER: When Ms Kirchner does arrive I think we will have her interposed and the statements can be tendered through her. And Ms Gerace has very limited leave to ask questions in relation to the changes arising out of the use of the creditors system and I think that's as far as it needs to go. And there shouldn't be more than one or two questions in relation to that.

MR MOSES: Thank you, Commissioner. But with all due respect to my friend again, and in respect of that, we're not even clear what she wants to put to the witness in respect of that.

THE COMMISSIONER: Well no, but my general understanding is - - -

MR MOSES: Okay.

40 THE COMMISSIONER: - - - that as she said before she wants to challenge the proposition that there was anything unusual about payment of employee expenses through the creditors system.

MR MOSES: Okay. Matter for her. Matter for her and her client.

THE COMMISSIONER: Yes.

MR MOSES: Okay.

THE COMMISSIONER: All right. Well can we proceed with Mr Foo?

MR THANGARAJ: Yes. And while he's coming to the stand can I just tidy up some tendering.

THE COMMISSIONER: Yes.

10 MR THANGARAJ: Tender Corruption and Prevention, volumes 1 to 4.

THE COMMISSIONER: Those volumes will be Exhibit R94.

**#EXHIBIT R94 - CP BRIEF (VOLUMES 1 – 4)**

MR THANGARAJ: The Sydney Airport Corporation Limited volumes 38 and 39.

20 THE COMMISSIONER: Exhibit R95.

**#EXHIBIT R95 - PUBLIC INQUIRY BRIEF (VOLUMES 38 & 39)**

MR THANGARAJ: And tender volumes 41 to 53 of the brief.

THE COMMISSIONER: 41 to 53, was it?

30 MR THANGARAJ: Yes.

THE COMMISSIONER: That will be Exhibit R96.

**#EXHIBIT R96 - PUBLIC INQUIRY BRIEF (VOLUMES 41 – 53)**

40 MR THANGARAJ: And just some, a couple of discrete documents. This is a Hill Rogers Spencer Steer Materiality Guide which is referred to in evidence.

THE COMMISSIONER: Exhibit R97.

**#EXHIBIT R97 - HILL ROGERS SPENCER STEER MATERIALITY GUIDE 2015**

MR THANGARAJ: And the Hill Rogers Spencer Steer Audit and Assurance Services Policy.

THE COMMISSIONER: That will be Exhibit R98.

**#EXHIBIT R98 - HILL ROGERS SPENCER STEER AUDIT AND ASSURANCE SERVICES POLICY**

10

MR THANGARAJ: And there's one document that needs to be updated. We're giving the parties or have given the parties a copy of this. It's volume 19, page 131 through to 138. We've just put in a total. Everything is the same but we've just in a total as I understand it. So if that could just be updated.

THE COMMISSIONER: That will be Exhibit R99.

20

**#EXHIBIT R99 - UPDATED EXCERPT FROM PUBLIC INQUIRY BRIEF (VOLUME 19) PAGES 131 TO 138**

MR THANGARAJ: Thanks. And when Ms Marshall gives evidence I'll tender her diary through her.

THE COMMISSIONER: All right. Yes, Mr Foo, would you come forward please. Mr Foo, I take it, just take a seat, sorry.

30

MR BLAND: Commissioner.

THE COMMISSIONER: Yes.

MR BLAND: My name is Bland.

THE COMMISSIONER: Yes, Mr Bland.

MR BLAND: And I seek your leave to represent Mr Foo?

40

THE COMMISSIONER: Yes, that leave is granted. Have you spoken to Mr Foo about the section 38 order?

MR BLAND: I have briefly spoken to him about it. And he's acknowledged in his previous evidence.

THE COMMISSIONER: Yes. Mr Foo, just so that you understand. I know that you've been previously told about this but the section 38 order

does not protect you from the use of your answers against you if it should be found you've given false or misleading evidence. You understand that?

MR FOO: Yes, I understand.

10 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Would you like to be sworn or affirmed, Mr Foo?

30 MR FOO: Sworn.

THE COMMISSIONER: Sworn, thank you.

<MALCOLM FOO, sworn

[2.39pm]

THE COMMISSIONER: Yes.

10 MR THANGARAJ: Mr Foo, have you read the evidence of Mr Floudas and Ms Marshall from gardens2nv?---Yes.

Now is it correct that you received cash payments from one or both of them for a period of about two years?---

Now is it correct that you received cash payments from one or both of them for a period of about two years?---Yes, I received once only.

THE COMMISSIONER: Once did you say?---Yeah, once.

20 MR THANGARAJ: You received one cash payment?---Yeah. Yeah. One cash payment. The rest, the rest is all for, for Mark Goodman.

Okay, sorry. I understand what you're saying now. You received cash envelopes for them but you're saying that you didn't keep them yourself - - - ?---I didn't keep them myself.

30 All right. So, do you agree that over a period of about two years you received cash in envelopes from either Mr Floudas or Ms Marshall?---From Ms Marshall.

All right.---As for Floudas, he goes directly to see Mark Goodman and Marny Baccam. Marny.

Marny Baccam?

THE COMMISSIONER: Baccam.---Oh, Baccam, sorry.

MR THANGARAJ: Okay. All right.---Sorry.

40 And you read that they gave evidence that they purchased appliances and gift cards and flowers for you at various times?---Actually, as for the gift card, it is mostly for (not transcribable), like Christmas.

Right.---To give the boys. So the boys gets around \$50 each.

All right. Now, were you using, with them, false invoicing to provide money to Mark Goodman?---As for Marny, she done it herself because I never get involved with her.

THE COMMISSIONER: You mean Marny Baccam?---Yeah, Marny Baccam. Because I have so much of problems with her, because she has, as you say, that she wanted to tender for (not transcribable). And I told her there's no way we can do it and I rejected it.

MR THANGARAJ: All right. Part of the false invoicing with gardens2nv, has that included money for Mr Anmol?---As for Mr Anmol, actually he work but Gary Goodman says to pay him and Gary will reimburse the  
10 money back to the Council.

All right. But you understand that part of the false invoices included money for him, for his work, Mr Anmol's work?---As far as I know, as for Marny, all the false invoice, Marny did for herself.

All right. You didn't know about the hours that he was doing for gardens2nv, as opposed to Mr Goodman?---No.

All right. And the payments that were being made to you, either to you or  
20 via you, the cash that you received, sometimes it was multiple payments a day, even?---No.

How - - - ?---It's either weekly or fortnightly.

Okay.---And all it comes in the envelope.

Sometimes twice a week?---No, never. So far as I can recall, it's never been twice a week.

30 All right. And it was getting to the stage where it was in the thousands?---I think roughly depends. So far as I know. But I haven't seen the envelope, so Mark comes and tells me, you know, my wife is sick, I need some money and this and that. So he normally asks for \$1200 or \$1500.

How much do you say you kept for yourself?---As I say, all the money I never kept for myself.

Sorry. I thought you said you kept one.---Only one only.

40 Yeah, how much is that?---That was around \$400.

All right. I've dealt with all of my questions for this witness last time, Commissioner. So that's all I have.

THE COMMISSIONER: Thank you. Any other questions of Mr Foo?  
Yes, Mr - - -

MR BLAND: Commissioner, could I ask - - -

THE COMMISSIONER: Sorry, yes?

MR BLAND: - - - by way of, you would, I don't know if my friend knows that I'm about to ask questions.

THE COMMISSIONER: No, I'm just, sorry. Before you ask any questions, Mr Bland, can I just make sure everybody else has had their opportunity? Yes, Mr Dunne?

10

MR DUNNE: Mr Foo, my name's Dunne. I represent Mark Goodman. Now, do you recall when you gave evidence back on 7 March, 2016?---Yes, I - - -

You've just given evidence here before the court that the false invoicing scheme, if I can call it that, with gardens2nv, was for payments to Mark Goodman, except for one payment. Is that right?---Can you please repeat again?

20

I said the evidence that you've just given is, except for one payment, all the money from the false invoicing scheme from gardens2nv went to Mark Goodman. Is that right? Is that your evidence?---Yes, but as far as that's concerned, they have did a lot of hours which they worked. And before I pay them, I always get approval from Sydney Airport. His name is - - -

Well, can I just stop you there.---Sure.

30

Your evidence less than 10 minutes ago was that you didn't keep any of the money from the false invoicing from gardens2nv except for one payment and that the rest went to Mark Goodman. Is that right?---Yes.

Yes. Now, that's contrary to the evidence you gave on 2 March, is that right, do you recall?---I think I gave on the, on the 7 of March (not transcribable).

When do you say that the false invoicing with gardens2nv started?---(No Audible Reply)

40

It went for a number of years didn't it?---I think this started in 2011.

Yes.---And, and as far as I can recall it didn't, it didn't start until 2014.

2014?---Yes.

Yes.---That's what I can - but I'm not sure about it.

Yes. And you gave evidence today that Mark asked you for money because of his wife's operation. Do you remember saying that?---Yes, I remember saying that.

And when I asked you questions on 7 March - - -?---Yes.

10 I – and this is at page 715 at around line 20 for the Commission. I said to you, “His wife went in for an operation.” And you answered, “Yeah, one.” “And so it was after his wife went for the operation that he asked – that he started asking you for money?” And you said, “I think, yeah, after.” Do you remember those answers?---I can't recall that.

Well, do you agree with that evidence? It was after his wife went in for the operation that Mark started borrowing money from you. Is that right? ---Yes.

And I put to you that Mr Goodman's wife's operation occurred in the middle of 2015 and you agreed. Do you recall that?---Yeah.

20 And so it's just completely false to suggest to the Commission here today that the money that you obtained from gardens2nv prior to the middle of 2015 went to Mark Goodman.---Yeah, most of the money went to Mark - - -

Before, before the middle of 2015?---Yes.

Before – yes, before the middle of 2015, so in other words from 2014 to 2015 the money you took from gardens2nv you kept didn't you?---No. I was just a middleman.

30 You couldn't have been a middleman for Mark Goodman. He didn't start asking for money until the middle of 2015.---No.

MR BLAND: Commissioner, the transcript at page 715 at line 33 says, “And when he first started borrowing money from you he was borrowing it from you?” “Yes.” And that is in relation to the last premise that's been put by Mr Dunne.

THE COMMISSIONER: Well - - -

40 MR BLAND: And earlier at line 12 Mr Dunne put the proposition, “Now your evidence is that he started borrowing money from you in late 2014.” The answer is again, “Yes.” So the line of questioning is entirely unfair.

MR DUNNE: Well, with greatest respect to my friend, if he goes to line 25 where I say, “So if you accept his wife's operation occurred in the middle of last year being 2015.” “Yeah.” “You would agree you didn't start lending him money until after the middle of 2015?”

MR BLAND: The important word being you, Commissioner.

THE COMMISSIONER: I think the difficulty is that this deals with false – the proceeds of false invoices.

MR DUNNE: Yes, Your Honour.

THE COMMISSIONER: Not just lending money.

10 MR DUNNE: Yes, Your Honour. And, and what Mr Foo has now said is  
except for one payment from gardens2nv everything went to Mark  
Goodman. The questioning on 7 March and my client's affirmative position  
is that the arrangement with Mr Foo began as borrowing money from  
Mr Foo by Mr Goodman. At some later stage – and sorry, that took place in  
2015. At some later stage, and you will see at about line 38 there's no  
dispute about that, that it wasn't at some later stage that gardens2nv became  
involved. I simply want it to be completely clear that Mr Foo's evidence  
that the arrangement in relation to gardens2nv was not Mark Goodman's  
brainchild, it was in fact Mr Foo's and it came about after a circumstance  
20 where Mr Goodman simply borrowed money from Mr Foo and Mr Foo later  
changed that to a situation where the money which Mr Goodman was  
getting from Mr Foo came from gardens2nv.

THE COMMISSIONER: Well, look, I suppose the transcript will speak for  
itself, Mr Dunne, but just put what you want to put to this witness as your  
client's proposition and then he can agree or disagree with it. I think there's  
some inconsistencies if one looks at all of his evidence, but anyway, as I  
said, it's a matter for submissions.

30 MR DUNNE: Yes, well, I think – well, I think that I've already got that  
concession from already, Your Honour.

Mr Foo, you understand, do you - - -?---Yes.

- - - that on behalf of Mr Mark Goodman, I'm putting to you or giving you  
the opportunity to respond to Mr Mark Goodman's proposition that he did  
not, was not – it was not his brainchild, the false invoicing scheme with  
gardens2nv. Do you agree or disagree with that?---No, no, it was his  
brainchild 'cause - - -

40 Oh, so you disagree with that?---Yeah, I disagree with that, because at first  
- - -

And, and I want – no, sorry, just please answer the questions, Mr Foo?  
---Yes, yes.

And that it wasn't until some time, possibly a year after you had  
commenced the false invoicing scheme, if I can call it that, with gardens2nv,

that you subsequently told Mark Goodman that the money that you were giving to him in fact came from gardens2nv. Do you agree or disagree with that?---I disagree with that because - - -

Thank you. Those are my questions?--- - - - how we started was - - -

Those are my questions, thank you, Mr Foo?---Okay.

10 THE COMMISSIONER: Right. Anyone else have any questions of Mr Foo before we go back to Mr Bland? No. Yes, Mr Bland, do you have any questions?

MR BLAND: Thank you, Your Honour, Commissioner. Ms Marshall gave evidence after you gave evidence before?---Yes.

Have you had a chance to read Ms Marshall's evidence?---Yes, only I read last night.

20 Did you ever make threats to take work away from Ms Marshall's company?---Never.

30 Did you sit with Ms Marshall when invoices were amended to change the hours worked?---Yes. The reason ah, ah before she used to email Mark Goodman and cc to me but then when I get the invoices for Sydney Airport to approve it and they says that the work has not been done, has not been done, and then I told her, "From now on you better come and see me every fortnight or Saturday to make sure whatever invoices submit to Sydney Airport we have to get right, right thing that the job was done and how many hours and how many men were supplied. And also I was not the only one that was doing the invoices, they come, we have three supervisors there, one is the, the (not transcribable) and the other one is night shift, that is Paul Coles.

So you weren't the only person sitting with Ms Marshall doing things? ---Say again?

40 Do you know if other people were assisting Ms Marshall to change invoices?---I, 'cause whatever the Dave Wellington and Paul Coles was doing and I can tell you that ah, Paul Coles was the one that's my supervisor, Paul Coles was the one that recommended the gardens2nv to come in for, to come in and work as a, to supply labourers, that was the first step.

Mr Foo, could you please slow down a little bit so transcription can keep up with you?---Okay, sure, thank you.

Thank you. Now, you received a number of envelopes with money in it from Ms Marshall. Is that right?---That's right.

And did you ever open those envelopes and count the content?---No, 'cause the envelope was sealed.

And what did you do with the envelopes?---I pass it to Mark Goodman.

And that was all of them bar one lot of \$500. Is that right?---Yeah, that's right, that's right.

10 Thank you. That's all, Commissioner.

THE COMMISSIONER: Nothing arising, Mr Thangaraj?

MR THANGARAJ: No.

THE COMMISSIONER: No.

Yes, thank you, Mr Foo, you may step down?---Right, thank you.

20 You're excused.

**THE WITNESS EXCUSED**

**[2.55pm]**

MR THANGARAJ: Ms Marshall. Ms Marshall is being brought for the purpose of cross-examination by Mr Foo's representative.

30 And while that's happening I'll tender, but I'll show her first, her diaries. Sorry, I won't tender, it's in volume 44 and volume 45, please.

THE COMMISSIONER: Just take a seat, Ms Marshall.

You recall me giving you an explanation previously about the effect of a section 38 order?

MS MARSHALL: Yes, I do, mmm.

40 THE COMMISSIONER: Do you wish to have the protection of the order again today?

MS MARSHALL: Yes.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as

having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

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20 THE COMMISSIONER: Would you like to be sworn or affirmed, Ms Marshall?

MS MARSHALL: Affirmed, please.

MR KORN: Commissioner, may I seek leave to appear for Ms Marshall?

THE COMMISSIONER: Yes, that's granted, Mr Korn, thank you.

<LYNDAL JOY MARSHALL, affirmed

[2.57pm]

THE COMMISSIONER: Yes.

MR THANGARAJ: Can I just show you volumes 44 and 45. If you go to page 1186 of 44?---Yes.

10

Is the balance of that volume copies of entries from your diary?---Oh, I've got on page 1186, I've got a copy of the desk, the desk diary. Wrong page – am I on the wrong page number?

Maybe the next page and the following pages?---No, hold on.

You don't need to check every one, but - - - ?---Oh, look, 1198 I think you're referring to.

20 Okay, all right, 1198?---Yeah.

Thanks?---Mmm.

And the balance of that volume, are they from your diary?---Yes, they are.

And is all of volume 45 from your diary?---Yes, it is.

All right?---Even the blank pages.

30 All right?---Mmm.

Nothing further.

THE COMMISSIONER: Yes. Now, who wanted to cross-examine Ms Marshall?

MR THANGARAJ: Mr Bland.

40 THE COMMISSIONER: Oh, Mr Bland. Yes, go ahead.

MR BLAND: Thank you, Commissioner.

Ms Marshall, do you recall giving evidence here on the 15<sup>th</sup> of March this year?---Yes, I do.

And in that evidence very early on Mr Thangaraj asked you some questions about doing some work at Ms – and I'm probably going to do great violence to her name – Ms Baccam's - - -?---Yes.

- - - property?---Mmm.

And initially you were paid for that work?---Yes.

And then payment stopped?---That's right.

And at that point there was the first of the invoices to Botany Council. Yes?  
---That's right, exactly.

10

Okay. Now, whose idea was it to invoice Botany Council?---Malcolm's.

It came from Malcolm?---Yes.

So you had a discussion with Mr Foo?---I didn't, my business partner did.

Well, how do you know that the discussion was between Mr Foo and your  
business partner?---Because he told me.

20

He told you?---Yes.

All right. Because your evidence is, and I'm happy for you to be shown  
page 1012 of the transcript?---Mmm.

Is that "And there was some solution", this is at about line 25,  
Commissioner, "as to the non-payment. The solution was to produce the  
invoice and charge it to Botany Council"?---That's right. And I think the  
amount was a very small amount like \$175 or something from memory.

30

Now, who was allocating the labourers to come to your property and do the  
work, do you know?---My property?

Yeah?---What do you mean, my property?

Ah, sorry, to, sorry to Ms Baccam's property?---Righto. So well, it would  
depend. I'm mean I've got a business, we run it and I run it in conjunction  
with my business partner, so we would make a decision on what skills we  
required who was needed.

40

Who was requesting it?---Who was requesting the labour?

Yeah?---Either Marny or Malcom Foo. And generally if – can I just add to  
that, and generally that if we tried to refuse then we were pushed.

I understand that. Now it says here, "The solution was to produce an  
invoice and charge it to Botany Council"?---That's right.

Right. Now, "And you did produce the invoice?" And your answer is "Yes, I did - - -?---Yes.

- - - Ah hmm?---Mmm.

Now you realised that was a false invoice at that time, didn't you?---Yes.

And you then say "And who told you that that was the plan"? And you say "Robert told me"?---That's right. Mmm.

10

And then you go "Right". And then "Did you", "No, I think it was with intimation by Malcolm Foo well, mmm.". So at that stage you're actually not sure about Mr Foo's involvement are you?

MR THANGARAJ: Sorry. I think one bit that was left out was "as well".

THE COMMISSIONER: As well?---As well, mmm.

MR BLAND: Okay. With intimation from Malcolm Foo - - -?---Yes.

20

- - - as well?---Ah hmm. Because we weren't told - - -

But you're only thought - - -?---Because we were always told that we had to look after Marny.

You were always told?---Yes.

Now, you heard of that through your business partner, Robert, because he told you something, that's right?---Yes.

30

Right. And then you get asked another question by Mr Thangaraj at line 40. "You ended up speaking to, who did you speak to at Council with respect to the false invoicing, Malcom Foo?" And your answer is "And anyone else? Not very often with Marny." Now Marny was the recipient of the work?---I think you've taken it, sorry, out of context, mmm.

MR THANGARAJ: Sorry, when it's the end of a question mark, it balances the answer. I think it was just said that I put in the question "Malcolm Foo?" In fact that's her answer.

40

THE COMMISSIONER: Yes?---Mmm.

MR THANGARAJ: And then it was put that her answer was "And anyone else?" That was my question.

MR BLAND: Ah, I'm sorry. I read the transcript wrongly. And then you're asked and again, page 1013 about another invoice. "And who did you send that invoice to" was the question and your answer was "Marny"?

---Mmm. Well - - -

Because Marny had the power to approve invoices didn't she?

---I understand, yes. I'm sorry but you're reading from a transcript where I've, you know, from a couple of months ago so I mean I'm not digressing from what I've actually said, but the context of the conversation is actually a little bit unfair at this stage, mmm.

Well, I'm happy for you to be provided with a copy of the transcript of this?

10 ---Yeah.

THE COMMISSIONER: Well no, Mr Bland. Can we get to the point?

MR BLAND: Okay.

THE COMMISSIONER: I mean what we know what her evidence was on the previous occasion.

MR BLAND: Thank you.

20

THE COMMISSIONER: Do you want to suggest that it's remiss in some respect?

MR BLAND: I will get to the point very shortly?---Oh, thank you, mmm.

Malcolm Foo didn't have the power to authorise payment to your company, did he?---I understand he did.

30 Thank you. And you sent invoices to Marny because she had the power to authorise them?---No. I used to send invoices, actually Marny and Malcolm and Mark or someone else whoever I was told to send them to at the particular time of the invoice. So I have different, I'd have different instructions and very explicit instructions on what invoices went where and how.

And Mr Foo never made a threat to take work away from your company, did he?---Yes, he did, and he used to do it repeatedly.

Did you hear his evidence this afternoon?---I did.

40

Thank you?---And I'll contradict that. And in actual fact his words used to be, he'd actually go elsewhere.

When you provided the envelopes with cash in?---Yes.

You handed them to Mr Foo?---I'd have to contradict his previous statement yet again. Because often I would prepare the envelopes and give them to Robert and Robert would give them to Mr Foo.

So you never handed them to Mr Foo?---I handed him some and so did Robert. It just depended. Because some weeks there were more than one. And I wasn't very often at the Council.

And you were that Mr Foo was saying that his envelopes were for Mark Goodman?---Sometimes, yes, there was, also I think they were for other people too.

10 Right. Thank you. That's all, Commissioner.

THE COMMISSIONER: Thank you. Any other questions of Ms Marshall? No. Yes, Mr Dunne.

MR DUNNE: Just one question. I don't have your diary exhibit in front of me, but when did – can you just refresh my memory about when this false invoicing started again?---I think you brought up previously (not transcribable) about two years ago a bit more than that.

20 About 2014?---Yeah. I think that's when, when you actually brought it up, wasn't it.

Thank you?---You nominated a date, mmm, year, mmm.

Thank you.

THE COMMISSIONER: Nothing arising?

30 MR THANGARAJ: Sorry, I thought, Commission might have had a question?

THE COMMISSIONER: No.

MR THANGARAJ: Sorry, no, nothing arising.

THE COMMISSIONER: Thank you, Ms Marshall?---Okay, thank you.

You may step down, you're excused.

40

**THE WITNESS EXCUSED**

**[3.07pm]**

MR THANGARAJ: Mr Byrnes' Counsel is only available this afternoon, so we want to finish him off today.

THE COMMISSIONER: Yes.

MR THANGARAJ: He's the last witness apart from Ms Kirchner, possibly.

THE COMMISSIONER: Mr Byrnes.

MR THANGARAJ: Mr Byrnes and he's mainly here for cross examination for Ms Cullinane but I've got a couple of questions I need to ask.

THE COMMISSIONER: Come forward, Mr Byrnes.

10

MR FAGIR: Commissioner, you granted me permission to appear for Mr Byrnes on a previous occasion.

THE COMMISSIONER: Yes, yes, Mr Fagir, I have. Just take a seat, Mr Byrnes. You appreciate that the section 38 order does not protect you from the use of your answers against you if it's found that you've given false or misleading evidence, you understand that?

MR BYRNES: Yes.

20

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced

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THING PRODUCED.**

40

THE COMMISSIONER: Would you like to be sworn or affirmed, Mr Byrnes?

MR BYRNES: Sworn, please.

THE COMMISSIONER: Thank you.

THE COMMISSIONER: Yes, Mr Thangaraj.

MR THANGARAJ: Mr Byrnes, we brought up on the screen paragraph 49 of the statement of Karen Rowe. And can you just read paragraph 49 to yourself, please?---Certainly. Yes. I've read it.

Do you have any comment about the first sentence?---What was it, yes, I recall we may have a discussion about Teletec, yes.

All right. Did you have any view as to whether or not there was a problem with those payments?---In my previous, in my statement that I submitted earlier on I did make it clear that I'd submitted copies of invoices to the Deputy General Manager in regard to Teletec. And that the payment, there was supporting documentation for the payment, yes.

20

All right.

THE COMMISSIONER: Are you saying that that was action that you took after you had this conversation with Ms Rowe?---I'm not sure of the timing of this conversation, yeah, but I have, I have raised the issue of Teletec.

MR THANGARAJ: Yeah. All right. The next topic is did you ever receive communications or a phone call from Mr Goodman asking you to prepare cheques for MB Consulting?---I, I can't answer that. I don't recall that I - - -

30

All right. So you may or you may not have?---Yes, I can't answer that.

All right. Were you aware of any cash payments being made to Mr Fitzgerald?---Once again, it's very difficult to answer. I couldn't be specific. There may have been, but I can't be specific. I can't be specific about it because I can't recall any particular instance to support that statement.

Well, it would be an unusual thing, wouldn't it? Or would it not?---It would be a bit unusual, yes. Mr Fitzgerald used to get paid, as far as I'm aware, a travel allowance and a civic allowance. And they were often - - -

40

Were they in cash?---Sorry?

Were they in cash?---No, often cheques were drawn for those. That's all I do recall.

Yeah.---Yeah.

That's why I'm asking. Were you aware of any cash payments? Because if that had happened, it's something you probably would remember, wouldn't it?---Probably, yes.

10 All right. And just finally, do you have a recollection of going to a bank with Mr Goodman to withdraw 70-odd thousand dollars in cash?---I've seen that evidence. I did accompany Gary Goodman to the Commonwealth Bank in the city. Unfortunately, once again, I can't confirm what the business we undertook at the bank was. I can't say specifically what it was. It was a fair number of years ago and I can't recall.

All right. You don't remember whether it was a large cash withdrawal? ---No, I don't even remember if it was a cash withdrawal.

All right. All right, nothing further. Ms Cullinane has some questions for you.

20 THE COMMISSIONER: Yes, Ms Gerace.

MS GERACE: Mr Byrnes, I appear for Lorraine Cullinane, the former deputy general manager.---Ah hmm.

30 I'm going to ask you some questions about your evidence on the last occasion and also the processes within the finance division. Firstly, you've given some evidence both in a statement and in evidence before this Commission about conversations you had with, you said, with Mark Thompson, firstly, about issues that might have arisen with in the finance section, firstly, and secondly conversations you had with Ms Cullinane following those conversations. And can I say this, the position is that you made no file notes of those conversations at the time?---That's correct.

Right. Now, the first time you sought to recall what was said was in the course of this ICAC investigation, in terms of preparing your statement and then coming to give your evidence, is when you first turned your mind back to the words used by you at the time, correct?---Yes, probably, yes.

40 And is it also fair to say that generally in relation to those conversations that you say you had with Ms Cullinane, the best you could really say to this Commission is "I think I may have said something about these issues" and give a general description of what you believe you conveyed to Ms Cullinane. You can't remember the precise words you used.---No. I was relying on advice from other people and I took that information to Ms Cullinane.

Ah hmm. All right. Now, let me say this. Generally, would it be fair to say that, in your observations of Ms Cullinane, she was a hard-working deputy general manager?---Yes, I know that she put in a lot of hours, yes.

Right. And that by and large, in your time of working with her, she was generally responsive to issues that you raised, correct?---Correct.

She was also generally diligent in seeking to ensure that proper processes were followed in the finance section, correct?---Well, yes, but I had some concerns after 2009 about the whole matter, because that was a very large amount of money that was involved.

10 Can I come back to that?---Ah hmm.

Save for that one issue, she appeared to be very concerned in ensuring that proper processes were followed in the finance section? Let me take it this way. She gave directions as to what people were to do in the finance division, didn't she?---Yes, she did, yes. Gary Goodman was the chief financial officer, so she would have been.

And whilst we understand the employment role in – so I can understand the hierarchy, Gary Goodman was in charge, the CFO, yes?---He was.

20

You were the 2IC, yes?---Correct.

And Mr Thompson was then your subordinate, in a sense, wasn't he?---In a sense, yes.

Right. And do you recall Ms Cullinane issuing a direction that Mr Thompson was only to be in charge of the finance section in your absence or in Gary Goodman's absence? Do you recall that?---No, I don't.

30 Right. But you don't dispute it?---No, I don't dispute it, but I don't recall it.

Right. And she was very clear, was she not, in ensuring that everyone did the jobs that had been allocated to them, correct?---Well, she didn't have a day-to-day involvement in the finance section. That was Gary Goodman.

I understand that. But to the extent she did become involved, she wanted each of you to undertake the jobs that had been allocated to you, didn't she? ---I would assume so, but, yeah.

40 All right. Do you recall her issuing a direction that you and Gary Goodman were to co-sign cheques and that Mark Thompson was only to co-sign in periods of genuine absence by either yourself and Mr Goodman?---I don't recall a direction being issued in that wording.

Right. That was what was meant to happen, though, wasn't it?---Well, I know that she issued a direction that Mark Thompson and Gary Goodman weren't to co-sign cheques, yes.

Right. Thank you. And that was to deal with concerns that had been brought to her attention about proper processes not being followed in relation to the raising of cheques or the signing of cheques, correct?---Yes.

And the effect of that direction was to ensure that you and Gary Goodman co-signed cheques, correct? And not Gary and Mark Thompson?---Yes.

10 Right. Okay. Now, from the time she issued that direction, did you take steps to ensure that direction was adhered to?---Inasmuch as a direction was issued to Gary Goodman, myself and Mark Thompson, yes.

All right. And did you become aware after she issued that direction of Mark Thompson signing cheques?---No, not really, no.

20 All right. Now, you gave some evidence. Let me take you through this. You gave some evidence in issues being raised in about 2007 in relation to cheques. We talked about that. You've given that evidence, yes? Now, can I suggest to you that the direction in relation to the co-signing of cheques to be done by you and Gary Goodman, and not by Mark Thompson and Gary Goodman, was given in or about 2007 in response to that problem that had arisen.---That's what I thought, yes.

Yes. So, we understand that from 2007, from the time you raised that with the deputy general manager, she gave a direction then in 2007 that cheques were to be co-signed by yourself and Gary Goodman?---Ah hmm.

And that was a procedure to be followed from there on?---Yes.

30 And at no time did she revoke, to your knowledge, did she revoke that direction or change it?---Not to my knowledge.

Yeah. Okay. And to the point even as late as 2014, Mr Byrnes, that when – do you recall in 2014 Mr Goodman became ill for a period of time?---Yes.

Yeah. And at that time, the deputy general manager issued a direction that in Mr Goodman's absence invoices ordinarily approved by him were to be approved by you firstly? Do you recall this direction?---No, I don't. I don't say that it wasn't given, but I don't recall it, yes.

40 Or in your absence by her while Mr Goodman was away?---Ah hmm.

Yes? And that would be consistent with your evidence that you do not recall at any stage the deputy general manager changing from her position that cheques were to be co-signed by you and Gary Goodman?---Sorry, a minute ago you were talking about invoices.

Yes.---Yes, now you're talking about cheques.

Yes.---I'm just saying - - -

But it's consistent with the processes she put in place that the primary responsibility for either approval of invoices or co-signing of cheques was to be done by you and Gary Goodman?---Well, the matter of invoices was never mentioned.

10 Right. Okay. But you don't recall a direction in 2014 when Gary Goodman was ill for a period of time?---It may have been something put in place. I don't recall it.

All right. Okay. But you don't dispute it?---No.

All right. Now, you see, Mr Byrnes, I want to ask you this, you were involved in preparing various reports for the CFO weren't you, financial reports, budgets, et cetera?---No, I had nothing to do with budgets.

20 No. Okay. Let me put it more generally. You were involved in the preparation of reports for the CFO. Correct?---I was basically involved in external reporting.

Ah hmm.---The annual financial reports.

Ah hmm.---They were then – some of those were signed by the CFO.

Ah hmm. And you assisted in the preparation of them. Correct?---Yes.

30 Right. And you understood how to use the authority system. Correct? ---Well, to some extent, yes, but I had no – I didn't have the ability – it was only just to view it. I had no ability to make alteration or changes to it.

No, but you could - - -?---Read only.

- - - view it?---Yes, I could.

You could undertake search inquiries yourself?---I could, yeah, inquiries.

40 You could prepare reports from it. Correct?---No. No, I never had any reports. I - - -

You could if you wanted to from the information you viewed. You couldn't alter the data but you could go in and view it?---No, I – yes, we weren't able to print – we were able to – I was able to screen print.

Thank you.---Yeah.

All right. So you could screen print information that you searched on the system itself?---Ah hmm.

Yeah?---Yeah.

All right. Now, prior to working at Botany you had worked at Marrickville Council. Is that correct?---I had.

Right. Now, in your statement where you talk about various matters and in your evidence you didn't mention in that evidence that you had worked there with Gary Goodman, did you?---No.

10

THE COMMISSIONER: He may not have been asked.

MS GERACE: No, I understand that, Commissioner.---No, I didn't.

All right. But you did in fact work there with Gary Goodman and Mark Thompson?---I did.

20

All right. Thank you. Now, see, you said in your evidence – we've dealt with the 2007 complaint where you say that information came to you about the blank cheques. Do you recall that?---Yes.

You say you took that to Lorraine Cullinane.---I did.

And your evidence to this Commission is that apparently in response to that a direction was issued by the Deputy General Manager about the process for co-signing cheques?---Yes, that's the way I viewed that, yes.

30

Yes. And so that would – we would – that would appear to be a complaint taken to her which she acted upon.---Correct.

Yes?---Yes.

All right. Now, let's deal with some of the other complaints. I'll leave aside the 2009 and we'll come back to that. Now, you believe in about 2011 or 2012 which – that some information came to you about credit card transactions on Mr Fitzgerald credit card?---Yes.

40

All right. And this was at or about the time Peter Fitzgerald was either resigning or had resigned?---I thought he had left at that stage, yes.

But you couldn't really be sure whether he had left or - - -?---No.

- - - he was still there?---No.

Right. And in response to that you raised with the General Manager that there might have been some transactions on Mr Fitzgerald's credit card that were not accurate?---That was the Deputy General Manager I raised it with, yes.

You raised it with Lorraine Cullinane?---Yes.

Now, all right. Now, are you aware that the evidence suggests that at about the same time the Deputy General Manager spoke to Peter Fitzgerald and asked him to review the credit cards in order to acquit them and check them?---No, I wasn't aware of that.

10 All right. So if the evidence establishes that point that would appear to be the Deputy General Manager acting on information you take to her. Do you agree with that?---Could have been, yes.

All right.---I wasn't aware.

Now, if we go to 2014 which is the next issue you say you raised with the Deputy General Manager, that was Cabcharge, concerns about Cabcharge? ---Yes.

20 All right.---Yes.

Now, I see from a printout that the Cabcharge card analysis, and I'll just check this with Counsel Assisting. Is it the evidence that the Cabcharge misuse started in 2014 according to the investigations?

MR THANGARAJ: There's sometimes a difference between when something might have started, when we think it started and what the records ---

30 THE COMMISSIONER: Yes, I know. Well, it's only what we're able to ascertain from the records that were produced.

MR THANGARAJ: Yeah.

THE COMMISSIONER: I think that's the limit of the documentation.

40 MS GERACE: Thank you. It would appear that the misuse started in 2014 according to the investigations as far as they've been able to ascertain and an employee came to you and said that there have been an unusual number of Cabcharge transactions involving Mr Goodman?---Yes.

And now, I note that you've said August, 2014. Could it have been September or October, 2014?---Yes, I've had to be, you know, at the initial part of my statement there I've done the best I can in terms of time frames.

MS GERACE: I understand. Yes. But it was sometime in 2014. You don't really know which month or what date?---Yes, that's right. No.

That's fair isn't it. All right. Now, you passed on the information to Ms Cullinane that there had been some irregular Cabcharge payments - - -?  
---Yes.

- - - on Mr Goodman's Cabcharge?---Ah hmm.

And you're aware are you not that she issued a direction for Mr – for there to be firstly, an investigation into those matters?---Well, I understood she was looking into it, yes.

10

Yeah. And – but are you aware of her – the steps she took next?---No, I don't believe I am.

Right. Are you aware that a demand was made of Mr Goodman that he repay any irregular transactions?---Well, that would have been between her and Mr Goodman.

All right. So you wouldn't expect that she would come back and tell you?  
---She may, she may have come back and told me but, no, I didn't know the actual – how it was resolved.

20

All right. So she may have come back and told you or is it your evidence that you recall she did come back and tell you that she was taking steps to have a look at this issue?---I was, I was aware that something was happening about it but the actual - - -

All right.--- - - - exact detail and how it was to be repaid and those sorts of things, no, I wasn't.

30

All right. But you were aware from some conversation with the Deputy General Manager that something was being done about those Cabcharges?  
---Yes.

All right. Thank you. Now, in 2014/2015 there was an issue you raise about phone calls. Correct?---Yes.

A member of staff Sharon Dale - - -?---Yes.

- - - reported overseas phone calls. Correct?---Ah hmm. Yes.

40

Are you aware that that was raised with – that the Deputy General Manager raised that with the General Manager, Ms Kirchner?---No, I didn't know that she raised it with the General Manager.

All right. Were you aware – can you assist that the phone number was transferred out of Council's name and - - -?---No, I wasn't aware of that either.

All right. All right. You can – can you assist us in this though, do you recall a process implemented by the Deputy General Manager to review all phone accounts?---Yes, I recall that.

All right. And that she arranged the cancellation and suspension of a number of connections that were no longer required or that Council was unable to identify?---I don't know about that. I wasn't involved in the investigation or the outcome of it. I don't know the outcome of it.

10 So you're aware though that she did act in terms of taking steps for the first process that you're aware of, the review of all phone accounts by the Deputy General Manager?---Yes, and I'm not too sure of the time frame on that but, yeah, that was done.

Okay. And it could be at about the same time as this complaint is taken to her?---It could have been.

20 Yes. All right. Now, can I just bring you to the last point which is Teletec on these matters. Can I suggest the following, the Teletec reports, are you able to assist or otherwise as to whether or not when Sharon Dale prepared those did you understand that she may have been acting on the direction of the Deputy General Manager to prepare those Teletec reports and to give them to you to give to her?---No, that was my understanding.

Right.---I specifically got a particular invoice that was payment for a large phone bill for the Council - - -

30 Ah hmm.--- - - - that had no supporting documentation and gave that to the Deputy General Manager along with a normal invoice from Teletec indicating that they were doing some consulting services for Council.

All right.---They were the invoices that I gave her, just two.

All right. Now, the other thing just to say about that period you say in which this occurred, that period in August/September, 2015, the evidence would appear to establish that in fact that was a period in which the Deputy General Manager was away on leave from Council because of the death of her mother.---Ah hmm.

40 So is it possible that the request that you made occurred after that on her return?---It is possible, yes.

All right. Thank you. Now, you raise an issue about the pro shop timesheets in relation to the golf shop?---Yes.

Now, you know that - - -?---The issue that I raised there, if I could just mention it to you - - -

Yes, thank you?--- - - - is that I had some concerns about signing timesheets for such large numbers of hours that I had no knowledge of whether those hours are worked.

Yes?---They weren't normal 35/40-hour weeks, they were, you know, 60, 60-hour weeks.

Yes, I understand that?---And I raised it with the personnel manager at the time?

10

Yes. And as a result of that a decision was made to transfer responsibility for the golf shop pro shop to a different division where that could be monitored, wasn't it?---I'm aware that's occurred, yes.

Yes. So as a result of you raising a matter with both the Deputy General Manager and I think you said was it personnel, HR?---It was, yes.

20

A decision was taken shortly thereafter to transfer responsibility for verifying those invoices to another division. Yes?---Yes, that's occurred I understood.

And that, and that transfer meant that that division was more able to assess the timesheets that were being put in. Correct?---I hope so, yes.

All right. All right. So in relation to each of those complaints that I've taken you through, there would appear to be a corresponding response or some action that you become aware of shortly after those matters you've raised?---Yes, some action arose out of those, yes.

30

Yeah. All right. Thank you. Now, can I come back to this. Do you recall in 2014 I believe, the Deputy General Manager issuing a direction that Council was not to pay for parking fines incurred by employees?---Parking fines?

Yes?---No, I don't recall the direction being issued, but normally if there was, if there was a parking fine we would identify what vehicle it belonged to and ascertain from the employee why that occurred or - - -

40

Ah hmm?---And there would be some responsibility for the employee to pay that.

But it wouldn't be ordinarily the case, would it, Mr Byrnes, that Council would pay other people's parking fines?---No.

And even if you don't recall the Deputy General Manager's direction, you would have understood that you didn't pay parking fines for staff through Council?---Unless it was on Council business and there was some reason for, for it occurring, yes.

Were you involved in paying Council fines for – sorry, were you involved in payments of fines incurred by Mr Goodman?---Yes, I think I might have been, I could have been.

Ah hmm?---Well, I don't know whether they were Mr Goodman's but I, I was involved in payment of some fines, yes. Could you be more specific about which fines that was?

10 Well, I'm just asking whether you're able to recall you were involved in paying on behalf of Council fines incurred by Mr Goodman?---Well, I don't know whether they were Mr Goodman's, but I could have paid fines on behalf of Council, yes.

All right. I think I'll ask you this. You understood, did you, that co-signing cheques was a responsibility to check that all the processes had been followed up to that date, it was appropriate to sign a cheque, the correct amount was being recorded and the payee was reflected in the substantiating documents, didn't you?---Yes, that would be the general approach, yes.

20

And were you an authoriser of EFT transactions?---Yes, I had that ability, yeah.

And did you exercise that ability, did you co-authorise EFT payments?  
---No, only occasionally, not on a regular basis.

Right. So to the extent that a direction had been given by the Deputy General Manager that you and Gary Goodman were to co-authorise cheques and in the sense of your evidence is that that process had never been, had  
30 never changed, why didn't - - -

MR MAHENDRA: I object to that, Commissioner. That's not what Mr Byrnes has said.

THE COMMISSIONER: Well, no, no, he said it did change.

MR MAHENDRA: He says he doesn't know.

THE COMMISSIONER: Well - - -  
40

MR MAHENDRA: Well, in answer to my learned friend's question as to whether it changed or whether the direction remained, he said as far as he knew, but he couldn't comment on whether it had changed in respect of Mr Thompson and Mr Goodman.

MS GERACE: Well - - -

MR MAHENDRA: And you'll recall, Commissioner, that Mr Thompson's evidence was that it had been relaxed - - -

THE COMMISSIONER: Yes.

MR MAHENDRA: - - - because of absences by Mr Byrnes.

MS GERACE: Well, Commissioner, this witness's evidence is that it hadn't changed, as far as he was aware.

10

THE COMMISSIONER: Well, can I just make this observation, Ms Gerace. A lot of questions are being put to this witness on the basis of things that were done or not done by Ms Cullinane and to some, and to some of those questions and to many of those questions, this witness has said yes, I recall that such and such a direction issued or I recall that such and such a thing happened, without being able to positively assert that he knows that that was a direction or a course of action that was instituted by Ms Cullinane. Now, I just want to make it perfectly clear. I know that you have reasons for not calling your client but I want to make it perfectly clear  
20 that the evidence is constituted by the answers, not the propositions that are being put.

MS GERACE: I understand that.

THE COMMISSIONER: So I just don't see how to the extent that this witness can say this is what I did and this is what I knew, that that in any way establishes a proposition that you might want to put in relation to some course of conduct pursued by your client in respect of each and every concern that was raised with him. So I think we've just got to be realistic  
30 about the limits to which this witness can comment on those matters, but can we cut to the chase and just deal with this issue in terms of his knowledge of the co-signing of these cheques?

MS GERACE: Yes.

THE COMMISSIONER: Mr Byrnes, as far as you knew, that was something that you were meant to be doing together with Mr - - -?---Yes. Can I just say this, Commissioner?

40 Yes?---From April 13 I was only there three days a week. I wasn't there  
- - -

April 13 what year?---2013.

You were there for three days a week?---Yes, I wasn't there a full week.

Until?---Until I retired on um, in um, 2 July or 1 July, 2015.

So you don't know what happened on the other two days of the week?---No, I don't, and on other occasion from evidence I've heard here, other things happened that I wasn't aware of also in terms of cheques being drawn and signed and payments being made.

All right. Well - - -

MS GERACE: I'll be very quick.

10 THE COMMISSIONER: - - - with that, with that general qualification, yes, go on.

MS GERACE: Thank you. In respect of the three days that you were present though, you were there on the days that the pay, that cheques were meant to be signed, weren't you?---Yes.

And there was a regular day, was there not, that either cheques were signed or EFTs were processed?---Yes.

20 And was that the Wednesday of every week?---It was.

And that was the day that you were there?---Yes.

And in the ordinary course, save for any extraordinary payments, that is the date on which, the day on which of the week Council processed payments due that week. Correct?---Correct.

30 All right. So it would only be in other extraordinary circumstances. So in respect of those three days that you were there, and noting that by and large the bulk of cheque payments and EFT payments were to be done on a Wednesday, as far as you're aware the Deputy General Manager never changed from her position that the persons to co-authorise those payments when they were paid by cheque was to be you and Gary Goodman. That's right, isn't it?

THE COMMISSIONER: As far as he was aware?

THE WITNESS: As far as I'm aware, yes.

40 MS GERACE: Yes. And did you also understand the EFT payments were similarly to be authorised by you and Gary Goodman?---No, I didn't understand that. The email related to cheques, so what happened about EFT wasn't mentioned in the email, as I recall it.

All right. But there was an email, was there, about this, this issue?---Yes, yes.

All right. Now, can I just bring you to those other matters that I took you though. Now, I know that I put them in a general way that you raised an issue and it appeared that some action was taken?---Ah hmm.

10 But in relation to those matters that I've taken you to, and please clarify if there's any particular one you disagree with this proposition, it would appear that either in response to your complaint to Ms Cullinane in respect of those matters I've taken you to, that she either spoke to someone else or instigated a process to respond to some of that information that you took to her?---Yes, in some way the majority of those items that you've listed, some weren't, but the majority of them something happened about them, yes.

And that would – although you weren't involved in whatever processes were undertaken by - - -?---That's correct.

- - - Lorraine Cullinane - - -?---Mmm.

20 - - - you would accept, would you not, you'd say to this Commission it would appear that in response to - - -?---Well, I - - -

- - - you taking those matters up, something was done about those ones, leaving aside the 2009 issue and I'll come back to that?---Really it – I think from my point of view it would be up to Ms Cullinane to justify what she did about those reports rather than me justifying what she did about them.

I understand that, but I just want to say this, that leaving aside the 2009 CND, and I'll come back to that - - -?---Yeah.

30 - - - so we'll put it aside, but other matters I took you through, between, there was a short period of time between you taking those complaints to Ms Cullinane and some action being taken following those. That's true, isn't it? ---Some action was taken, yes.

Yes. All right. So the adequacy or otherwise of that response will be for the Commission to investigate if that reaches a threshold. But your evidence to the Commission is I took - - - ---Some action took place.

40 I took a matter to Lorraine Cullinane and some action took place shortly thereafter.---Yes.

Right. Now, can I come back to those CND invoices, please? Is it the case that you saw a sheet but you're unable to tell the Commission what was on the sheet that was shown to you by Mr Thompson?---I didn't receive a copy of it.

Right.---Mark Thompson had what he claimed was the value of these entries to CND.

All right.---And I said, “We’ll have to go see Lorraine Cullinane about it.”

Ah hmm. And is it the case that when you went to speak to Lorraine Cullinane, conversation occurred to the effect that there appeared to be some irregular transactions involving CND?---When you say irregular, the claim was being made that this money had gone to a bank account that was related to Gary Goodman in some way.

All right.---I didn't have access to verify that.

10

Now, when you say that, is it your evidence that – sorry, you gave evidence that it was reported to you, was it, that the observation was made by Mr Thompson in relation to a payroll system, is that right?---Well, I thought that he had identified the bank account in the payroll system. This was, from memory, this was what I understood to be, that the bank account in the payroll system was the same as the bank account to which these invoices were being paid.

Right. And is that what you understood? You say now you seem to recall?  
20 ---Yeah, and that bank account related to Gary Goodman.

Right. Do you think you could be mistaken about some of the content of what Mr Thompson told you, firstly?---Well, I could. I didn't have any evidence. He had a sheet of paper with figures on it, saying, “This is what's happened.”

Right. And is it the case that when you went to see Ms Cullinane, that, firstly, well, can I say this, let me put it in a different way, what do you say, who spoke at the meeting with Ms Cullinane?---Yes, I might have spoken.  
30

What did you think you said?---Basically I said, “Look, Lorraine, Mark’s got some information here that he wants to give you in respect of some payments.” Along those lines.

All right.---They wouldn't be exactly the words.

All right. So, but along the lines of “Mark’s got some information here that he wants to give you about these payments,” correct?---Yes.

40 And do you recall Mark Thompson saying anything or did he just give Lorraine that document and she said, “I’ll look into it”?---I can’t recall exactly what was said. The difference was that this had something to do with payments to Gary instead of the supplier.

All right. But you can’t really recall what words Mark Thompson used at all?---No, you're going back to 2009, so.

And you don't know what was on the sheet that was handed to Ms Cullinane?---Yeah, only that CND Computers was on there, and it was a large amount of money. And I think the amount was - - -

Did you see the sheet yourself?---Yeah, at one state, I did. Initially, he showed me the sheet of paper, Mark Thompson.

Right. So the sheet you saw, was that after this meeting with Ms Cullinane?---No.

10

It was before this?---Before, yeah.

All right. Now, all right. I think I have – now, can I ask you this? Would you accept that given the ambiguity about what words were spoken, what information was on that document, would you accept this as a general proposition?

THE COMMISSIONER: Well, sorry, I need to stop you there.

20

MS GERACE: Yes.

THE COMMISSIONER: I don't know that we've established that there was an ambiguity, have we? We've established that this witness didn't see the sheet and doesn't recall precisely what was said. But “ambiguity” suggests that there are competing versions about what was said.

30

MS GERACE: All right. Thank you, Commissioner. Would you accept that having regard to the fact that you were not given a copy of the sheet and you don't know really know what information was on it, secondly you don't recall what words were spoken by Mark Thompson, would you accept that there could have been ambiguity about whether the information was conveyed to Ms Cullinane in the context of these payments being made to CND but involving Gary Goodman? Do you accept - - -

THE COMMISSIONER: Sorry, are you asking this witness to express a view about whether or not there was confusion in Ms Cullinane's mind about the information being conveyed to her?

40

MS GERACE: No, no. But if that is the appearance of the question, I'll reframe it, Commissioner. Given that you're unable to recall now, Mr Byrnes, what words were spoken by Mr Thompson, nor are you able to recall precisely the words you spoke, and that you made no file notes of the conversation, nor do you have a copy of the document, nor did you make any other report, would you be prepared to agree with the proposition that it's possible that what was given to Ms Cullinane was some information about invoices involving CND and the suggestion that she investigate what those payments were?---No, the inference that I got off Mark Thompson was that these payments were going to an account - - -

Yes.--- - - - that had something to do with Gary Goodman. Mark Thompson had totalled them. It was only a figure. The figure was over \$1 million. That's what the basic content of what was on the paper showed.

Okay. I accept that, Mr Byrnes. I accept that that's the inference of what Mr Thompson said to you. Yes?---That's right, yes.

10 Right. And I accept that on the paper there was some information. Yes?  
---Yes.

All right. Some invoices listed, yes? I accept those two things. I'm not asking you about that. I'm asking about the meeting with Ms Cullinane.  
---Yes.

20 Given all of those things I've said, the fact that you can't recall the words spoken by Mr Thompson, you're only able to generally recall the words you spoke to Ms Cullinane, you don't have a copy of the document, can't now accurately recall what's on it, would you accept that, as a proposition, that it may have been that what words were spoken to Ms Cullinane was along the lines of "Have a look at these invoices. We think you should check them out"? But that's all that was said?---No, I can't confirm. I don't believe that was the inference of that conversation.

All right.---I think it was more along the lines of what I've said in my statement, that the claim was that that may have been paid into an account or some account associated with Gary Goodman.

30 Well, having said that now, do you recall that around that time a search was undertaken of the computer to look for duplicate bank accounts? You recall that, don't you?---No, I don't.

No. But you don't dispute it was done?---It could have been done. I don't -  
--

Who is Tien Luk?---Sorry?

40 Who is Tien Luk?---She's an assistant in the finance department, a clerk in the finance department.

All right. Thank you.

THE COMMISSIONER: Any other questions of Mr Byrnes?

MR MAHENDRA: Commissioner, I've just got a couple of questions - - -

THE COMMISSIONER: Yes, Mr Mahendra, yes.

MR MAHENDRA: - - - that arise from Exhibit R90.

THE COMMISSIONER: Yes.

MR MAHENDRA: If that can be shown to Mr Byrnes.

THE COMMISSIONER: Can we have Exhibit 90?

10 MR MAHENDRA: Mr Byrnes, I act for Mr Thompson in this matter. I just  
wanted to ask you a few questions in relation to your knowledge  
surrounding Michael Davis and/or MB Consulting.---Yes.

And the process that was undertaken in respect of cheques being made out  
to Michael Davis and/or MB Consulting. Now, if I can start with the  
process. If you turn to about the sixth, sorry, the eighth page of that  
document, it's an email from Gary Goodman to you. This doesn't, as I  
understand it, related to Michael Davis or MB Consulting. It's simply an  
email to you from Mr Goodman, dated 27 May 2004. Do you have that?  
20 ---Yes, I see that.

And it's asking you to draw a cheque in the amount of \$12,000, being the  
reimbursement of costs with receipts attached.---Yes.

And if you turn back one page, you'll see that there's a cheque with the  
same date.---Oh, yes.

27 May, 2004. It's been signed by Mr Thompson and Mr Gary Goodman in  
the amount of \$12,000. Do you see that?---Yes, I do.  
30

But there isn't any cheque requisition form provided. Is it your  
understanding that the email from Gary Goodman was sufficient for a  
cheque to be drawn?---Well, the email said receipts are attached. I'm just  
not sure where the receipts are. I can't see any receipts attached to the  
email.

I don't believe they've been provided but if there were receipts coupled with  
an email would that be sufficient for you to draw a cheque which would  
then be signed by authorised persons?---Well, from the email I'm a bit  
40 vague as to what the reimbursement was for and what it related to.

Sure.---So I can see that the cheque has been drawn and I can see that it has  
been signed by Gary Goodman and Mark Thompson but I'm not sure of the  
- without a little bit more supporting document a bit hard to answer whether  
it was sufficient or not.

I'll deal with another issue. Do you know or do you recall someone by the  
name of Michael Davis?---I do have some recollection of that.

What's your recollection of him?---Just that at, just that at some stage he may have done some consulting but that's, that's the only recollection I have.

And do you know what the nature of those consultancy services were?---No, have no - - -

10 Do you know who was responsible or do you have an understanding of - - - ?---I have an understand - - -

- - - how he was, how he was engaged?---No, I don't have any understanding of how he was engaged.

Do you know if he had friendship or a professional relationship with Mr Fitzgerald?---No, I don't know anything about - - -

20 Do you know if there's any connection between Michael Davis and MB Consulting?---No, I don't know that either.

Can you just turn over a few pages. You will see there's a cheque made out to Michael Davis and there's an address [REDACTED] ---Sorry.

Sorry, the document that I have isn't paginated. It's on the screen for your benefit, Mr Byrnes.---Oh, sorry. Oh, yes.

Do you see that?---Yes, I do.

30 Okay. If you can just turn over another two pages from there.---Ah hmm.

You will see there's a cheque – a requisition for drawing a cheque - - -? ---Yes.

- - - dated 6 February, 2004.---Yes.

Payable to M Davis.---Yes.

40 The description of goods and services consultancy and the amount to be paid 7,500.---Yes.

It appears to have been requested by and approved by Mr Goodman.---Yes.

And if you turn over the page one more time you will see an email from Mr Goodman to Mark Thompson.---Yes, I see that.

Requesting him to draw a cheque.---Yes.

And then if you turn back, I apologise for doing it this way.---Ah hmm.

It's just the order the documents are in.---Yeah.

Turn back one page from the cheque requisition.---Yes.

You will see a cheque dated 6 February, 2004 which has your signature on it.---Yes.

10 Can I – do I – can I understand from these documents that you having  
authorised this cheque took the view that cheque requisition signed by  
Mr Goodman was sufficient for you to co-authorise that cheque?---Well, I  
don't know if you saw all the paperwork that was attached to it or not when  
it was approved and I'm not sure of the circumstances under which it was  
drawn so it's very difficult for me to confirm that but obviously I have  
signed the cheque, yes. I, I can't confirm as to why I signed the cheque. I  
can see this email to Mark Thompson and I can see the requisition. Whether  
there was some other verbal or undertaking given by Gary Goodman about  
something or there was additional information that wasn't attached I, I don't  
20 really know.

Can I just ask you about that - - -?---Yeah.

- - - that answer you gave. You said if there was an additional verbal  
undertaking by Gary Goodman.---Yes.

You don't know whether that was present in this situation but did that occur  
in other situations where you would get a cheque requisition plus a verbal  
undertaking from Mr Goodman?---On some occasions there might have  
30 been a request to draw a cheque - - -

Yes.--- - - - and that he had – he would supply the invoice at a later time.  
I'm aware that that occurred, yes.

And do you recall which entity or which entities that related to?---No. It  
wasn't, it wasn't that regular occurrence. It did occur. I can't be more - - -

In answer to some questions earlier you expressed some difficulty I think is  
the word you used as to – difficulty in answering a question as to whether  
40 you were aware of cash payments being made to Mr Peter Fitzgerald.---Yes.

Why do you find that answer difficult to provide?---Because at some time  
cash cheques were drawn by the Council and, and I've just remembered this  
now, there were instances where cash was given to Mr Fitzgerald. They  
related to sustenance allowances, payments.

And how do you know that?---Because the cheques, because the cheques had to be cashed and had to be divided up. The moneys had to be divided up between staff who were attending these conferences and Councillors.

And is that the only situation in which you can recall Mr Fitzgerald being paid cash?---Yes. I can't recall another situation.

10 Are you aware of any regular cash payments being made to Mr – sorry, to Mr Gary Goodman in respect of – sorry, I'll withdraw that. That's been put poorly. Are you aware of a situation involving MB Consulting or Bloggs Consulting or any variation on that name where cheques were being drawn, paid as cash and then cash being provided to Mr Goodman?---Oh, sorry. Yes, I am, I am aware of that occurring and I was, I was on the understanding that that was for Mr Fitzgerald but I, I never – I didn't ever hand Mr Fitzgerald any cash in regard to that so I can't - - -

So was it the name MB Consulting you couldn't recall – you do recall - - -? ---Yes, I can recall MB Consulting.

20 You can?---Yeah.

Thank you. And just in relation to that, if you were aware of cash payments being made to Mr Fitzgerald in respect of MB Consulting - - -?---Well, that's what, that's, that's what I was – no, that's, that's the understanding I was given from Gary Goodman that it was being made to – paid to – given to Mr Fitzgerald.

Thank you. Did that raise any concern for you?---Oh, yes. Yes, it did.

30 And did you raise those concerns with anyone?---Well, if it was Mr Fitzgerald there wasn't anyone I could raise it with internally really.

What about the Deputy General Manager?---No, I didn't. I, I didn't raise it with her, no.

What is it specifically about Mr Fitzgerald that prevented you from raising it?---Well, my understanding was he was the one that was asking for the payment in cash.

40 Okay. Why would you then not report that to say the Deputy General Manager or an external body?---Well, on some occasions cheques were cashed and I've just explained that to you, particularly in, in respect of sustenance allowances they were called for conferences, so I was aware that cheques were being done. In respect of reporting it outside I didn't form an opinion that it was, it was warranted. During my time at Council I had a number – I became concerned about a number of things which I've outlined in my statement. I did seek some advice about externally in 2009 because I was becoming worried about it and the advice that I, I got was really, the

alternative I had was just to leave Council if I didn't, if I wasn't happy about that.

Okay. So that's in relation to the matters you've identified in your statement?---Yeah. In general, yeah.

Okay. I'll ask you specifically about MB Consulting?---Yes.

10 Did you have a view that these payments were legitimate or illegitimate?---I thought that they were legitimate expenses that for some reason the General Manager wanted it paid in cash.

And did you have that view because it involved the General Manager?---Yes.

Nothing further, Commissioner.

THE COMMISSIONER: Any other - - -

20 MS GERACE: Sorry. I know the time. But we've reached an agreement in relation to the other matter that I think was short circuited. Could I have five minutes with this witness just to raise five short matters, that will be very quick?

THE COMMISSIONER: All right. Well what are they?

MS GERACE: Just in relation to other steps that were taken in finance.

30 THE COMMISSIONER: But - - -

MS GERACE: By Ms Cullinane.

THE COMMISSIONER: All right. Yes, go on.

MS GERACE: Thank you. Mr Byrnes, in 2011, the Deputy General Manager issued a direction or a request for there to be a review of costs and maximisation of fuel cards and cancelling of cards, do you recall that, fuel cards?---Who did she issue that directive to?

40 Were you aware that that was done in finance in 2011?---I didn't have a lot to do with fuel cards or the issuing of them in 2011, that I'm aware of.

Okay. Well were you aware of that process being undertaken in finance in 2011, Mr Byrnes?---No, I couldn't say that I was aware of it.

All right. Are you aware of – you were involved, were you not in a process with, involving the General Manager, Deputy General Manager in relation to a number of ETags issued to staff and the recall of those ETags?---Yes.

Yeah. And can I ask this. After Gary Goodman's absence when he left work, EFT transfers were being done with Gary Goodman's name on it and you were asked about why you hadn't been authorising it, in fact did you tell Ms Cullinane that you'd not activated your new authority code and therefore had not been authorising EFT payments?

MR FAGIR: I object, there are a couple of questions in that.

10 THE COMMISSIONER: Yes.

MS GERACE: I'm just trying to be quick about it. That's right, did you have a conversation with Ms Cullinane where you told her you had not activated your new authority code for the EFT transfers?---No, I'm sorry, I don't recall the conversation.

All right. Had you activated your new authority?---No.

20 When did you stop, when did you fail to reactivate it?---I cannot put a date on that, I don't know when it was reissued.

So there was at least some significant period of your employment where you did not activate or use a token provided to you that would allow you to carry out your job to authorise EFT payments, that's fair isn't it?

MR FAGIR: I object again. There's a premise involved that it's Mr Byrnes's job to authorise the payments.

30 MS GERACE: Well that's what you were given an authority, a token wasn't it?---Yes. But other people had that authority too.

Yes, I understand what other people had, Mr Byrnes. You were given a token, yes?---Yes.

As a second in charge, yes?---Yes.

Right. And did you fail to activate your token so that you could carry out those responsibilities?---I didn't fail to do anything.

40 Well why didn't you activate your token?---I was never approached to activate it.

All right. So you say it was someone else's job to activate your token, was it?---No. I don't say that. I just said I was never approached to activate it.

And in 2016, did you pay Council through the cashier an amount of \$14,000 for a motor vehicle you had purchased from Council that you had checked out but had not paid for?---That's not correct.

Did you have a car that you paid for just shortly prior to your resignation through the cashier?---Did I have a car, did I pay – no. I had a car – I made a payment for a car that I purchased in 2008.

And when did you pay that?---Well I wasn't sure that I'd paid for it. I had - - -

10 No, you weren't - - -?--- - - - and I had a conversation with the Deputy General Manager and explained that situation to her.

Was that in 2016 your conversation?---It was.

So you'd had a car for eight years that you weren't sure you'd paid for?---No. I, I became concerned about it in October, 2015.

Right. But you'd had the car since 2008?---Yes.

20 And in 2015 you became concerned that you hadn't paid for this car?---Yes.

And you approached the General Manager, Deputy General Manager?---Yes.

She told you to pay for it?---No. I said to her and she said to me there's no need to pay for that because that's already been covered. And I said no, I want to do this because I don't want to be seen to be owing Council any money.

30 That's not true Mr Byrnes?---And at the same time - - -

That's not true Mr Byrnes, what you say about that?---Which part of it isn't true?

The suggestion that Ms Cullinane told you that you didn't have to pay for a car that you'd had for eight years?---How would Ms Cullinane know that I had the car if I hadn't have gone and seen her?

All right?---So - - -

40 As the answer's not responsive I'll move on.

THE COMMISSIONER: Go on Mr Byrnes?---Could I just explain the situation?

I think the rest of the answer?---I, I made an appointment with the Deputy General Manager and spoke to her in regard to that. I said I had some concerns about it and wanted to pay for it. She initially said no. I've said, look, I don't know, I haven't, I'm not sure what happened about it. And she

said you don't need to worry about that because that's already occurred. I said, yes, I want to do something about it and she said, okay, you can. And I said, if this causes any sort of problem I'm happy to resign and she said, no, I believe you're an honest person you don't have to do that. And in fact she told me that she had a similar problem before a Ford Falcon that she had acquired.

MS GERACE: Now, in 2010 did you undertake corruption training?---(not transcribable)

10

All right. And as a result of that corruption training were you told that if you – an issue of concern to you was raised with your direct report and nothing was done you should take it further up?---Yes.

All right. And in relation to these matters you say that you had concern about in 2009, you didn't escalate them anywhere within Council did you? ---I had the training in 2010, didn't I?

Yes?---Wasn't that after that?

20

Yes, Mr Byrnes, it was after it but apparently according to you, you say nothing was done?---Oh, sorry. I did escalate it. I got some advice outside of Council.

Who did you seek advice from?---Some solicitors.

And what are the name of those solicitors?---Owen Hodge, Hurstville.

All right. Thank you.

30

MR LATHAM: Commissioner, I've got one question. Sorry, Mr Byrnes. I just wanted to clarify your evidence this afternoon. You gave evidence, didn't you, talking about the MB Consulting payments?---Yes.

That the only knowledge you had of those payments going to Mr Fitzgerald was what Mr Goodman said to you, was that your evidence?---Oh, well I knew that – no, I knew that there was some payments being made to MB Consulting, that's my evidence.

40

Yes?---And that I was told by Mr Goodman they were at the request of the General Manager.

Okay. No further questions, Commissioner.

THE COMMISSIONER: Does that conclude with Mr Byrnes?

MR THANGARAJ: It does.

THE COMMISSIONER: Thank you, Mr Byrnes, you may step down, you're excused.

**THE WITNESS EXCUSED**

**[4.08pm]**

10 MR THANGARAJ: I take it from that that there is no need for Ms Kirchner so - - -

MR MOSES: No, there's – no that's correct and I think there are just two issues that my friends want to put on the record in respect of discussions that we've had and I think Mr Latham first I think.

20 MR LATHAM: Commissioner, there is a discussion in relation between Ms Kirchner and Mr Fitzgerald, senior. Mr Fitzgerald, senior's version is that he had a telephone discussion with Ms Kirchner to set up a meeting and that at the meeting that took place at Grinders Coffee House in Leichhardt, Ms Kirchner asked "What's your take on Ms Cullinane's superannuation"? Mr Fitzgerald said "I remember approving a payment to Ms Cullinane and all of the details would be on her file".

MS GERACE: In relation to the following - - -

THE COMMISSIONER: And sorry, just before - - -

MR MOSES: And the position in relation to that, Commissioner - - -

30 THE COMMISSIONER: Yes, is?

MR MOSES: - - - is that Ms Kirchner doesn't recall the conversation in those terms but doesn't deny that the conversation may have occurred in those terms. It's dealt with in her statement, Commissioner, in terms of the discussion and I'll provide you with - - -

THE COMMISSIONER: Well I take it that it's common ground that there was some discussion between Ms Kirchner - - -

40 MR MOSES: There was.

THE COMMISSIONER: - - - and Mr Fitzgerald about the origins of that payment.

MR LATHAM: Yes.

MR MOSES: Correct.

THE COMMISSIONER: All right.

MR MOSES: And that's referred to in Ms Kirchner's statement as I said. That's not her recollection but she doesn't deny that it may have occurred in those circumstances.

THE COMMISSIONER: There may not be a material - - -

MR MOSES: No, that's right.

10

THE COMMISSIONER: - - - controversy about that anyway.

MR MOSES: No.

THE COMMISSIONER: All right. And, yes, anything else that we need to canvass? Yes.

MR MOSES: My friend for Ms Cullinane.

20

MS GERACE: Another agreed position that Ms Kirchner would give the following evidence, that in the four years that the General Manager, Lara Kirchner, and the Deputy General Manager, Lorraine Cullinane, worked together the General Manager, Ms Kirchner, observed the Deputy General Manager to be hardworking, apparently diligent in the carrying out of her responsibilities and appeared responsive to the matters that the General Manager raised with her.

THE COMMISSIONER: And that's not disputed, Mr Moses, from - - -

30

MR MOSES: No, no.

THE COMMISSIONER: - - - from your client's point of view?

MR MOSES: No, Commissioner.

THE COMMISSIONER: All right. Thank you.

40

MR THANGARAJ: So apart from tendering a couple of matters that's the evidence. Can I tender the two statements of Ms Kirchner, the first is 30 May, 2016.

THE COMMISSIONER: 30 May. Yes.

MR THANGARAJ: Provide one copy of that because it has a number of annexures. And the second is 7 June, 2016.

THE COMMISSIONER: So the statement of 30 May, 2016 will be Exhibit R100 and the statement of 7 June, 2016 will be Exhibit R101.

**#EXHIBIT R100 - STATEMENT OF LARA KIRCHNER AND ANNEXURES DATED 30 MAY 2016**

**#EXHIBIT R101 - STATEMENT OF LARA KIRCHNER DATED 7 JUNE 2016**

10

MR THANGARAJ: And then just two discreet documents, Finance and Performance Committee Minutes of 16 September, 2015.

THE COMMISSIONER: Sorry, that was Finance and?

MR THANGARAJ: Performance Committee.

THE COMMISSIONER: Performance Committee Minutes. That will be Exhibit R102.

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**#EXHIBIT R102 - BOTANY BAY COUNCIL FINANCE AND PERFORMANCE COMMITTEE MINUTES DATED 16 SEPTEMBER 2015**

MR THANGARAJ: And finally, Office of Local Government Model Code of Conduct for Local Councils in New South Wales November, 2015.

30 THE COMMISSIONER: That will be Exhibit R203 – R103 I'm sorry.

**#EXHIBIT R103 - OFFICE OF LOCAL GOVERNMENT MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW**

MR THANGARAJ: And I think all that leaves then is a submissions timetable, Commissioner.

40 MR MOSES: Commissioner, I think there are just two additional documents. There's MFI 1 which is a folder of documents relating to Ms Mishra which we would like tendered and MFI 2, a folder of documents relating to Mark Goodman which I think we didn't tender but if they could be marked as exhibits. We cross-examined each of those individuals on it.

THE COMMISSIONER: All right. So the - - -

MR MOSES: I'm sorry, Commissioner.

THE COMMISSIONER: - - - folder of documents relating to Ms Mishra was it?

MR MOSES: Yes. Yes, Commissioner.

THE COMMISSIONER: Will be Exhibit R104 and the folder of documents relating to - - -

10 MR MOSES: Relating to Mark Goodman.

THE COMMISSIONER: - - - Mark Goodman Exhibit R105.

**#EXHIBIT R104 - FOLDER OF SUMAN MISHRA DOCUMENTS  
VOLUME 2 (PREVIOUSLY MFI 1)**

20 **#EXHIBIT R105 - FOLDER OF MARK GOODMAN DOCUMENTS  
(PREVIOUSLY MFI 2)**

MR MOSES: And, Commissioner, just in relation to Ms Kirchner's statement there is a document which my learned friend for Ms Cullinane has drawn to my attention which we're content to have it marked as a confidential exhibit. It's just the terms of a consent order made in the Supreme Court on 18 April entered on 19 April concerning proceedings between the Council and Ms Cullinane and what annexure is that? I'll just provide you with the reference. I don't have an objection to it being marked confidential.

30

THE COMMISSIONER: Well, I'll mark it Exhibit R106 as a confidential exhibit.

MR MOSES: Thank you.

THE COMMISSIONER: And direct that it not be published pursuant to section 112 of the Act.

40 MR MOSES: It's Exhibit 51 but as I said we don't have a problem with it being marked confidential but I should just make the observation that it's been consented to in the Supreme Court and it's an order on the Supreme Court file that's the problem and as I said it's a concern that my friend has raised. I don't wish it to be marked confidential but my friend has raised it. I just note that it's on the Supreme Court file.

THE COMMISSIONER: Did you say it was already an exhibit, Mr Moses?

MR MOSES: It's part of Ms Kirchner's statement.

THE COMMISSIONER: Oh, I see.

MR MOSES: I'm not sure whether you've marked that yet as an exhibit.

THE COMMISSIONER: I have.

MR MOSES: Yes.

10 THE COMMISSIONER: That's – which statement is it, the 7<sup>th</sup> of - - -

MR MOSES: That's the first statement.

THE COMMISSIONER: 7 June?

MR MOSES: Correct.

THE COMMISSIONER: 30 May?

20 MR MOSES: Yeah.

THE COMMISSIONER: That's Exhibit R100.

MR MOSES: Can I just have a word with my friend.

THE COMMISSIONER: Yes.

30 MR MOSES: Commissioner, just I think to short circuit this, rather than make an order that the Supreme Court document being confidential here, can we just say that we don't tender that document. So the statement refers to the issue but we don't tender the actual order of the Supreme Court as part of the statement. I think that's the neater way to deal with it.

THE COMMISSIONER: All right. Well, perhaps, Mr Moses - - -

MR MOSES: I will deal with it through the Commission solicitors.

THE COMMISSIONER: - - - could you make sure that you take the document from the exhibit so that - - -

40 MR MOSES: We can do that.

THE COMMISSIONER: - - - there's no mistake.

MR MOSES: We can do that.

THE COMMISSIONER: I would not like someone to upload it by mistake.

MR MOSES: No, no, we can do that, Commissioner.

THE COMMISSIONER: All right.

MR MOSES: Thank you

MR THANGARAJ: Just the timetable then. So if mine could be three weeks from today which is the 29<sup>th</sup> and then I'm not sure what – how long is needed after that.

10 THE COMMISSIONER: Well, is – sorry, what day is the 29<sup>th</sup>?

MR THANGARAJ: Wednesday.

THE COMMISSIONER: It's a Wednesday. Well, could I suggest that the submissions in reply be filed and served on or before 15 July which is the Friday fortnight.

MR LATHAM: Commissioner, the 15<sup>th</sup> is fine but different parties may wish to respond to other parties – sorry, parties - - -

20

THE COMMISSIONER: No, I appreciate that.

MR LATHAM: Parties are the wrong way of putting it, but different persons might want to respond to other persons so could there be a further step where that is allowed to occur.

THE COMMISSIONER: Yes, well, I think if we – I mean at some stage everyone is going to see what everyone else's submissions are so submissions in reply be filed and served on or before 15 July and then any further submissions in reply should be filed and served on or before 22 July and any submissions by Counsel Assisting in reply to all of those should be filed and served on or before 29 July.

30

MR MOSES: Commissioner, the only suggestion we were going to have, and if it has to be because there's no other explanation for it other than leave issues, but in terms of the point for response for the Counsel I was just wondering whether we could have until – this is July – 20 July?

MS GERACE: Commissioner, whilst my learned friend is being heard on that point and without wanting to delay further, it is in fact just a leave period in July and I – it's in school holidays.

40

THE COMMISSIONER: All right. Look - - -

MS GERACE: Could we have it out for another week or two.

THE COMMISSIONER: I don't need to - - -

MS GERACE: Thank you.

THE COMMISSIONER: Is 20 July suitable then for all parties as the first date for the submissions in reply?

MR MOSES: That's convenient.

MS GERACE: Thank you.

10 MR MOSES: Thank you.

THE COMMISSIONER: All right. So I'll amend that to read that submissions in reply from all parties filed and served on or before 20 July, further submissions from all parties in response to any matters raised by other parties should be filed and served on or before 27 July and then Counsel Assisting submissions in reply to be filed and served on or before 3 August – 4 August which is the – no, sorry, 5 August is the Friday isn't it. 5 August. Yes, Mr Moses.

20 MR MOSES: Commissioner, I've just been instructed by the Council to thank the Commission for its work in investigating the corruption and misconduct of certain former employees of the Council and I'm instructed to say that the Council will work with the Commission to implement recommendations arising out of the inquiry that will no doubt benefit the Council but all Councils. Thank you.

THE COMMISSIONER: Thank you. I appreciate that, Mr Moses. And I'll adjourn.

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**AT 4.19PM THE MATTER WAS ADJOURNED ACCORDINGLY  
[4.19PM]**