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The High Court

Commercial

Record number 2012/7824 P

Between

James Haughey

Plaintiff

and

J&E Davy trading as Davy, Bank of Ireland Mortgage Bank and Bank of Ireland

Defendants

Judgment of Mr Justice Peter Charleton delivered on the 10th of April 2014

1. James Haughey, the plaintiff, was born on the 5th July, 1985 and is now 28 years of age. Both his parents are dead; his mother since 1998 and his father since 2002. He has no brothers or sisters. Nor does he have either close relations or committed friends to look out for his interests. When he was aged 8 he had a stroke. Two years later he suffered a more serious stroke. He was badly afflicted, losing mobility and impairing swallow. His late father, a medical doctor, gave up work and committed himself to his rehabilitation as did his late mother. Considerable progress was made. The family moved from Ulster to Dublin and James Haughey attended, first of all, Saint Michael's College on Aylesbury Road and then his father sent him to Clongowes Wood College in County Kildare as a boarder. While at this school, his father died. Considerable friendship was shown to him by his classmates; although much of it transpires to have been formal and to have been directed by the Jesuit priests running the school. These priests also determined to look after his interests and to ensure that on leaving school he had some achievement to his name. He was therefore named head of the debating society, a similar position to that held by him, for whatever cause, in his prior school. He went to University College Galway and struggled to graduate in law.

2. The defendant J&E Davy is firm of stockbrokers. Their documents are quoted as they were written. The firm professes considerable expertise in stocks and shares. It advises clients as to the appropriate form of investment for them once the representatives of the firm get to know the prospective client and what their aims are and financial resources and acumen are. Davy can be used simply as an agency for the purchase and sale of stocks and derivatives, bearing no responsibility as such because all decisions are those of the client with no input from the firm. Davy can also take over a sum of money or a set of investments from a client and can use its undoubted expertise to invest in financial instruments at its own discretion. Between these two extremes is the advisory account, where Davy advises clients as to the appropriate course but where the client is free to accept or reject that advice. That is the kind of account that James Haughey had with Davy from the 25th August, 2005, a month after his 20th birthday. By signing up to such account, James Haughey also agreed to pay the fees appropriate to that service to Davy.

3. There has been considerable debate over the course of the very long and many days of this trial as to the capacity, intelligence and shrewdness of James Haughey and as to how he would appear to those advising him. There has been no debate as to the capacity of Davy. It is accepted by all that the firm is distinguished and able. The kind of investment into which, in heavily disputed circumstances, James Haughey engaged with Davy was contracts for difference. This is not just the simple buying and selling of stocks and shares. Using round figures for the moment, on this, James Haughey would say that under the tutelage of Davy, he gained €2 million and lost €3.5 million, paying the firm for its services commission and charges close to €400,000 in the process. Damages are claimed in the sum of around €2 million. In that regard, he claims that Davy were negligent and in breach of contract. Davy reply that any bad decisions were those of the plaintiff James Haughey and that as regards its statutory, contractual and advisory duty, it was careful and prudent and dispensed its expertise appropriately. Succinctly put in closing submissions, the plaintiff was foolish. In addition, the approach of Davy to investment was said to be above criticism as were the checks and balances inherent in its organisation of clients in their relationship with stock dealers. Paradoxically, the most serious criticism of the structures of Davy, as to its checks and balances, came most tellingly from the senior portfolio manager of Davy closest to these events.

4. Since this case is almost entirely fact-dependant and since the bulk of this difficult trial has been taken up with a minute and repetitive analysis of the character and attributes of James Haughey, it is as well to recall the function of a court in matters of fact. A court is to hear everything relevant, to compare testimony and documents with all of the evidence, to approach an adjudication of all issues on the basis of shrewdness and common sense and to carefully look and listen to every witness while bearing in mind that the burden of proof rests with the plaintiff. The ultimate issue is what he court accepts and the liability that may arise from facts proven as a probability. In this case, while recalling the warning that "there's no art to find the mind's construction in the face", demeanour and attitude has proven of assistance in determining where the probability of the truth lies. The Court has watched everything and ignored distractions. Whereas Dr. Damien Mohan, assessing James Haughey for Davy, has, in his capacity as a psychiatrist, characterised this case as one of investor regret, there are others who might feel, or it is argued for the plaintiff ought to feel, regret in a case such as this: stockbrokers. None of these financial dealers were subjected to the rigorous testing which the plaintiff James Haughey had to go through. The Court has also seriously borne in mind any untruths that have been alleged against James Haughey and that exaggeration and more has been shown to attend his testimony when his interests might be advanced and that diversion towards others as to responsibility has on occasion been the answer when he has been challenged on issues. But, it must be noted, the plaintiff is not the only witness in respect of whom considerable care needed to be exercised. There was as much to doubt and more about the defence testimony as well.

5. As stated, James Haughey is central to this case. This action was about him and not about anyone else who may have lost on financial products with this or any other financial service provider. The Court's findings of fact as to the capacity of James Haughey therefore follow.

James Haughey

6. James Haughey is not as Davy have chosen characterise him during this hearing, but nor is he a person in the full of his intellectual,

physical and mental health. Furthermore, that situation is obvious to anyone interacting with him over anything but the briefest encounters. His manner of speaking, his choice of words and the way in which he physically holds himself would put any observer of average perception on warning that his condition was seriously different to that of an average man of his age. He has a perceptible speech impediment; he talks in a very unusual and high pitched nasal tone of voice; he uses his hands when speaking in an unnatural way; his choice of words is sometimes inappropriate; his reasoning can be circular; his knowledge of financial products, particularly contracts for difference is, even now, seriously defective; and he reacts emotionally to matters that affect him much more than with the large majority of witnesses. It would be clear to any objective observer that he has been physically stricken in some serious respect. Any ordinary observer would be put on enquiry. He is also deeply resentful of Davy. All the findings of fact in this case about him and about other witnesses are made despite his having turned to that firm seeking a job in late 2010 to early 2011.

7. In this case, there has been an unusual amount of parsing of expert reports and analysis of expert testimony. The Court has heard all of this and has read the relevant documentation. Witnesses for Davy have raised evidence that the plaintiff while being examined from a psychiatric and psychological viewpoint was malingering and that results in tests were structured so that James Haughey would appear to be worse than in fact he is. The Court takes all of that into consideration. During one examination, a Mass card and four boxes of matches were taken out of James Haughey's pockets for no apparent reason. He was cross-examined on this issue with a view to determining that he wished to present himself as a very vulnerable person. The relevant memorial card was for his late mother and is an intensely personal item; something of the kind that perhaps many people carry in a less obvious form. The boxes of matches were a springboard for questioning which resulted in a statement in the witness box that he intended to take his life into its own hands should he lose the case. The Court can have no regard to this. His despair, however, is real. Dr. Damien Mohan, consultant forensic psychiatrist, saw his vulnerability as genuine and advanced the view that he was likely to accept advice from a professional person in consequence. He regarded suicide is a very real risk. This evidence is accepted. Of all the witnesses, Dr. Mohan was most explicit in describing some of the answering of James Haughey during interview as being deliberately approximate for secondary gain. Apparently, this is something called Ganser's syndrome but, whatever it is, it is at least as familiar to judges as to psychiatrists. Into the mix of opinions given on the issue of malingering, non-cooperation and the deceit of testing psychiatrists and psychologists must be put the obvious resentment towards Davy and every emanation of Davy which was apparent in the evidence of James Haughey. There is no simple answer as to why certain tests did not marry well with others but simple deceit as a facile explanation is not one which the Court is prepared to accept.

8. Many of the tests showed alarming degrees of impairment. Dr. Simone Carton spent five hours with James Haughey on 22nd January, 2014. Her assessment was both thorough and compassionate. In common with the opinion of other experts, she found good verbal skills and good verbal conceptual reasoning; though these scores were lower than what might be expected of someone with his ostensible qualification of a law degree. Probably, as one expert said, this verbal ability carried him through his time as a student. She found him engaging with her and appropriate in giving a lot of information, though exhibiting more than expected emotion on some issues. Considerable empathy was apparent from her approach and it was likely to yield reliable results. She described him as having the cognitive capacity for financial transactions and described the written application to join Davy on a graduate program as comprehensive, selective, elaborate, detailed and competent. Cognitive capacity for financial transactions may be likened to a very high mountain, however, covering everything from simple purchases at the foothills to more hazardous and demanding things the higher up you go. On many of the tests, however, James Haughey was well below low average ability, including on new learning ability, executive functioning, verbal fluency and effort. These results are not inconsistent with those of Dr. Niall Pender who found him of low average on many tests and on short story recollection but well below average on complex visual design. He described him as having difficulty with coming up with information quickly and with strategic problem solving. The more the load, he said, the tighter the timeframe and the more complex the task, the worse James Haughey performed. This is a reasonable and probable opinion. Professor Peter Kelly, an expert on stroke medicine, described James Haughey as having very mild dysarthria and very mild arm function interference. He saw his gait as having appropriate symmetry and he saw no evidence in the limitation of independent decision-making. He declined to express any view on the issue of complex decision-making. The Court is satisfied that decisions on contracts for difference involve a high level of intellectual functioning and require complex decision-making which are well beyond the intellectual capacity of James Haughey. The few light moments in this case came around when medical experts of high intelligence and qualification were read passages from Davy documents and expert reports describing how these instruments work and how the financial consequences may play out. It is clear that all of them who were asked these questions were completely at sea without navigation aids. It was said by the financial expert called on behalf of Davy, Paul Keenan, that it is possible to explain these instruments and the consequences of investing in them comfortably within the space of an hour. Nothing in the course of the case suggests that that this could even possibly be true when dealing with a person of average to high intelligence, never mind a person who is impaired. That opinion is not accepted.

9. There are two results in this case with which no one can quarrel. When, in late 2010, James Haughey decided to seek employment in Davy through a graduate program that would have seen him enter more fully into the world of stockbroking for a fixed period, he was required to take two tests. There had been considerable vagueness by Davy as to the nature of these tests and it took persistence before any information as to what they were supposed to indicate emerged. As it turns out, these are general intelligence assessment tests which can be applied to any group in the population with a view to testing their overall abilities in questions of mental agility. There can be no doubt that James Haughey wanted to get a job. There can also be no doubt that, for whatever reason, he saw Davy as a place where he might work. He overestimated his abilities. On each of the tests, in terms of the general population in Ireland, he came below the 13th percentile. Dr. Mohan, who was strong on the malingering explanation for the presentation of James Haughey, was asked to estimate from his meeting with him as to where he might come under tests such as this. Dr. Mohan estimated that he would come in or around the 50th percentile. Insofar as some distinguished medical people have said that the disability of James Haughey was mild or was not easy to discern, this clashes with the finding of the Court. It is partly explicable, however, on the basis that while the medical witnesses were correct in describing James Haughey as recovering well from a serious stroke, they are much more used to dealing with persons who were very seriously impaired and with whom they were perhaps favourably comparing him. That viewpoint does not apply to stockbrokers or to anyone else engaging with James Haughey. There the comparison is of an ordinary person of business and on this James Haughey demonstrably does not measure up.

10. In terms of education, the results can be plainly stated. James Haughey categorised himself as having done a "mediocre Leaving Certificate". He had extra time for public exams and dictated his exam answers. In applying to join Davy, he misstated his results to make them better. Similarly, he achieved entry into University College Galway on the basis not of results but of a laudable access program for persons with a disability. His academic transcript is alarming, with several failed exams and repeated exams and exams which seem to have been excused or put off. There are no brilliant results which could leaven this with any sign of real comprehension of particular aspects of law. He ended up with a third class honours degree. While in Galway on the access program, he was given a scribe who transcribed his lectures and emailed him the typed notes. This is because his fine hand movement cannot cope with swift writing: even his signature on superficial examination would make one wonder. His time in university was far from easy. He was, and is, in many respects an outsider and must have found the social superficialities of student life a trial. A priest of the Roman Catholic faith helped and supported him through his time in university. However, perhaps following the tragic death of a friend who seems to have been a very decent individual, and certainly as a result of the strains of college life and of managing property, he ended up in

the psychiatric unit of Galway University Hospital from the 2nd the 6th May, 2007. There he was treated for depression. Like a lot of people, he did not follow-up properly with outpatient treatment. This date is important, as is this event. Also important is the fact that James Haughey shows no sign of holding back on personal details when talking to people.

11. Apart from finding university a strain, in addition to that, having inherited property from his parents, he found travelling around to manage these properties and to deal with tenants severely discommoding. In his application to Davy, there is a description of the merits of the candidate, namely him, which is fluent and appropriate. It is highly probable that his late friend helped him with a general template for job applications and it is more probable that the exaggeration of his university and school results arose more naturally from his desire to achieve at least an interview than from whatever mild prompting as to the value of exaggeration he was given by any employee of Davy. It is also probable that there was such prompting.

Contracts for difference

12. A simple explanation of how contracts for difference work occurs in a passage in the evidence of Joe Motley, the financial expert from Clarus called on behalf of James Haughey. Financial people call these CFDs, though it might be noted that the Bank of Ireland recorded them in one inadmissible document as "CDFs". The Court has no regard to this. As Joe Motley's analysis was put to a number of witnesses, including medical experts, it is now quoted:

> CFDs are, very simply, a form of margin investing. When acquiring a position in a share declined is required to contribute only a portion of the underlying position value in cash. The proportion varies typically from 10% (four large-cap liquid shares) to 20%. That cash (the "margin") is deposited with the CFD broker… and the client receives a small rate of interest on it. The client is exposed to the full fluctuation in value of the underlying position, and if the position value falls he may be required to contribute further cash margin. The full acquisition coursed of the underlying position is financed by the CFD broker, and the client pays a financing rate on that amount which is set at the CFD broker's cost of financing plus a fixed margin. The client also pays dealing commission on the trade, which is determined by reference to the size of the underlying position rather than the size of the margin. CFDs may also be used to take a 'short' position in the stock (which is otherwise difficult for a private client to do). In that case the client is still required to put up margin in the 10%-20% area, but he now receives the financing rate on the position value. However in this case the fixed margin is deducted from the financing rate. When 'long' stock via CFDs, any dividend income is credited to the client, but when 'short' it is deducted from the value of his position. CFDs offer three attractions for clients who are interested in speculative short-term trading: they provide leverage for the client who wishes to take more risk with a given amount of cash than would be possible through direct purchases of shares; they facilitate 'short' positions; stamp duty on purchases (1.0% on Irish shares and 0.5% in the UK) is a significant transaction coursed for active traders in the cash market, and CFDs provide a way to avoid it.… The client's risk level in a CFD position is determined by the size of the underlying position. Furthermore, it must be noted that short positions are inherently more risky than long. On an un-geared basis along position cannot lose more than 100% of it opening value, whereas there is no theoretical limit to how much can be lost on a short position.

13. Whereas CFDs are represented by firms dealing in them as perfectly respectable, some examples might suggest to reasonable people that they are seriously risky. One does not buy anything tangible and, furthermore, by staking a small percentage of a cost, one borrows to embrace the apparent totality of an instrument. To take the short position question briefly touched on by Joe Motley in the above quote, but much more fully explained in evidence: a client can decide to go short for 10,000 positions in Ryanair shares at €6 of which you will pay 10% of the €60,000 value at a cost of €6000. Where someone is taking a position short on a CFD they are, according to the elaborate explanations before the Court, looking for the shares to fall. Were the price of Ryanair to travel to €18, the client would lose €174,000 for a €6000 stake. This is said by Davy in testimony to be highly unlikely as are the other extreme fluctuations which can be calculated in respect of both short and long positions through a CFD purchase. This is taken into account. But, in reality, CFDs fluctuate over a very wide band and one that is exaggerated by the lack of a concrete position, namely owning the share, and by borrowing to purchase the shadow image of a position on its price. The financial analysis so carefully done by John Harding ACA shows very serious fluctuations towards the end of the approximately two and a half year cycle of CFD dealing that is in issue in this case. The Court is grateful for this objective analysis. It was most helpful. This kind of derivative instrument is suitable for those who are prepared to risk the investment of their money speculatively and have the wealth to do so. By spending only 10% of the share price, a client obtains a position on a share but never buys the share itself. If things go wrong in terms of what way the CFD is called, long or short, the client has nothing to sell. All the client has is leverage, of which some portion, a tenth or a fifth, has been paid already. The CFD provider must purchase the shares or must be in a position where books are balanced by an equal number of speculators going long and short on a similar number of interests in the shares. On going long for 10%, a fluctuation of 10% means that the entirety of that stake is lost. Over time, money can be lost on shares and money can come in on the ownership of shares but over a much shorter period of time the entire stake in a CFD can be lost. Of course, over a short period of time an enormous gain can also be achieved by a speculator investing in these instruments because the amount staked is multiplied by 10 in terms of the result achieved through share fluctuations once a long or short position is correctly prophesied and where the position is encashed at the optimum time. Some tax is also avoided.

14. In a long position, the loss of 10% has been attributed by Paul Keenan, the expert in this case for Davy, as being equivalent to a wake-up call to the investor. If one has several positions in several different shares, or even only a few, or if one has one position which is long and a number of positions which are short, shrewd attention to detail is called for if these alarm bells are to be correctly interpreted. But there is another and even more serious disadvantage to trading in CFD positions. Everyone knows that shares may go up and down. Every graph of financial markets, except in extraordinary times, will show a trend either upwards or downwards but one which is characterised by peaks and troughs in the wave that represents the share price. If a 10% position falls by 10%, the stake is entirely lost and the upward bounce, as apparently it is called, for a long position, or the downward fall for a short position, is a considerable temptation for the investor. This is because once the stake is exhausted by the movement in the share price there is nothing to hold onto in order to wait for the expected opposite movement. In order to do that, for the position to be held, another stake must be proffered in cash. A series of cash calls can be answered from an investor with yet more money in order to hold a position that may be hopeless but which may be perceived to be profitable in the longer term. In contrast, in the long term, on actually buying a share, an investor holds a share in a firm. If the share price goes up or down 10%, the investor holds the price of a saleable commodity to 90% or up to 110%, but it is still a saleable commodity. In reality, a person entering into a CFD, while holding a 10% stake is, in fact, borrowing the entire of the money required by the provider to purchase the shares, namely the other 90%. People have a natural reluctance to borrow money, but this is essential to commerce. In taking a CFD position, it is not obvious and needs to be carefully explained that large sums are being borrowed for the stake: 90% in the case of a 10% payment. It needs to be spelt out to anyone who buys a CFD that whereas they are staking 10% of the price, they are paying for the interest on borrowing the remaining 90% of the price. That borrowing is part of the way that the provider finances its position on the shares; that is by charging a rate of interest which is above the London Interbank Offered Rate, commonly abbreviated to "LIBOR". What did not emerge until later in this case, was what was certainly unknown to James Haughey, namely that some percentage of that profit due to borrowing being charged to the client by the provider is returned by the provider to the broker, in this case Davy, through whatever

private arrangement is set up as a matter of contract whereby the broker chooses a particular provider. The rate of return was apparently not known to the portfolio managers who gave evidence in this case— at least that is what they claim — and is only known, the Court is expected to accept, at a high level in broker and provider undertakings. When staking 10% or 20% of the price a return in interest is made on that small sum of money to the client by the provider through the broker but this is at a much lower rate than the rate for borrowing and hardly offsets the cost of holding in a CFD position at all. This was unknown to James Haughey.

15. Davy claims to have provided high levels of explanation to James Haughey before he entered into any contract for difference. Among the documents used was one of 25th August, 2005 which showed examples of paired trades, ratios of trades and the profit resulting from a short position. It might be noted that there is no example of the loss resulting from a short position. The document purports to explain what a CFD is, describing it as "a product traded on margin which, allows a client to trade long or short of stock to mirror the performance of the underlying share." Then the document lists the following as the characteristic aspects of a contract for difference:

> Trade Short as well as Long: Trading a CFD is a convenient and cost-effective way of mirroring the potential fall in the underlying share. A short position in the physical equity could be opened with a stockbroker; however, the cost of rolling this position at the end of every settlement period would prove highly expensive.
>
> Cost Effective: No Stamp Duty is incurred when trading a CFD as the client is not physically buying the shares. This means, however, that the CFD holder is not normally entitled to any voting rights or perks.
>
> Gearing: Holders of a long or short CFD position are required to deposit margin as collateral rather than pay the full underlying value of the stock. Margin requirement will typically be 20% of the full contract value. CFD's are available on Technology and other volatile stocks but may attract a higher deposit margin.
>
> Hedge Risk: A client might also be able to take advantage of the opportunity to sell a CFD short if he is the holder of the physical underlying stock. He may believe that the stock is due for a short-term correction on the downside, and would therefore sell the CFD short to protect his profits and potentially control the timing of any UK Capital Gains or avoid the cost of selling and buying back of a share.
>
> Expiry: Hold your long or short position for as long as you like. A CFD has no settlement date. It is an open-ended contract. We also offer a CFD future with fixed maturities – see page 12 for details. [There is no page 12]
>
> Dividends: A holder of a CFD is entitled to 80% of the net dividend. However, a client who is short would be liable for 100% of the gross dividend.
>
> Corporate Actions: As the holder of a derivative position, you do not have the same rights as the holder of the underlying. However, Cantor CFDs will, in so far as this is possible, allow you to participate in any corporate actions which might arise.
>
> Financing: A client holding a long CFD position will be liable to overnight financing charges. Cantor CFDs has financed the value of this trade and charges are spread over LIBOR for this service. With Cantor CFDs on a short CFD position the client will be entitled to a daily rebate.
>
> Execution: CFDs are available on the FTSE-350 stocks, UK stocks of smaller capitalisation as well as on any US and European shares. Approval for a very low capitalisation stocks will need to be sought prior to trading. Trading a CFD is exactly like trading the traditional stock market and confirmation is either immediate or on completion of the order.
>
> Commission: A small commission charges made each time a contract is opened or closed.
>
> Taxation: Any profit on CFDs may be subject to CGT (Capital Gains Tax), but losses may also be offset against CGT.

16. None of this is easy to understand. Certainly, it is difficult without a serious analysis of the nature of contracts for difference, together with appropriate explanations and perhaps with appropriate checks during the learning process as to whether a client of even lively intelligence has absorbed the information prior to making a decision to move away from trading in actual shares, or shares purchased for cash, as opposed to staking 10% or 20% of the value of stock on a contract for difference in the hope of leverage upwards or downwards on the margin giving a return as if a 100% position were taken. A CFD position can, in general, according to the testimony in court, be gotten into or gotten out of very quickly. So, it is to be wondered as to what explanation was ever given to James Haughey by Davy as regards the nature of these instruments and how a loss of high magnitude can be very quickly made on them either by taking a short position or by taking a long position and then being tempted by adverse circumstances into keeping the position open to answering further cash calls.

First contact

17. James Haughey did not initially go to Davy with a view to entering into any contract for difference in shares. The Court accepts that whereas he may have heard of a CFD he did not know what that was. He had done some dealing in stocks and shares before, but only of the ordinary kind. Davy present this as evidence of expertise and also of long dealing, but James Haughey was then barely two years past his 18th birthday. As to what happened, there is a stark conflict of evidence. At least the beginning of the crucial day of 25th August, 2005 is undisputed.

18. Among the properties which James Haughey had inherited were two rented houses in Drumcondra. He had to manage these properties himself and he did not have a property manager or agency. On that day, he collected rent and then went into Bank of Ireland in Drumcondra because an idea had occurred to him. Recollecting family meals in Jurys, happy occasions when he stayed there with his mother and father, he decided to buy into that hotel group in the form of Jurys Doyle as traded on the Irish Stock Exchange. Davy present this as a shrewd financial choice. The Court does not accept that. The amount which he had to spend was up to €200,000 and while there was a share trading desk in some banks, this was beyond their limit. He was therefore put into a taxi by Bank of Ireland and sent to Davy, a firm with which he had no previous contact. He indicated the nature of his business and met Niall Kelly. They waited together for about 10 minutes until Anthony Moyles became free. This is where the conflict in evidence begins.

19. Anthony Moyles describes his recollection of James Haughey at this first meeting as being small in stature. He claims that they spent "well over an hour" on different topics, and over that time he noted his form of speech to be deliberate and with an unusual accent but not as manifesting any impediment. The form of speech was described as being similar to that over the six days of the cross-examination of James Haughey before this Court. A clear impediment was manifested in the speech of James Haughey during

this hearing. To fail to have noticed it and to fail to have been put on warning of potentially serious underlying problems is highly improbable. Anthony Moyles said that a stroke was mentioned but that James Haughey made light of it, describing it has not affecting him. He said he had €5 million plus to invest in a share portfolio and that he had finished first year law and English in UCG. He never got the sense that James Haughey did not know what they were discussing and or had any problem in understanding anything. On the plaintiff's age Anthony Moyles said: "okay, he was 20, but we get all kinds in Davy." James Haughey was described as being determined in his view, the implication being that he was unbiddable (something that this Court does not accept). James Haughey was described as being a person who manifested serious knowledgeable in shares, mentioning values and particular stocks such as Zara, Indetex, European Aerospace; and as a person who had familiarity with financial markets, read the newspapers' financial pages and financial magazines. It was very late in the hearing before 'The New Yorker' was curiously identified as one of these. Anthony Moyles would rate James Haughey on the basis of that meeting, where 10 is an experienced investor's knowledge of stocks in the financial markets, as ranking around 6 to 7. He explained to him that Davy offered discretionary, execution only and advisory accounts and that to trade in CFDs a customer would have to open an advisory account. He says that he explained by reason of examples how CFDs have multiples in terms of profit and loss and how these would result from engagement with these financial instruments. This was clearly explained, he asserted, as was the difference between buying shares in the hotel group and engaging in positions on contracts for difference on that stock. The relevant leverage was 20% for Jurys Doyle. The margin call was explained as being a risk control. He assessed James Haughey from the point of view of the four key components of stockbroker-client interrelationship, namely wherewithal, knowledge, risk appetite and objective. He explained that there would be an interest charge on the full position. Forms were produced to James Haughey explaining the nature of the risk, the nature of the relationship and the nature of the product and it is asserted that these were gone to through carefully. These were signed in front of him. On the face of at least one of these explanatory forms, if the wording is correct, it was designed to be taken home and studied and then signed. While the meeting lasted over an hour in fact, it would have needed less than an hour the Court was told. The forms were then completed by being signed. These were not filled out because Anthony Moyles had a full picture of what James Haughey was like. That is Davy's case. Or, it was said, if the forms were not to have been filled out properly it was the job of the document section within Davy to bar him from acting. That document section never came back to stop him. That was a serious failure by Davy in appropriate controls. Anthony Moyles, he said, was impressed by James Haughey, a person who at 20 was managing property and doing a law degree. He did not know that James Haughey had gained a place in university on an access program for persons with disabilities who use a scribe. He saw him as engaging in speculation and noted him as being well aware of the risks involved in CFDs. Part of the reason that he saw him as engaging in speculation was that anyone who is prepared to put the amount eventually used that day, being €175,000, on a single stock fitted within that category. There was also limited evidence from Niall Kelly. He said he had no clear recollection of the meeting but did not notice anything unusual about this client. He did not recall what was said in relation to the nature of any talk about CFDs. It is possible that his recollection is a blur.

20. James Haughey described the meeting in a radically different way. He had gone in to purchase shares with a sum of in or around €175,000 but came out of the stockbroking firm with a long position in contracts for difference on that stock and a liability five times higher, potentially, than he had wanted. This was a reference to a 20% stake. He did not understand what he was doing. He described Anthony Moyles as saying that he could buy shares in the normal way or that we could enter into these instruments. Lots of terms were used like leverage, margin calls, limits, *et cetera* which he claims he did not understand. He was told that engaging in CFDs was normal and that 40% of share trading was done in this way on a particular Irish index. "Highfalutin terms" were used so much so that at times it was as if Anthony Moyles was talking in Latin. The choice presented was one of either making modest returns in share dealing or of joining "the big boys" in what was presented as the CFD club. The prospect of making 10 times the relevant profit was put forward as a typical possibility, though here the leverage was 20%. Standard forms were put in front of him to sign. These were not explained. There were flashed in front of him by Anthony Moyles for signature and not read out. They were put in a file. They shook hands. Anthony Moyles said that he would be in contact. Thus it was that this unfortunate series of events began according to James Haughey.

21. What has been lost sight of in the Davy presentation of events is how serious this meeting was and how it laid the foundation for a set of transactions generating fees spanning two and a half years. This, while profitable at times, ended up with a serious loss for this plaintiff. It was perhaps too easy for anyone to fall for the attractions of the apparent wealth of James Haughey: in an ancestral adage *déanann ciste cairdeas*. Whether folk wisdom is appropriate now or not, there is a serious legal duty on any stockbroking firm selling financial products which may or may not be suitable for particular client to find out who that client actually is. The Court accepts that James Haughey was encouraged towards investing in contracts for difference by Davy. This was inappropriate to him. Further, every system dealing with money must have checks and balances. It is improbable that any stockbroking firm would attempt to stand over a process which involves the careful filling in of forms as being adequately transacted when the relevant forms were not filled in at all. Regrettably, that has been the position adopted in this case by Davy. Whereas James Haughey in the course of the hearing walked himself into a situation of alleging that forms were filled out in blank and then filled in later by Davy and whereas this has been criticised, the actual situation is not impressive. After James Haughey had signed the application form to join Davy as a client, he was given a client number on the form in his absence; this is ordinary administration and above criticism. In his absence, as well however, he was ranked as a "gold" client and someone with an "aggressive" disposition towards investing. The reference to the precious metal, the Court was expected to believe, and sees no reason to accept, was something to do with the number of forms that might to be sent to him over a year or perhaps something to do with his financial wherewithal or perhaps not. As to an aggressive approach to the stock market, with any degree of care being exercised this would be something that might responsibly be teased out over weeks or months. Exercising any kind of even minimal duty of care, the result of an ill-considered approach can be financial ruin. Does the client really want that? This is the kind of question that a stockbroker should ask. On the form James Haughey signed on foot of a declaration as follows:

> I hereby declare that the information given on this form is correct and if any of this information changes materially, I undertake to inform you in writing without delay. James Haughey. 25/08/05.

22. Any such declaration is very serious as it is key to the service being paid for. Absurdities have been talked over days about this form. Reality must be faced. It is a blank form. There is no information given. The document contains serious queries about the particulars of the information sought which would be necessary for any stockbroker to offer any kind of an appropriate service to the client. Even the contact details were left blank. On one other form an address was given for James Haughey as being care of a particular street in Ranelagh where hundreds of people live in scores of different but similar terraced houses. The result is that there is uncertainty and more as to what this particular client received by post. That is just not careful work. Various addresses were used for communication.

23. In the form, the client is asked to rank his attitude to risk as between 10, speculative, and 1, conservative. This is blank. The client is asked to describe his investment knowledge and experience as between limited, at 1, and extensive, at 10. This is blank. The client is asked to indicate the approximate value of investment holdings as between a range such as deposits, An Post savings accounts, unit trusts, shares, options, unquoted shares, property apart from the home and other. This is blank. The client is expected to indicate the source of his income from employment, from rental and from other. This is blank. The client is asked what his current

pension arrangements are and this is blank. The client is asked for any further information that he may feel is relevant. This is blank. The client is asked as to his initial investment amount. This is blank. The client is asked about his investment objective, whether it is growth, income, guaranteed growth or income and growth. Another very good question, except there is no answer. The client is asked what income he expects from his investment but this is blank. The client is asked what time horizon would be appropriate for his investment from up to two years to over five years and this is not filled in either.

24. Davy makes the case that seeks to justify this on the basis of a pen picture taken down by Anthony Moyles. Hours were spent on this pen picture and the bits that were right and on the bits that were wrong. Every attempt to justify this pen picture was futile. Here is the pen picture:

> Personal Information
>
> James Haughey. 5/7/85 single. Both of James parents are deceased.
>
> His father died about 10 years ago and his mother died last year. He suffered a mild stroke himself in 2004 but he is in great health and does not seem to be suffering from it.
>
> He is a resident in Ireland and enjoys watching all sports.
>
> Intro Source:
>
> Niall Kelly of the execution desk got a call and introduced him to me.
>
> Investment Objective
>
> James wants to buy one specific stock for the time being. He has been buying shares for over two years and his approach is that when he thinks the shares cheap he goes for it. He does not want to build a portfolio as yet but instead buys certain equities and reduce the downside risk by placing limits.
>
> He will eventually look to diversify out of his large property portfolio. He has properties in the North of Ireland and in Dublin. He has already begun to divest and move into equities and he will be accelerating this process over the next 6-12 months.
>
> Investment Knowledge
>
> He has excellent knowledge of the market. He does a lot of his own research. He reads all the financial press and is well up on the working of the markets. He has just completed his first year in Law and English in NUIG.
>
> Risk Attitude
>
> James will take a loss of risk. He is willing to open a CFD product and to leverage up to purchase his specific stocks. He has again limited his downside with the use of stop limits, and he is well aware of the risks involved with the CFD's.
>
> Business Info
>
> James is a student.
>
> Source Money
>
> James inherited over €5 million worth of property and cash deposits from his Mother and Father. He has most of the properties rented out at present and currently lives off the rental income. I have talked to him about diversifying his portfolio and possibly looking at sheltering his rental income. James has expressed an interest in meeting me again in a few weeks after this initial deal.
>
> Ethical Preferences
>
> James has no ethical preferences.
>
> Correspondence
>
> James would like all correspondence to go to his solicitor.
>
> James Haughey, c/o 18 Upper Beechwood Avenue, Ranelagh, Dublin 6.

25. Apparently, there was another short meeting between Anthony Moyles and James Haughey in June, 2006 when the CFD provider's account moved from Cantor FitzGerald to IG Markets. The result is even worse. The Court was told that there was no discussion of the parents of James Haughey at the initial meeting, or none to speak of, and yet the parents are on both of these forms, his father having died about 10 years ago and his mother the previous year. He is described as being someone who enjoys "watching all sports." In the form from June, 2006, James Haughey is described for some intensely obscure reason as being a client to whom the designation "silver" should be applied, as opposed to "gold" a year earlier and in fact is called "Jim Doherty". He is described in both forms as having an excellent knowledge of the market and wanting to take on a lot of risk. A quote may be appropriate:

> Personal Information
>
> James Haughey born 5/7/85 and is single. Both of James parents are deceased. His father died about 10 years ago and his mother died last year. He suffered a mild stroke himself in 2004 but he is in great health and does not seem to be suffering from it. He is a resident in Ireland and enjoys watching all sports.
>
> Intro Source:
>
> Niall Kelly of the execution desk got a call and introduced him to me.

Investment Objective

Jim's objective is to grow his investment song. I showed him our CFD product and he agreed that in order for him to get a level of return that he was happy with for the year that we would invest the €50,000 into a CFD a/c and leverage it up five times. We would look to invest in good quality companies that we felt offered value.

Investment Knowledge

He has excellent knowledge of the market. He does a lot of his own research. He reads all the financial press and is well up on the working of the markets. He has just completed his first year in Law and English in NUIG.

Risk Attitude

James will take on a loss of risk. He is willing to open a CFD product and to leverage up to purchase his specific stocks. He has again limited his downside with the use of stop limits, and he is well aware of the risks involved in CFD's.

Business Info

James is a student.

Source Money

James inherited over €5 million worth of property and cash deposits from his Mother and Father. He has most of the properties rented out at present and currently he lives off the rental income. I have talked to him about diversifying his portfolio and possibly looking at sheltering his rental income. James has expressed an interest in meeting me again in a few weeks after this initial deal.

Ethical Preferences

James has no ethical preferences.

Correspondence

Regular meetings and telephone calls.

James would like all his correspondence to go to his solicitor James Haughey, c/o 18 Upper Beechwood Avenue, Ranelagh, Dublin 6.

26. As regards other documentation, the Court has taken all of this into account. As regards documentation showing that James Haughey had not made a final will and testament, this is unlikely to have resulted from him as with his medical condition he is aware that the chances of further strokes are higher than with the general population. It is clear from his testimony that he worries seriously about his health. The attempt by Davy to justify this manifest lack of care has completely undermined the credibility of Anthony Moyles and any other witness from Davy. It is also fair to record that Anthony Moyles in criticising the document section of Davy must be regarded as correct. In any organisation with a functioning set of checks and balances any forms submitted in the name of James Haughey would be analysed one against the other for consistency and any form that had anything material missing should have resulted in a stop being put on any form of trading. Furthermore, the fact that such a situation could pass is negligence. It should have resulted as a matter of ordinary care in enquiries being made at a higher in different level as to what the nature of the situation at stockbroker to client level was. The more the issue of the forms is gone into, the more extraordinary the situation is that emerges. There was no clear idea as to what address the forms were to go to, accepting that James Haughey had a number of addresses. This latter factor should have made the address issue a priority for any administration. This meeting in June, 2006 was not characterised by either side in this case as having added to the sum of knowledge on the part of client or firm. By 2006, apparently, Davy had introduced, perhaps prompted by the move to IG Markets as provider, requirements that a senior manager should authorise the client as being suitable for CFD trading. Did the senior manager read any of this and did he look at the wealth situation, considering was it stagnant or not, after a year of trading with Davy as manifested by these forms? There is no evidence that any degree of care was exercised. Even so, on 12th June, 2006, an apparently senior individual who is described on the form as a "member of the CFD Authorised List" certified that James Haughey was suitable to open a CFD account through Davy, that a total exposure had been agreed with the client and the portfolio manager, that controls were in place within the team to ensure that the portfolio manager maintained that exposure under that particular limit. In fact, there was no limit. The form goes on:

> I have reviewed the above named client's suitability to trade in CFDs. I met with the portfolio manager who will be responsible for managing the client's CFD account; together we evaluated the client's financial position and assessed his/her attitude to risk, based on the documentation completed and forwarded by the client and the portfolio manager. I have carefully weighted and considered the appropriateness of this product to the client's circumstances. I am happy that there is sufficient documentary evidence that the portfolio manager has taken time to discuss with the client the risks, relating to this product, as listed in the Davy CFD risk-warning letter. I am satisfied that the client fully understands these risks.

27. The Court is satisfied that this did not happen and that this form was filled in as a matter of paper covering. These forms were designed for careful execution. In the way they were treated the diligence expected of a stockbroker engaging with a client was rendered meaningless.

28. Many forms were discussed in the course of the hearing and the Court is mindful of them all. What needs to be most concentrated on is whether there was any change from the lack of care manifest in August, 2005 to the taking of care at any time within the limitation period. The Court is satisfied that this never occurred. Particular emphasis has been placed on the terms and conditions of the advisory service. The reality is that this is a contract whereby Davy agreed to advise the client in accordance with the aims of the client and in a way that Davy considers to be suitable for the client. This never happened. The terms and conditions of the advisory service limit liability to deliberate neglect. The initial meeting of August, 2005 demonstrates deliberate neglect. The change and lack of consideration of June, 2006 manifest deliberate neglect. The exaggerations in the job application form of December, 2010 have previously been referenced. In addition, James Haughey filled out a similar form in June, 2006. In this instance, the relevant fields are filled in. The account given by James Haughey, in this regard, is of obtaining that form and having been worried because of a recollection, either from school or university or talk with friends in university, of the obligation of utmost good faith in filling out

insurance contract forms, he rang Anthony Moyles. In consequence of this phone call, and while a phone call was going on, the form was filled out in an exaggerated fashion in consequence of the urgings of Anthony Moyles.

29. It is been said in argument that the evidence of James Haughey is utterly improbable and especial emphasis is put on this conflict. That argument by Davy is not accepted. The form is filled out in such a way as to establish a wealth base at least three times higher than the form that was not filled out, but in respect of which the so-called pen picture exists, a year previously. It contradicts this wealth declaration: it is set at "over €5 million" and that is very far from €17.6 million. This should have been queried by the document section of Davy and it should have been queried by Anthony Moyles and it should have been queried and more by the senior manager authorising that James Haughey was suitable for CFD trading. There was a systems failure and a failure in responsibility by higher management. The question is asked on the form as to approximately "how much of these funds are available for your trading with CFDs with Davy?" The answer put in is "no limit". That makes no sense. It was negligence in high degree to have accepted that form. The ranking given mentally by Anthony Moyles to the financial expertise in terms of investment knowledge and experience of James Haughey had, the previous year, been a 6 to 7. In the form completed by James Haughey in June 2006 his investment knowledge and experience is filled in as 5, which is a "good" level of understanding according to the scale provided. As to experience of trading margined or geared products, James Haughey answered in the negative: that he had none. It is further evidence that he did not understand what was going on. This should have been queried at stockbroker level and, more importantly, at senior manager level. That did not happen. The account of James Haughey on this most contested of all the forms is not improbable. It is probable that there was some input by Davy into the answer is to be given in filling out the forms in June, 2006. A form for an online service by IG Markets is dated 2nd June, 2006 with a view to linking into dealing software featuring live prices direct but this was not completed. This form is only a matter of information; but in the context of this kind of fast moving situation in financial instruments there is nothing more important than information.

30. The question emerges as to whether in August, 2005, June, 2006 and through to February, 2008, Davy, through the persons dealing with James Haughey, were aware of his limitations or at least put on notice that these limitations existed. It is probable in a high degree the Davy were so aware. It is even more evident that Davy as a firm was put on notice of the limitations and that negligently no enquiry was made when manifestly it was called for. Insofar as it may be argued that this was merely notice, the legal duty on Davy was to know the client and what is suitable for the client. The limitations of James Haughey were manifest to the Court during the hearing and it is apparent, as well, but this is not taken into account in the final assessment, that these limitations were obvious to those Davy witnesses who listened to James Haughey giving his testimony. Where someone is put on notice of a limitation, even to the extent of noting that someone has had a stroke, and the notice here was considerably more serious than that, steps should have been taken pursuant to the duty of care of a stockbroker towards his client to investigate what kind of investment might be suitable. Not everybody is the same and it is no shame to say the James Haughey was and is different to the ordinary investor in stocks and shares and in other financial instruments of a more complex variety. The denials by Davy cannot be accepted as probable. It is to be noted that in late 2010 and early 2011, when James Haughey had finally persuaded Davy to give him an interview, an email was sent from Anthony Moyles to another employee of Davy stating: "… go easy on him." Taken in isolation this might mean nothing, but in the context of everything that has been seen and heard during the course of this hearing this is an expression of shared awareness by the defendant of the nature of the client.

Duty of care

31. Davy owed a duty of care towards James Haughey. This does not require any deep legal analysis. James Haughey was paying Davy to exercise that care. The duty of care owed arose from the contract but was independently manifested in tort. Davy owed to James Haughey the duty of care that is appropriate to an experienced stockbroker towards the particular client when, pursuant that duty of care, the stockbroker has taken appropriate steps to get to know the client and as to what his or her aims are, what his or her means of knowledge are, what his or her financial circumstances are, what the attitude of the client is to risk and, importantly, judged objectively, whether that level of risk is appropriate to that client. If it is not the client should be advised against and in some circumstances more than that.

32. The general duty of care owed may be compared to that which is required of a solicitor to a client. The comparison is appropriate since it is part of the job of the lawyer to ask reasonable questions with a view to ascertaining the true position of the client for the purpose of tailoring the advice accordingly. Here, Davy have continually made the hollow argument that merely taking a pen picture was enough to get to know a client. The implication of the lack of intervention by senior management in authorising James Haughey to trade in CFDs and the failure of the document section to put a stop on the account is that a practice of a sufficient kind was being followed. That is not a discharge of the relevant duty. The matter was put as follows by Henchy J. in *Roach v. Peilow* [1985] I.R. 232 at 254:

> The general duty by a solicitor to his client is to show him the degree of care to be expected in the circumstances from a reasonably careful and skilful solicitor. Usually the solicitor would be held to have discharged that duty if he follows a practice common among the members of the profession… Conformity with the widely accepted practice of his colleagues will normally rebut an allegation of negligence against a professional man, for the degree of care which the law expects of him is no higher than that to be expected from an ordinary reasonable member of the profession or of the speciality in question. But there is an important exception to that rule of conduct… [T]he duty imposed by the law rests on the standards to be expected from a reasonably careful member of the profession, and a person cannot be said to be acting reasonably if he automatically and mindlessly follows the practice of others when by taking thought he would have realised that the practice in question was fraught with peril for his client and was readily avoidable or remediable. The professional man is, of course, not to be judged with the benefit of hindsight, but if it can be said that if at the time, on giving the matter due consideration, he would have realised that the impugned practice was in the circumstances incompatible with his client's interests, and if an alternative and safe course of conduct was reasonably open to him, he will be held to have been negligent.

33. Share transactions invariably involve risk. It does not necessarily absolve a stockbroker of liability that a client agreed to risk without the needs, background and knowledge of that client being first properly probed and the advice tailored appropriately. As Clarke J. stated on the matter in *ACC Bank plc v. Johnston* [2010] 4 I.R. 605 at 639:-

> While the duty of care of a professional person is often described by reference to the standards that would normally be applied by a professional of equivalent experience, it is clear from *Roche v. Peilow* that the mere fact that a practice is universal does not, of itself, immunise the professional concerned from potential liability, if it is a practice which, on reasonable consideration, the professional concerned ought to have identified as giving rise to a significant risk. In that context, it is apposite to note the reference of Walsh J. to a "stock" risk. There is risk in everything. Professionals cannot remove risk from the equation. However, professionals are normally employed to minimise risk or advise clients on relevant risks. Professionals should not expose their clients to unnecessary risk without, at a minimum, advising their clients of the risk involved and inviting their clients' instructions. The mere fact that there may be a common practice to expose clients

> to a particular type of risk will not necessarily provide a defence. The ordinary duty of care, therefore, extends not merely to ensuring that the relevant professional person carries out his or her duties in the way in which other suitably qualified members of the relevant profession do, but also extends to considering whether common practices may so obviously involve unnecessary risks which can be eliminated that such practices should not be engaged in. It might be said that such practices are more honoured in the breach than in the observance in the proper sense of that quote.
>
> Against that background, it seems to me appropriate to ask what the point of employing an independent solicitor might be if it is not to reduce the risk that might otherwise lie on the financial institution. As pointed out earlier, a financial institution, by instructing the purchaser's solicitor to act on its behalf takes a risk. For the reasons which I have set out it would appear to be a risk which, at least in smaller transactions, financial institutions are willing to take in order to save costs. Where, however, the transaction is bigger and the financial institution chooses to reduce its risk by employing its own solicitor, then it does not seem to me to be appropriate for that solicitor to take it on him or herself to expose the financial institution concerned to the very risks which it has sought to avoid by employing him in the first place.

34. Central to any view that might reasonably be held as to the nature of the stockbrokers duty towards his client is that clients are different and before a client can be advised reasonable efforts must be made to get to know a client. There is a binding obligation under the rules of the Irish Stock Exchange 1997 which were in force on 25th August. 2005. Counsel are agreed that these rules govern the relationship up to November 2007. The relevant rule in that regard is encapsulated in rule 4.5.3:

> Before a member firm enters into a relationship with a private client, other than an execution only client, it must take reasonable steps to obtain information in writing from that client, details of his:
>
> (a) personal financial situation,
>
> (b) investment objectives,
>
> (c) attitude to risk,
>
> (d) investment experience,
>
> (e) investment restrictions, and
>
> (f) any other facts about his position which the member firm reasonably believes it needs to know, or which it ought reasonably be expected to attempt to find out.
>
> The firm may in capturing a client's investment objectives and attitude to risk provide the client with a number of standard investment objectives in its client documentation. For each investment objective and risk option listed, the firm shall ensure that it provides sufficient guidance to enable the client to make an informed decision.

35. It was key to the relationship of stockbroker and client that the client paid for these services. The basis on which the client paid was that appropriate investigation should be carried out and the service tailored accordingly. Investors can be different. The fees of Davy were paid for discharging duties particular to the specific client. In this respect Davy failed to meet that standard. Counsel for Davy has rightly accepted that this was the standard that applied. Other duties arise as well which apart from this duty are not essential to the decision in the case. Insofar as Davy have pleaded that risk warnings were given, and that that was in compliance with section 4.2.4 of the same rules, this is not accepted. The additional requirements set out in section 4.2.2 in relation to advisory clients were not, on the evidence in this case, fulfilled. In addition, it is not probable that section 4.1.1 was complied with. There was a duty of care but even if the duty of care is cast on the basis of a contractual duty of deliberate neglect, such neglect was the situation here. When the regulations were changed in November 2007, this led to no discernable change in the practice of Davy as regards this client. Actually, there has been much concentration in this case on the European Communities (Markets in Financial Instruments) (Amendment) Regulations (No. 2) 2007 (S.I. No. 773 of 2007) but on analysis of the terms, these continued but added nothing to what the obligations were already that are essential to this decision. Some specific terms were referenced, some not pleaded, and this is not appropriate to the orderly disposal of a case.

36. The duty of Davy to James Haughey duty existed concurrently in contract and in tort. James Haughey was paying for advice. He had contracted for fees to receive advice based on an appropriate analysis of who he was and what his objectives were. As was stated by Lord Goff in *Henderson v. Merrett Syndicates Ltd.* [1995] 2 A.C. 145 at 193-4:

> [T]he common law is not antipathetic to concurrent liability and [..] there is no sound basis for a rule which automatically restricts the claimant to either a tortious or a contractual remedy. The result may be untidy; but given that the tortious duty is imposed by the general law, and the contractual duty is attributable to the will of the parties, I do not find it objectionable that the claimant may be entitled to take advantage of the remedy which is most advantageous to him, subject only to ascertaining whether the tortious duty is so inconsistent with the applicable contract that, in accordance with ordinary principle, the parties may be taken to have agreed that the tortious remedy is to be limited or excluded

Expert opinion

37. Two expert witnesses gave opposing evidence on the key question of the discharge of the duty of care. Both were genuine experts and the court has benefited greatly from the debate between them. Paul Keenan for Davy sought to justify the pen picture as being sufficient in the context of the "know your client" exercise. Paul Keenan in his professional life has otherwise sought to generally warn financial service providers of the necessity to ensure compliance at a higher level than that of traders. This is an important thing to do from the point of view of the public. In this, he is completely correct. Writing about what may be described generally as a lack of management scrutiny he said:

> Internal audit has a role to play, but their role is always behind the times, runs to a known schedule, and trusts the systems that the traders are able to manipulate. It requires expensive forensic training and major changes to be effective. Compliance officers, these days, are usually on the trading floor and have daily contact with traders, they understand SYSC, and so, if given the tools and the access, will understand how to monitor for SYSC compliance. Compliance monitoring already has a strong presence in banks, and is easily extended to incorporate SYSC.

38. Paul Keenan is involved in serious and important work and is entitled to the respect of everyone in that regard. He said the above quote referenced another service. At the very least, the quote declares a reasonable statement of principle which the Court accepts.

The Court cannot accept, however, that a pen picture that was never sent to James Haughey for his approval can be regarded as equivalent to a client profile. This was part of the service being paid for. Nor can it be accepted that any aspect of the plaintiff James Haughey talking in court about contracts for difference could be described as "quite impressive". That is not so. It cannot be reasonably said that an execution only account might have been suitable for James Haughey to trade in contracts for difference because he would have been under the "watchful eye" of Anthony Moyles. Nor can it be accepted that even an average person could over the course of an hour read through the documents presented on 25th August, 2005 and see the warnings even more swiftly. That is unrealistic and as a matter of fact in this case cannot be accepted as probable. These, and other considerations, lead to Court to the conclusion that, while there is much benefit from debating the contrary view, the expert evidence proffered on behalf of the plaintiff James Haughey by Joe Motley is strongly to be preferred.

39. His view was that even if the plaintiff was demanding greater risk, there was a duty under the Irish Stock Exchange Rules to take all reasonable steps to ensure that the advice from Davy did not encourage unsuitable activity. His view was that Davy was under a responsibility to advise James Haughey away from extensively risky positions at a much earlier stage. Further, if Davy believed that there was a persistent pattern of James Haughey choosing to undertake trades which did not meet their suitability criteria, it was open to them, and they should have, requested him to change the status of his account to an execution only account. In that case the stockbroker under the relevant rules would not be providing any advice in relation to the client transactions and would not be obliged to verify their suitability for the client. This was a series of transactions which, at their height, exposed James Haughey to risks in excess of €30 million. This was against a background where his ostensible value in the initial pen picture was perhaps €5 million and where that included, it would seem, his residence, something which should not be taken into account. No one should be in a position to invest, he said, unless they mean to take the risk of loss in value of 50%. The language in the warnings was dense and was not easily taken up. Once the account was changed from Cantor FitzGerald to IG Markets as provider in June, 2006 the level of risk was ramped up. The Court would find it important to note the total failure to conduct a further face to face meeting beyond a brief chat and yet more empty document signing. That level of risk, according to Joe Motley, was too high and it was too concentrated, essentially on two or three companies and exclusively on one kind of investment. That exclusivity was not appropriate. To accept an answer in the June, 2006 from James Haughey in relation to the level of commitment of assets as being "no limit" was nonsensical, he said. The client has to be looked at in terms of what the client is, according to Joe Motley, and if someone has an inheritance then that person may not be shrewd, not a person who has earned their money and worked their way into a level of wealth. Furthermore, if someone has an inheritance and is merely a student, that person cannot be expected to turn to the employment market readily. That is right. Building a career takes years. If someone is to depend on an inheritance, then the money must be structured through their broker so as to have a reasonable chance of lasting over decades. If a broker feels a client is taking too much risk, the right thing to do is to change to execution only and this should have been done in respect of the disputed transactions from May, 2007. This evidence of Joe Motley is accepted. It is objective, it is clear, he did not shy away from answering difficult questions and he was of real assistance.

40. Another aspect of Joe Motley's statement of evidence is accepted, though this is not essential to the decision in the case. This reads:

> I was unable to find any evidence in the documentation of Davy having given its terms of business to the plaintiff before any dealing commenced (as required under rule 4.2.1 of the rules of the Irish Stock Exchange) and there is no record of any disclosure anywhere else of what commission rates, financing rates and other charges would be applied to his account.

41. The Court would also note that the rate of return in terms of the interest charged on the full amount of taking a position on shares as between the stockbroker and the provider was kept out of evidence. As to how and in what circumstances a stockbroker is entitled to a bonus and on what basis it is calculated was fogged in the evidence so that no meaningful information came across. As to what a "silver" client or a "gold" client may be was deliberately obfuscated in the evidence. References to the number of brochures that might be sent to a particular kind of metal-designated client as opposed to another, gold being approximately 100 times more expensive as bullion than silver, was explained in a silly way. None of this is important. And none of this is taken into account in making any decision in this case. It regrettably, however, does show a lack of trust for the independent and completely transparent public forum of justice that the High Court represents.

42. Whether there are experts or not, it is the responsibility of the Court to form a view The Court is charged with that responsibility and unlike either expert has a complete view of live evidence and relevant documentation.

Borrowing

43. There has been some dispute between the parties, in addition, over borrowing by James Haughey to fund these contracts for difference. This is not essential to this decision. In terms of fact, it seems that a Bank of Ireland loan was taken out on the equity of some of his property on 21st April, 2006 for €1.64 million. The loan cheque issued on 31st May, 2006 and went to a solicitor with whom James is friendly on 4th July of that year. Then, €650,000 was lodged to the CFD account of James Haughey. On 14th March, 2007, a Bank of Ireland loan was raised on the equity of property in the sum of €1.2 million. The cheque was made payable to James Haughey on 11th June, 2007 and €1.1 million was put into the CFD account. So, €2.84 million was raised by James Haughey out of his inheritance in property and, of this, about €1.75 million was put into his CFD account. Money was put into that account and money was taken out of that account to buy property, to pay capital gains tax and for other reasons. This movement in money is supposed to be significant, according to the argument advanced by Davy. That is not accepted. In reality, €1.09 million went elsewhere from these loans. Having carefully considered the contradictory evidence, the Court accepts that Davy encouraged these loans. That huge amount of finance was raised against property that was the inheritance of James Haughey from his late parents. This was not an appropriate way to deal with this client and Davy would not have dealt with this client in this way had a proper "know your client" exercise been conducted from the outset in August, 2005, or in June, 2006, or in June, 2007 or at any time up to the disastrous losses which manifested in January, 2008.

Summary

44. The Court is bound as a matter of law to accept, and further accepts as a matter of expert opinion, that the correct way to have dealt with James Haughey would have been for Davy, firstly, to get to know him properly. In that context, secondly, if there was a manifest desire coupled with appropriate knowledge to engage in some form of trading in contracts for difference, someone with his background and vulnerability in terms of not having a job and only having inherited wealth should strongly have been advised in writing against any trading in contracts for differences. The correct approach, thirdly, for any investment for this particular client with his particular needs and his special disabilities would be to structure a share portfolio that was spread over time and over investments that would minimise risk; thus providing a reasonable prospect of a steady but conservative return. Had Joe Motley been receiving fees from this client that is indeed what would have happened. It did not happen. That failure represents negligence and manifest breach of contract through deliberate neglect over the relevant period of the relationship.

45. In summary, Davy manifested an insufficient level of care throughout the entirety of the relationship with James Haughey. Davy failed to provide the service paid for throughout the entirety of the relationship. This was equivalent to, or amounted to, deliberate neglect. This particular client should never have been allowed at any stage of this relationship to engage in contracts for difference either at all or at the level involved. Nor did James Haughey know what he was doing to the degree that he ought to have known prior to being introduced to and while being allowed to speculate with these products. The Court is satisfied that the concept and the ramifications of contracts for difference were never properly explained to James Haughey by Davy. The Court is further satisfied that he remained genuinely mystified in giving evidence as to the full implications and ramifications of these instruments.

Limitation of action
46. There was a complete failure to get to know James Haughey for what he was. There was a complete failure in that fundamental obligation under the rules of the Irish Stock Exchange. That obligation is not one which arises at one point in time only and is then completed; it is a continuing obligation. In this case, at no stage was that obligation met. While it may be met by a thorough introduction and analysis that maintains a profile over years or decades, failure to engage in that analysis means that there is an unfulfilled obligation throughout the entire of the relationship. That is why this case has nothing to do with the Statute of Limitations.

Civil Liability Act
47. Another point pleaded by Davy was that section 17 of the Civil Liability Act 1961 did not entitled James Haughey to recover damages. That section reads:

> (1) The release of, or accord with, one concurrent wrongdoer shall discharge the others if such release or accord indicates an intention that the others are to be discharged.
>
> (2) If no such intention is indicated by such release or accord, the other wrongdoers shall not be discharged but the injured person shall be identified with the person with whom the release or accord is made in any action against the other wrongdoers in accordance with paragraph (h) of subsection (1) of section 35; and in any such action the claim against the other wrongdoers shall be reduced in the amount of the consideration paid for the release or accord, or in any amount by which the release or accord provides that the total claim shall be reduced, or to the extent that the wrongdoer with whom the release or accord was made would have been liable to contribute if the plaintiff's total claim had been paid by the other wrongdoers, whichever of these three amount is the greatest.
>
> (3) For the purpose of this Part, the taking of money out of court that has been paid in by a defendant shall be deemed to be in accord and satisfaction with him.

There are a number of problems with the argument advanced by Davy. It is certainly the case that the statement of claim, in common with almost every pleading before the High Court contains many claims that were not pursued. One of these was conspiracy and another was negligence alleged against both defendants. The first day of this case was taken up with waiting for the parties to negotiate. No court takes an interest in that and will deliberately remove from the process. The result was that the case against Bank of Ireland was discontinued and judgment for that bank in excess of €3 million was entered as against the plaintiff. That was in respect of loans and the usual interest, apparently. The Court in no way enquired into that and was not asked to. There were vague references to the pleadings. But where is the concurrency of liability to James Haughey? How in those circumstances can it be said that the Bank of Ireland was a concurrent wrongdoer with Davy since no liability was ever established against that bank and, on the contrary, a substantial judgement was entered by the supposedly concurrent wrongdoer against the plaintiff? This is supposed to be because the bank and Davy are pleaded as being in a conspiracy, in other words an agreement to commit an unlawful act, as against the plaintiff. Where is the evidence for that conspiracy? How can the court possibly come to the conclusion that an unrepresented party, who has left court because the case involving that party has been settled, is a wrongdoer? Furthermore, where is the "consideration paid for the release or accord"? The section is an entirely sensible means of ensuring that compensation on the double is not paid where the case is settled as against one wrongdoer but the defendant is either kept in the dark or is deprived of the benefit of the appropriate measure of damage. As a matter of contract, that measure is the damage which flows naturally from the breach. This is to be judged according to the nature of the contract and what could have been contemplated by the parties as a consequence of a breach. In tort, the measure of damages requires compensation to put the plaintiff back into the position where the wrong is substituted by an appropriate monetary award: thus, in theory, as if the wrong had never been committed. But, where is the wrongdoer that accord has been achieved with? Is it supposed to be Bank of Ireland? If so, the terms of the settlement contradict any such assertion. On the contrary, the plaintiff paid money. In law no one pays money to a wrongdoer. What is missing from this argument is a demonstration of what wrong has been committed by Bank of Ireland and what compensation has been paid by that bank to the plaintiff so that it can be said that the injured person is to be identified with the bank because of the release or accord.

Knowledge of losses and warnings
48. The Court accepts that James Haughey is likely to accept warnings and to act on them. The Court accepts his often repeated statement in evidence that having hired an expert he is likely to have followed that expert's advice. Whether or not the nature of his personality is such as to make him vulnerable to the advice of those he looks up to, a common enough human failing in any event, is not part of the matrix of fact that makes up the decision in this case. The Court is not at all content to rely on written accounts of advice given to James Haughey by Davy. The failure to properly record the crucial aspects of the relationship from the start, and all the way through this relationship to consider its elements, indicate that the records of Davy are unreliable. Even were the records of advice given to be reliable, the nature of what the plaintiff was in terms of what he was and what his needs were should have been, and was not ever, taken into account in giving that advice.

49. The disastrous positions on Ryanair shares were initiated and partially entered into while James Haughey was being treated as an inpatient in the psychiatric unit of Galway University Hospital. The Court considers that it is highly probable that conversations took place at that time between James Haughey and Anthony Moyles as to where he was, how he was doing, what exams he had passed or failed or had had deferred or as to any major event in his life, including the loss of his close friend. It is less than probable that Anthony Moyles advised against taking up any position in Ryanair. The evidence has been carefully listened to and the stark contradiction between advice recorded in a telephone conversation of 24th April, 2008 and a statement in evidence that airline shares in general were somehow generally to be distrusted because of the risk of a crash is noted. Ryanair is regulated by the Irish Aviation Authority in its operations and this opinion is, in consequence, surprising. It is likely that positions in Ryanair were taken and were maintained in consequence of advice to James Haughey from Davy. In that regard, the Court notes that while some of the positions were being built Anthony Moyles was training in sport abroad. In terms of the probability as to what happened, however, on the state of the evidence, May, 2007 was a time to cut completely any relationship by Davy with James Haughey and contracts for difference. To fail to have done that, in the context in which it occurred, was a failure to respond to the developing nature of the relationship which has to be based on knowledge by a stockbroker of his client.

50. On 25th July, 2006 a note appears on the file:

> Both myself (Daniel Molloy) and [Anthony Moyles] advised client [James Haughey] that it would be very risky to go short on Greencore shares at this point in time. We highlighted the risk […] Our advice was that he should not short the stock at this point in time. Client proceeded regardless, requested to go short on 2,000,000 shares at €4.20.

51. In fact, the position was not taken up by James Haughey and the Court can be satisfied that Davy were capable of giving advice and the James Haughey was capable of acting on it.

52. Then on 31st July, 2007 a note was dictated by Anthony Moyles to John Clohisey, who was then his assistant. There is a problem in relation to phone calls in this regard since John Clohisey's phone call was not recorded until a later time on that day. Part of the suspicion raised in this case as to phone calls was that many took place outside the internal records of Davy on mobile devices owned by the brokers. That is probable. The note reads:

> We reviewed the CFD portfolio with James on 31st July, 2007. We explained the recent volatility in the markets and pointed out that there could be further downside from here in the short term. He is happy with the current positions and will send in more money if required.

53. John Clohisey gave evidence. There was a strong sense in his testimony as to how far he would go. His evidence is taken into account in so far as it is probable and in so far as portions of it may be accepted. Such portions do not help the defendant's case.

54. On Wednesday 1st August, 2007 another note was dictated by Anthony Moyles to John Clohisey:

> We spoke with James on 1st August 2007. We discussed the idea of putting a short position in place to hedge his current long positions in the market. We warned him about his large exposure to Ryanair and Inditex and the risks surrounding this in the current market. James advised that we will consider putting the short in place and that he would revert if he wishes to hedge his portfolios.

55. The problem with this advice is that short positions were soon after put in place and that Inditex was eventually sold. The short positions were on stable shares that were not likely to balance the wild fluctuations that eventually came to characterise the Ryanair position. These short positions did not at all solve the serious problem and yet they were advised by Davy as part of the solution.

56. On Wednesday 29th August, 2007 there is another file note at a time when John Clohisey was on holidays:

> I spoke to James on 29th August 2007. I explained the situation to him that we coming into a very turbulent time in the markets over the next 6-12 months. I explained to him that if the market lost on average 20% he would have a margin call of close to [€]5 million based on his current holdings in Inditex and Ryanair. He said that he understood and would bear it in mind. He did not want to reduce any of his holdings at present.

57. Shortly thereafter, the Ryanair position was reduced somewhat, by about a third. Inditex was sold leaving only Ryanair, but including short positions on a range of other shares bundled. The last trade in Inditex seems to have been 21st September. 2007. The short positions, which were commenced in August, 2006, continued until 27th December. 2007 and at one point, on 30th October, 2007, these short positions reached €5.844 million. Earlier shorts are not relevant to any outcome. In the context of all that has occurred in this case as regards note keeping and record checking, these Davy notes cannot be relied on as a probable account of the advice given to James Haughey. Furthermore, an alarmingly self-serving note was penned to the file that was dictated by Anthony Moyles to John Clohisey as of Saturday, 27th October, 2007. The circumstances described in court of dictating this note are improbable. The note reads:

> We call James on a daily basis to review all holding in James's CFD account. James has a good understanding of the financial markets. He has his own ideas on companies. He regularly researches specific companies and reads the financial press. He understands leverage and has used this tool in his own property transactions. Anthony has explained how leverage works with CFD instruments and the risks involved. James has been supplied will all the relevant documents on CFD and his happy with the risks involved. James relies on Davy for investment ideas, but also makes his own calls with regard to buying certain stocks and with regard to selling out of positions. James confirmed that he was happy with the recent sale of Inditex (September 2007) and Independent News and Media (April 2007). James confirmed he was happy to hold all stocks currently in the portfolio including long positions in: Ryanair and short positions on the FTSE 100, EADS.

58. This note does not record the nature of the relationship as it appears to be probable to this Court. Davy as a firm was aware that James Haughey had difficulties. The responsibility of Davy in that regard was to terminate any involvement by James Haughey in contracts for difference. That relationship should never have been entered into in the first instance. It should have been reviewed properly. Several opportunities arose for appropriate review during the course of this relationship by Davy. The episode of strain was one obvious one. The positions could have been terminated on the changeover from Cantor FitzGerald to IG Markets but this did not happen in June, 2006. When the levels of stress that were apparent to Davy resulted in James Haughey ending up in hospital, whether he said psychiatric or not to anyone in Davy, the relationship should have been again reviewed in May, 2007. Instead, this disastrous series of events continued. In so far as it is alleged that any warnings were given, the Court could only be in a position to accept that of 25th July, 2006 as probable. That is because of the source of the note is not shown to be inaccurate. Any other notes are likely to be garbled and any testimony with regard to these warnings came across as unlikely. Any advice given to counter the long positions in Ryanair with short positions on a range of shares was insufficient advice. But it was advice that, on the documentation, was probably taken by James Haughey. Clear and unambiguous advice to move out of contracts for difference would have been given by any competent and careful firm of stockbrokers on the review date of June, 2006 and what should have been a review date of May, 2007. In what Davy choose for him, James Haughey was totally and completely at sea and out of his depth. A review by the documents section was absent as a check and higher management did not conduct any necessary review even in signing off their client as suitable for contracts for difference speculation.

59. One of the aspects of the law of negligence is predictability. No reasonable stockbroker would have allowed James Haughey into this kind of trading because no reasonable stockbroker could reasonably have predicted a good outcome over time for him as a client. In terms of time, a reasonable stockbroker would have looked at where James Haughey was at financially and in terms of employment and in terms of source of income and in terms of whether assets needed to be fostered as opposed to speculated and would have asked how long the money he had was to last. All such questions on the evidence in this case would have indicated the same result. Even had warnings been given, they did not override the situation into which Davy had put James Haughey both as a matter of fact and as a matter of law.

Information

60. It has been proven that statements from IG Markets were emailed to an email address for James Haughey at University College Galway. Davy had two different email addresses for James Haughey, both very similar. This lack of attention to detail is not impressive. In the end, it is likely that emails went regularly directly from IG Markets to James Haughey at his university email address. The Court does not accept that he understood these or how to read these properly. James Haughey has no recollection of the emails in question. That evidence came across as reliable. The data manager from the university was called. All emails have by now been deleted. IG Markets have indicated that no emails were replied to. It is hard to conclude what happened. One possibility is that the emails were treated as spam and were accepted but put into a spam folder in his inbox where they were left unread in consequence of university protocols. This is unclear. It seems less likely that they bounced back as this would leave a trace, in other words IG Markets would know of it through their technology branch. Another possibility is blocking because of the size of the attachment but there is no information as to the university protocols at the time. Another possibility is that James Haughey ignored everything and relied on Davy to keep him informed. What is clear is that he did not fill out the form for access to IG Markets computer information on a specialised website. This has been mentioned earlier in the context of forms. He says that he complained to Davy that he needed paper information and he asserts a suspicion that Davy stopped such records because of a dishonest act. The Court accepts that nothing done by Davy as a firm was dishonest in their dealings with James Haughey. There was negligence and that amounts to deliberate neglect. That is all. The Court accepts that a request for paper information was made, perhaps not made too assertively, and that the IG Markets records were an insufficient substitute. James Haughey seemed to have been genuinely puzzled when the IG Markets email attachments were drawn to his attention. It is probable that the emails did not reach him. Even if these did get to him, more than that was required for him as a client to show how the accounts were working out. As he complained, one position may be clear but the overall result was what needed to be shown. Again, this finding is personal to this plaintiff. But again, the "know your client" exercise requires reasonable levels of scrutiny as to what each client needs. The Court is not satisfied that the case made by Davy as to the appropriate delivery of email and any other written documentation is made out as a probability.

Damages

61. Both John Harding and Andrew Brown are exceptionally able accounting experts. They met and agreed a joint report. On one issue they are divided and that is the result of awarding damages. The logic inherent in the evidence of John Harding makes his viewpoint preferable though the debate with Andrew Brown was of considerable benefit in the clarification of the issues.

62. The Court has a fundamental view. This trading in contracts for difference would never have taken place if the stockbroking firm had gotten to know James Haughey. It would have been stopped, and replaced by conservative trading of the Joe Motley variety, had such knowledge been acted upon by Davy. The approach of the Court on damages is to removing those trades and to putting the plaintiff back in the position he would have been in had no trades taken place. The Court does not accept that losses would probably have been made in alternative investments. The Court considers it probable that investment in a range of good stocks through cash ownership would place a foundation of wealth diversification on a firm footing. It is not likely that the money would have been lost or diminished or thrown away. Nothing as to the alternatives as produced by Davy would convince the Court that anything other than maintenance of funds with some small growth would have been achieved had there been sensible advice of the kind that would have emanated from Joe Motley.

63. On the key issue of the carry forward of capital gains: the Court considers that the precipitation of James Haughey into these products was wrong and that maintaining him in that sector of speculation was wrong on every day that it occurred. The measure of damages is as to removing that wrong and returning the plaintiff to a situation as if these regrettable excursions into leveraged products had never occurred. Commenting on his interactions with Andrew Brown, and reasoning through his position, John Harding said as follows:

> We agreed that the capital gains tax paid was heading that needs to be taken into account, primarily because notwithstanding that losses were occurred in the 2008 CGT losses, or losses for capital gains tax purposes, these losses cannot be set back against the capital gains tax paid into thousand and seven and in earlier years. In other words, once you paid tax on previous gains that taxes settled and can't be offset. So, in terms of assessing the amount of money that would be required to put the plaintiff into the position that he would have been in had there been no CFD trading, the objective is to say: "look, if there had been no CFD trading he wouldn't have made the profits in earlier years which we have taken into account and netted off in arriving at the €1.5 million but neither would he have had to pay the capital gains tax, the irrecoverable capital gains tax that was paid on these", so that becomes a valid heading of claim… Arising from the CGT legislation as it's currently structured, the losses that were incurred in January 2008 cannot be set backwards but can be carried forward in terms of an ongoing situation. In that situation the carried forward CGT losses would be available to use against any future capital gains that the plaintiff might make… Where there is disagreement is that in the context of this case, in the context of the plaintiff receiving compensation in this case in the amounts claimed… I see that at a superficial level it looks like we have €3.7 million of losses to carry forward and that we are receiving compensation, or would, in that situation, receive compensation of €2 million. So in such a situation, at face value, it looks like there would be residual losses that the plaintiff could carry forward and that might be available to him subject to the legislation not changing and subject to him earning profits at some point in the future and that is the position. I believe… that cannot sustain examination. I believe that in the context of the settlement of this case, for example, in the context of an award of damages of the €2 million that that award of damages fully compensates the plaintiff for the €3.7 million of losses that were incurred in 2008…. or allowing a credit for the after-tax income that he earned in previous years, implicit in these net figures. So when you decide the figure, you discover that he is receiving in for the losses that were realised in 2008 and he's handing back the after-tax profits that he made and in such a situation the capital gains tax losses will not be available to him if he's awarded damages in the amounts claimed.

64. The Court fully accepts the logic of this position. It is also improbable that gains will be made by the plaintiff. It was argued that since receivers were appointed by Bank of Ireland over his properties that gains will probably be made on the sale of these and that losses carried forward must be available as a matter of law to write off against these profits. There is no evidence that these profits will be forthcoming, apart from speculation based vaguely on the prices of properties, again in a state of flux in Ireland. Nor is there any information as to when a receiver might be likely to sell properties. Even were such information to be forthcoming, the logic of the position as explained by John Harding is regarded as compelling.

65. The Court accepts the John Harding figures. Consequently, the net losses incurred on the relevant figures, for the CFD trading accounts was €1,250,475, to which must be added the non-recoverable capital gains tax and this amounts to €487,066, to which must be added the interest cost of funds invested in CFD trading up to 31st October, 2013 at €350,960, and finally the interest cost of funds invested from November, 2013 to the end of February, 2014 at €11,120. Total recoverable damages are therefore €2,099,621.

Result

66. There will be a decree for the plaintiff in the sum of €2,099,621.